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INTRODUCTION

The establishment of the Royal Commission on Electoral Reform and Party Financing in 1989 was fully in keeping with the traditional resort to royal commissions as an instrument of governance (Aucoin 1990). The Progressive Conservative government, among other things, did not want to act on demands from within the Quebec wing of its party caucus to restrict political contributions to individual voters and to place limits on the same, as found in the Quebec election law. Second, a royal commission, it was recognized, would extend participation in debate over the election law beyond the confines of the Ad Hoc Committee of parliamentary party representatives that constituted the most important component of the "sub-government" of this policy area (Pross 1986), given that Elections Canada is an independent agency of Parliament with solely an advisory role in matters of election law reform. The inability of the Ad Hoc Committee to reach consensus in response to a 1986 government white paper on election law reform also made a royal commission an attractive option. Finally, it was acknowledged that election law had been transformed by the Canadian Charter of Rights and Freedoms. The laws that govern elections in Canada, especially the Canada Elections Act, bear upon the most fundamental of constitutional democratic rights and freedoms. Charter challenges had already had their effect and more were expected. If election law was not be determined exclusively by the courts, legislative reform was necessary. In order to avoid the debacle that
followed a court striking down a major legislative amendment adopted in 1983 (Hiebert 1992 and Seidle 1985), however, reform was now seen to require not only independent and objective analysis but also the development of a consensus that could meet the dual tests of constitutional law and public acceptance. A royal commission was the obvious response.

In February, 1992, and following just over two years of work, the Royal Commission on Electoral Reform and Party Financing (hereafter the Lortie Commission, after its chair, Pierre Lortie) presented its four volume report. This report contained almost 600 recommendations and included a complete new legislative draft of the Canada Elections Act as well as draft legislative amendments to a number of other statutes related to electoral democracy.

In this paper I outline the proposals for reforming Canadian electoral democracy presented by the Royal Commission on Electoral Reform and Party Financing in its 1992 report, analyze the politics of electoral reform and assess the prospects for reform in light of the recommendations of this commission. Before doing so, I describe briefly the strategic approach adopted by commissioners in the performance of their responsibilities.

**STRATEGIC APPROACH**

It came as no surprise that the Royal Commission on Electoral Reform and Party Financing was comprised of persons with partisan affiliation. The 1964 Committee on Election Expenses (the Barbeau Committee) had just such a composition, although it did include an
independent, the late Professor Norman Ward. The Lortie Commission, in addition to its Chair, included two members from the Progressive Conservative Party (Pierre Fortier and Donald Oliver, later replaced by Robert Gabor), one from the Liberal Party (Lucie Pepin) and one from the New Democratic Party (Elwood Cowley, later replaced by Bill Knight).

Commenting on the Barbeau Committee on Election Expenses, the late Professor K.Z. Paltiel described the work of that committee as "the most detailed exploration of party finance undertaken by any public body in the democratic world" (Seidle 1985, 115). For its part, the Lortie Commission decided at the outset to interpret its general mandate broadly and to engage in a comprehensive study of election law, election and party finance, and electoral democracy generally in both Canada and elsewhere in the major Western democracies. This decision was based on four strategic objectives.

First, the commissioners were committed to a practical approach to electoral reform; their reforms were to be workable. For this reason, they wanted information and analysis on "best practices" elsewhere in Canada and abroad. The operative assumption here was that numerous practices in the Canadian provinces as well as elsewhere had moved beyond the federal Canadian experience and had proven to be effective, efficient and economical in advancing the cause of electoral democracy. To the extent that best practices elsewhere could be shown to work, Canadians could demand that their rights be secured under law with the knowledge that any purported practical objections from law-makers, administrators or other players could be met by reference to the experiences of other regimes in Canada and/or other comparable democratic systems. This explicitly comparative approach was to characterize the
extensive research program of the Commission.

Second, commissioners committed themselves to extensive consultations in order to foster consensus among themselves, representing as they did different partisan perspectives, as well as among practitioners from the registered parties, election offices, the media and those with particular interests in Canadian electoral democracy. It was agreed at the outset that this should entail a pro-active approach to the commission’s public hearings, on-going relationships with the major stakeholders (including a Committee on Aboriginal Electoral Reform) and, in addition, a series of organized symposia to bring together Commissioners, researchers and representatives from these several quarters. Although it was recognized that this approach could not in itself produce consensus, it was hoped that those so engaged would at least share a common understanding of the issues at hand, a knowledge of the options available from comparative experience and an appreciation of the conundrums faced by the commissioners themselves in the pursuit of electoral reform.

Third, at an early stage in their work Commissioners decided that their responsibilities would be best discharged if they (i) formulated general reform objectives based on a commitment to what they perceived to be the ‘ideal characteristics of electoral democracy’ and (ii) proceeded to reforms that research and analysis indicated would best realize them. This approach was considered decidedly preferable to engaging exclusively in a ‘plumbing exercise’, given that more was at stake than simply administrative reforms. In accepting this approach, commissioners acknowledged explicitly that their recommendations would have to be formulated with ‘the best interests of Canadians’ in mind. As was the case with the Barbeau Committee,
this required that commissioners adopt a "non-partisan" perspective, that is to regard themselves as other than "representatives" of their respective political parties (Ward in Seidle 1985, 115). This did not make their task any easier, of course, but it did make promote reasoned argument and decisions flowing from the evidence.

Finally, Commissioners wanted to present a report whose recommendations could largely, if not entirely, be implemented prior to the next election. This meant not only commitment to a schedule of work that was demanding, to say the least, but also the preparation for Government and Parliament of a complete draft of a new elections law. This undertaking was unique to a royal commission. In the case of the electoral law this task was a substantial one in two respects. First, election law is thorough in its coverage of its subject matter and detailed in its provisions. Although it necessarily contains some degree of administrative discretion for principal election officers, it does not provide for delegated executive authority vested in the Crown to make regulations pursuant to general provisions. Virtually all the rules are contained in the election statute. Second, the election act must be read, at least in part, by large numbers of Canadian citizens in their capacity as volunteers within the parties. The challenge was thus to draft a law in plain and clear language so that it could be used easily by lay persons.

THE OBJECTIVES OF ELECTORAL REFORM

On the basis of its public hearings, consultations, a major attitudinal survey and comparative analyses, the Commission formulated six major objectives for reforming electoral
democracy.

These were as follows:

(1) to secure the democratic rights of voters;
(2) to enhance access to elected office;
(3) to promote the equality and efficacy of the vote;
(4) to strengthen political parties as primary political organizations;
(5) to promote fairness in the electoral process; and,
(6) to enhance public confidence in the integrity of the electoral process.

The comprehensive character of these six objectives meant that the Commissions report could not be other than extensive and detailed. Given the Commissioners' aim to submit a unanimous report, however, meaningful agreement to these six objectives provided the necessary policy framework for the nearly six hundred recommendations required to address reforms of electoral democracy. Only the basic directions of these objectives and the accompanying recommendations can be presented here.

(1) Democratic Rights of Voters

The first objective recognizes the constitutional primacy of the Charter right to vote. This requires that any limits on the franchise be not only prescribed by law but also demonstrably justified as reasonable in a free and democratic society. It also means that both the administrative systems for voter registration and the voting process itself have to meet the same standard; voters cannot be denied access to the franchise simply on the basis of administrative
convenience. Although the Canadian record in these respects is relatively good, it does not measure up to the best practices found elsewhere in Canada or abroad.

Reform of the franchise means removing some or all restrictions on the franchise of election officers, judges, prisoners and persons with mental disabilities. The courts have already struck down provisions of the current law restricting the rights of the last three categories of persons. The commission recommended that election officers (namely the chief and assistant chief electoral officer and returning officers) and judges have the right to vote and that prisoners and persons with mental disabilities have their right restricted only in extreme cases. In the case of the first two sets of voters, the argument was that voting is a private act of citizenship and the integrity of the electoral law would not be compromised by their exercising this right, as demonstrated by comparative experience. In the case of the second two sets of voters, it was argued that the electoral law should meet the tests of the Charter.

Reform of the registration process entailed three considerations. First, administrative restrictions that do not serve to protect the integrity of the vote should be removed. This means, in particular, making it possible for voters away from their home constituency at the time of an election, in Canada or abroad, to register and therefore vote. The intent here is to eliminate, in so far as possible, ‘administrative disfranchisement’. It also means, more generally, making registration more accessible to a wide variety of voters. Third, it means adapting the registration system to the circumstances of the times: to make election lists as complete, current and cost-effective as possible. Among other things this requires changes to enumeration and revision processes, including the use of provincially based voter registers, and election-day registration.
Reform of the voting process means making the process as 'voter friendly' as possible, especially for voters with special needs. A major recommendation to this end is a proposal for the use of a 'special ballot' that would enable a wide variety of voters to vote other than at a regular polling station on election day or at an advance poll.

(2) Access to Elected Office

The second objective also recognizes a fundamental Charter right - the right to be a candidate. The Canadian law in this respect essentially extends this right to all voters. Yet in terms of the actual practice of Canadian electoral democracy, the meaningful exercise of this right on the part of many interested citizens has been undermined by the nomination processes and practices of our major parties. Herein lie the most significant obstacles to equitable access by women and members of various ethno-cultural minority communities. To the degree that these obstacles constitute a form of systemic discrimination, the meaningful exercise of the right to be a candidate is diminished. The legitimacy of the electoral process as well as our system of representative government is undermined accordingly.

Access to elected office is governed by two principal factors. The first concerns the provisions for candidacy in the electoral law; the second, the nomination of candidates by political parties.

The commission approached the first issue by distinguishing between the incompatibility of certain offices with candidacy and the ineligibility of certain voters to be candidates. In the
case of the former criterion, the commission recommended that senators, judges and election officers be disqualified as candidates while in office; members of provincial legislatures and territorial councils be qualified as candidates (but be required to resign from their provincial or territorial offices if elected to the House of Commons); and, federal public servants have the right to a leave of absence during the election period to seek nomination and be a candidate. In the case of the second criterion, the commission recommended that persons legally deprived of their right to manage their property, voters not residents of Canada on nomination day, prisoners serving a sentence extending from nomination day to election day, and candidates at a preceding election who had failed to meet the reporting requirements of the preceding election by nomination day be ineligible to be candidates.

Second, the commission recognized the critical role played by political parties and money in the determination of access to elected office. In order to enhance the access of those who have been underrepresented in party nominations, it was recommended that political parties be required to use search committees and processes that have demonstrably promoted the identification and nomination of persons from such underrepresented segments, especially women and persons from visible minority communities. It also recommended that the electoral law's provisions for both spending limits and tax credits be adapted to the nomination process and that the Income Tax Act be amended to provide tax deductions for attendant care and child care for nomination contestants and candidates. Finally, it recommended that all employees have a right to a leave of absence, without pay, during the election period to seek a nomination and be a candidate.
(3) Equality and Efficacy of the Vote

The third objective recognizes the centrality of what the courts have described as "effective representation". Effective representation in the House of Commons requires adherence, first, to the constitutional principle of proportionate representation in the allocation of Commons seats to provinces while ensuring a minimum representation for each province, and, second, to the principle of a relative equality of voters in each constituency within a province while having electoral boundaries contain meaningful communities of interest wherever possible. Adherence to both principles in recent practice has not been as faithful as it could and should be.

The Commission recommended a new formula for assigning seats to provinces in the House of Commons that, in comparison to the present formula, would better secure proportionate representation among the provinces while respecting the constitution's senatorial floor provision for smaller provinces and providing for the least growth in the size of the Commons.

The Commission sought to enhance the effective representation in the drawing of electoral boundaries by reducing the permitted deviation from provincial electoral quotients from 25% to 15%, by removing the authority of electoral boundaries commissions to make exceptions in 'extraordinary circumstances', by requiring that all deviations be justified in relation to explicit references to 'community of interest' and by having boundaries drawn on the basis of the number of voters at the last election and, where necessary, more frequently than after each
decennial census.

The Commission also sought to enhance the effective representation of Aboriginal voters by way of a process that would enable Aboriginal voters to cause the creation of 'Aboriginal constituencies'. This would occur in any province where the number of self-identified Aboriginal voters on an Aboriginal voters register warranted one or more constituencies with reference to the province's electoral quotient. This right of Aboriginal voters would be a right to have Aboriginal constituencies created in a province; it would not be a guarantee of a fixed number of seats. In principle, accordingly, any Aboriginal constituencies within a province would be included within that province's assigned number of seats in the Commons.

(4) Political Parties as Primary Political Organizations

The fourth objective recognizes that within our system of responsible representative government political parties are primary political organizations: they recruit and nominate candidates; they structure voters' choices for the direct election of representatives to the House of Commons and the indirect selection of a government; and, they enable their members to participate in the selection of candidates and political leaders and the development of party policy. The practices of our competitive parties have increasingly left something to be desired in each of these respects. While Canadians acknowledge the primary roles of parties, they are increasingly critical of the ways parties behave. As essentially self-governing organizations, parties have been either unable or unwilling, or both, to give primacy to the values of access, fairness or integrity in their governance structures and modes of operation. When measured
against the democratic spirit of the Charter, various provisions in the electoral law itself and public expectations concerning citizen participation in the democratic process, parties as primary political organizations appear to be stranded in the practices of a prior age.

The commission recommended that the public dimensions of political parties in selecting candidates and leaders be reformed so that only voters be able to participate in these processes, the principle of one person-one vote be respected, and there be clear rules and procedures, including membership and residency regulations, with effective remedies and sanction. The constitutions of parties should reflect these democratic values and incorporate a code of ethics.

At the same time, it was recommended that the legal framework for the registration of parties be made more flexible to allow for the emergence of new parties and the identification of small parties on the ballot that cannot meet the criteria for full registration.

It was also recommended that parties establish 'party foundations' to enhance the capacities of parties to fulfil their roles in developing policy alternatives and engaging their members in political education. It was further recommended that these foundations be eligible for direct and indirect public funding if they do not engage in electoral activities, these foundations and their party meet certain conditions pertaining to the activities of the foundation itself, and the party has a minimum measure of electoral support.

Finally, it was recommended that the constituency associations of parties be registered, be allowed to issue tax receipts for political contributions and be required to provide full disclosure of their revenues and expenses. Party nomination and leadership contestants would
also be required to provide full disclosure of their revenues and expenses.

(5) **Fairness in the Electoral Process**

The fifth objective recognizes that the fundamental equality of voters prescribed by our democratic constitution requires an electoral process in which voters have a fair opportunity to assess the choices presented to them and to influence electoral outcomes. This objective demands that election discourse not be unfairly dominated by those with resources sufficient to overwhelm others in presenting choices to the electorate. Given that it cannot be assumed that all participants will have recourse to a reasonably equal level of resources, the realization of this objective requires regulation of election spending by all participants, a measure of public funding of those seeking public office and reasonable access by them to the principal media of electoral communication. The pursuit of fairness in these respects cannot but affect other rights and freedoms, especially freedom of speech. Fairness must thus be regarded as a pressing and legitimate concern and the legal provisions to realize it must meet the standards set by the courts for limiting rights and freedoms.

In various ways the Canadian electoral regime has been a model within the comparative context in these respects. Fairness, however, has been only one of the objectives in the law that relates to these matters and this is evidenced in the degree to which some provisions are not as fair to all concerned as they could and should be. It is also the case that one critical provision, a ban on independent election expenditures, has been shown not to have paid due regard to Charter rights and freedoms and was successfully challenged in court. As a result, the regime
governing election spending at present has a gaping hole in it.

The commission recommended that spending limits be maintained as a central means to promote fairness. It also recommended a more comprehensive and inclusive definition of election expenses than now found in the electoral law. This new definition, for example, would include polling and research during the election period. In addition, it recommended the extension of the spending limit regime to the election spending of individuals and groups who are not candidates or parties coupled with a provision to ban any pooling of individual or group spending. As noted, spending limits would further apply to party nomination and leadership contests, whenever they were held.

The commission recommended that public funding for candidates and parties be maintained but made fairer to all concerned. Reimbursement of election expenses to a maximum of 50 per cent of expenses should be based on votes received above a threshold of one per cent of the total vote.

The commission recommended that access to paid broadcasting time for party advertising continue to be required by law but that all parties be treated equally in terms of access. The commission thus recommended a deregulation of the traditional formula based on party standings in the previous general election. In its place would be a requirement that broadcasters make time available, as under the present system, but with all parties able to purchase as much time as they wished up to a maximum of 100 minutes from any one broadcaster. Free broadcasting time, on the other hand, would still be based on a formula,
although with a formula fairer to new and smaller parties. The format, moreover, would be
designed to consist of a series of one-half hour magazine shows with four minute segments
allocated to parties for their use as they see fit.

(6) Public Confidence in the Integrity of the Electoral Process

The sixth objective recognizes that the legitimacy of the electoral process is enhanced
only to the extent that citizens are confident that their rights are secure by virtue of the integrity
of this process. Integrity requires that there be transparency in the financial activities of election
participants, public accountability in the use of public funds made available to participants
directly and indirectly, a regime that reduces the potential for undue influence in the democratic
process, credibility in the reporting of election information by the media and independence and
impartiality in the administration and enforcement of election law. Canadian election law
already encompasses some of these elements and the record in these regards is impressive in
comparative terms. At the same time, however, there are shortcomings in each of these respects
that need to be addressed in order to promote the desired degree of public confidence.

The commission recommended that the financial disclosure regime whereby candidates
and parties must make public their revenues and expenses be made more complete in its
information, more timely and frequent in its publication and more accessible for interested users.
This regime would be extended to constituency associations as well as to nomination and
leadership contestants. Given its proposals for spending limits, public funding and political tax
credits, the commission recommended no limits be placed on either the sources or size of
political contribution, except that no participant could accept contributions from foreign sources.

The commission recommended that the publication of public opinion polls require information concerning methodological details be made available in line with best practices in this regard and that there be timely public access to the data of published polls. It also recommended a blackout on the publication of polls on the day preceding election day and election day itself because the timing of such publication would not allow for examination and comment by interested parties.

The commission recommended that the election law recognize two categories of election violations: offences to be prosecuted before the courts and regulatory infractions to be handled by a new administrative tribunal - a Canada Elections Commission. This Commission would be chaired by the Chief Electoral Officer and have six other members appointed by a two-thirds vote of the House of Commons. It would issue policy statements, assume the functions of the Broadcasting Arbitrator, direct the CEO and election officers and adjudicate regulatory infractions brought before it by the Director of Enforcement. This officer would be appointed by the Governor in Council and have independent statutory authority to investigate and prosecute all violations.
THE POLITICS OF ELECTORAL REFORM

The politics of electoral reform will obviously pit reformers against those who favour the status quo. All those who favour reform, however, do not necessarily subscribe to the kind of regime advocated by the Lortie Commission. Although the Lortie Commission’s recommendations fit within the major historical pattern of electoral reform in the Canadian experience, there is a contending Canadian political tradition. Moreover, this tradition has found new life in recent years. As a result, the politics of reform is likely to be as much about the differences between the visions of these two reform traditions as between reformers and those who favour the status quo. In the final section of this paper, I consider the prospects of reform; here I consider the two competing traditions of electoral reform in Canada.

Janet Ajzenstat, in a recent paper on political reform in the 1830s, contends that there developed at the time "two sharply different political ideologies - two visions of good government" which find expression in contemporary Canadian politics (1992, 159). These two "poles of modern political thought" she identifies as "constitutionalism" and "democracy" (175). The former achieved supremacy in the great reform that saw the establishment of our constitutional system of responsible government in the 1840s. The latter, with its conception of a "true democracy, government by 'the people'", was never entirely extinguished however. It regained its status as a contending reform movement in the first part of this century, particularly on the prairies, and has once again re-emerged as a vital political force. As with the first wave of democratic populism earlier in this century, this pole of political thought extends across the partisan political spectrum, encompassing elements of what otherwise would be considered both
the left and right spectrums of Canadian politics. It derives its strength in part from the particular Canadian fact that our major political parties, especially the two parties that have governed nationally and in contrast to governing parties in other major parliamentary party systems, have been seen to be ‘brokerage’ parties that do not offer voters clear choices at elections and compromise on their election promises when in power (Brodie and Jenson 1989).

The Lortie Commission’s approach to electoral reform can be seen as firmly located within the "constitutionalist" tradition. It accepts and builds upon the institutional reforms that, among other things, put in place the independent and impartial electoral machinery headed by the Office of Chief Electoral Officer (1920), placed the drawing of constituency boundaries under the jurisdiction of independent electoral boundaries commissions (1964), and established the contemporary system of election and party finance (1974). In each of these and similar instances, reforms were based on an understanding of electoral democracy as essentially competitive and partisan and an appreciation of parties as the means to effective yet accountable representative government. Reforms have been required at times in order to address the negative consequences of competitive partisanship, such as a lack of integrity in the electoral process, partisan gerrymandering of electoral boundaries or the excessive influence of money in electoral competition, but the basic foundations of political freedoms and good government is seen to lie squarely upon a system in which competing partisanship is accepted as the principal political dynamic to best realize these objectives.

The Lortie Commission’s recommendations concerning the integrity of the administration and enforcement of the electoral law, the regulation of the publication of public opinion polls,
the registration and regulation of parties and their finances, spending limits in campaigns as well as in nomination and leadership contests, and the public funding of candidates and parties all accept the primacy of parties in electoral democracy both as a foundation and a consequence of our constitutional system of responsible government. Greater fairness between parties and their candidates is meant to be secured by reforms to the regulation of partisan competition but these reforms are not meant to reduce such competition.

The constitutionalist tradition, says Ajzenstat, also "demands equality of right, but tolerates inequality of condition" (175). The Lortie Commission conforms to this dimension of that tradition as well. It recommendations concerning the franchise and its administration and exercise, the right to be a candidate, the proportionate representation of provinces in the House of Commons and the equality of the vote in drawing constituency boundaries all speak to the fundamental equality of voters enshrined in the Charter. Although its recommendations concerning spending limits, public funding and political tax credits serve to promote greater fairness in the electoral process, fairness in this context assumes not an equality of condition among participants but rather an equality of equal opportunity to participate.

The democracy tradition, on the other hand, regards parties with distrust and suspicion at best: they are too hierarchical, even oligarchical and elitist; they are divisive of political community; and they run roughshod over the interests, opinions and participation of ordinary folk. More importantly to the point at issue, they design the electoral process to suit their narrowly partisan self-interests and ambitions for power over the people. Although a large majority of Canadians may agree that "without political parties, there can't be
true democracy" (Canada 1992, I, 207), the democracy tradition has experienced a revival as a result in part of the declining public respect for parties (224). A large majority of Canadians think that parties engage in too much squabbling, confuse rather than clarify the issues and impose too much discipline on Members of Parliament (226; Laschinger and Stevens 1992). These attitudes are reinforced by what are perceived to be undemocratic structures and practices within our major parties. Within the democracy tradition, "true democracy, government by 'the people'" demands direct forms of democracy in contrast to the form of indirect democracy achieved by party government. Referendums, citizen initiatives, recall, 'financement populaire', 'free voting' by MPs and freedom for "non-partisan civic participation" in election campaigns by "citizen-based" interest group organizations (Cameron 1992) representing "common" or "ordinary" Canadians (Johnson 1992), are the principal themes around which democracy reformers, from across the political spectrum, make their case.

While rejecting the basic premises of the democracy pole of thought, the Lortie Commission did recognize the legitimacy of certain aspects of its critique of the existing regime and current practices. Recommendations to alter the voter registration and voting process, for instance, were designed to make the electoral process more responsive and voter-friendly. Greater fairness was to be promoted in relation to small or emerging parties as against the larger and established parties in terms of reimbursement, access to paid and free time broadcasting, party identification on the ballot as well as the treatment accorded independent MPs with regard to election financing. More generally, recommendations concerning the constitutions, structures and operations of political parties speak to greater participation by members in the life of parties and the role of parties in political education and the development of party policies. Although
some of these recommendations may find favour with those of the democracy persuasion, some obviously do not go to the lengths desired by them while others go in the wrong direction.

The Commission, moreover, explicitly rejected both the idea of conducting referendums (or citizen initiatives) concurrently with elections and the inclusion of a recall mechanism in the electoral law - two of the principal instruments of direct democracy Mac Donald 1992). Referendums at elections were rejected on the grounds that they would invariably be partisan in any event (and thus strip the referendum device of its major purpose), that the spending limit regime could not be effectively applied if there had to be separate provisions for the election and referendum votes, and that referendums at elections would detract from the fundamental purpose of elections, namely the choice of who should govern. Recall was rejected on the grounds that turnover in the House of Commons is already substantial (indicating that voters have ample opportunity to reject those not responsive to their constituents), that ministers, as MPs, could be subject to recall petitions organized by interest groups not confined to their individual constituencies, and, more generally, that the experience elsewhere, particularly in the United States at the state and local levels, does not indicate that the responsiveness of elected representatives to voters is improved by virtue of the availability of this device.

The Commission also rejected ‘financement populaire’, that is limits on the sources of political contributions so that only voters may make contributions (within a set limit). It did so on the grounds that competitive parties and their candidates are more effectively restrained by spending limits, that undue influence is equally likely to arise with contributions from individuals as it is from groups such as business or unions, that tax credits have substantially
increased candidate and party reliance on small contributions from many individuals, that comparative experience suggests that corrupt behaviour is more likely to result from limits on legal contributions and, finally, that restrictions on the flow of money to candidates and especially parties merely results in a redirection of where, how and by whom political money is spent in elections.

The Commission recommendation that perhaps best represents the rejection of the democracy pole of thought, however, is that which would limit independent expenditures by individuals or groups who are not candidates or parties. Although the Commission opposed the idea of a ban of such independent expenditures as being both unconstitutional and undesirable, its recommendation strikes at the heart of the democracy model of elections. The democracy model, as articulated by libertarians on the one hand and populists on the other, regards any restriction on independent individual or group action during campaigns as a threat to democracy contrived by self-serving established parties in order to thwart challenges to their supremacy in political life. These democrats base their objections to restrictions on one or more of the following: (i) free speech must have paramountcy over all other political values in elections (especially anything as vague as ‘fairness’); (ii) money and advertising in campaigns have no significant effect on voter behaviour and therefore election outcomes; and, (iii) elections are not essentially and ultimately a process in which voters make partisan choices for which party’s candidates will be elected and which party will form the government. Political equality for these democrats means the equal right of all to free speech during an election (assuming they can pay for it) and the equal right to cast a ballot. Voters, moreover, have no difficulty in hearing the various sides, however much one or more sides is able to dominate election discourse; when
David and Goliath meet head on, it cannot be assumed that the latter has any real advantage (Johnson 1992). If there is to be a concern for equality as fairness then it ought to take the forms of spending limits and/or limits on the size and/or source of political contributions for partisans only, namely candidates and parties. Ordinary citizens and civic groups, on the other hand, should not be restricted in their spending; indeed, it has been suggested that access to free broadcasting time should be made available to such independents so that they might enrich election debate with their non-partisan and issue-oriented advertising (Johnson 1992).

Finally, the recommendations of the Lortie Commission may be regarded as seeking to reduce those elements of the democracy pole of thought that have been incorporated into the Canadian experience. This is especially the case perhaps with the recommendations concerning the structure and management of political parties that appear to go against the grain of what David Smith refers to as the "localism" of our party system (1985). This localism is expressed in the relative autonomy of local constituency associations in nominating candidates, in managing their own affairs, particularly their financial affairs, and in selecting delegates to national conventions, including leadership selection conventions (Carty 1993). The federal character of our national parties has reinforced this localism. The Lortie Commission’s recommendations, in a number of respects, seek to nationalize the parties by, among other things, bringing local constituency associations under the umbrella of election and party finance law, requiring them to conform to national party standards for selecting candidates, national delegates and local officers, and, more generally, fostering the role of the national party in establishing codes of ethics for the management of the party. Although the Commission’s recommendations in some of these regards actually address elements of the democracy model,
particularly in so far as they seek to enhance the meaning of membership within parties, it will not be surprising if local party elites wrap themselves in the cloak of local democracy in resisting these recommendations. In this regard, the recent experience of the Reform Party in coping with the conundrum of being a grass-roots/populist movement as well as a national political party may well be replicated in some ways in the more established parties.

In the contemporary context of this politics of electoral reform, the recommendations of the Royal Commission, based as they are on the constitutionalist pole of thought, cannot but suffer in comparison to the democracy model. As Ajzenstat puts it, the constitutionalist pole of thought, "may well appear less attractive" than its democracy counterpoint: "it does not ask for high-minded leadership, expects little from the populace in the way of citizenly virtue, and if we are to believe its [democracy] critics, fails to respect the human need for community....It stands on solid ground when it opposes the absolutism of the few, but its opposition to the absolutism of the many can easily appear like a betrayal of popular interests" (175).

THE PROSPECTS FOR ELECTORAL REFORM

The issue of electoral reform was almost immediately pushed off the political agenda by the constitutional question following the release of the Lortie Commission’s report in early 1992. Even the House of Commons Special Committee on Electoral Reform, established after the release of the Lortie Commission report, was affected when it was transformed into the legislative committee for the government’s bill that became the Referendum Act. This committee has now produced its first of what it intends to be three reports on this subject. This
initial report deals with various administrative measures as well as changes to the right to vote and to be a candidate that must be accepted within the next few months if Elections Canada is to have sufficient time to implement them for the coming election. Its second report is to focus on changes that could also be put in place before the next election but which will take less lead time to implement. These include election finance, broadcasting and enforcement measures. A third report will deal with matters that could not be implemented before the next election, including the assignment of seats to provinces, the drawing of constituency boundaries, the question of Aboriginal constituencies and the creation of a Canada Elections Commission.

At least three major sets of factors need to be considered in assessing the prospects for reform. The first of these is the impact of the Charter and courts in relation to constitutional rights, equality and fairness in the electoral process. The first report of the Committee on Electoral Reform reflects this fact directly in regard to the rights to vote and to be a candidate and indirectly in regard to the need to make the registration and voting processes more accessible. A pending court decision on the broadcasting provisions of the current elections act will serve to bring this facet of election law to the forefront of the political agenda. A recent decision on reimbursement under the current act will do likewise for this matter (Barrette and Payette v. Attorney General of Canada, August 7, 1992, Superior Court of Quebec).

There has been a certain nervousness on the part of some legislators over the implications of the Charter for the question of limiting independent expenditures by individuals and groups. Contrary to the federal government’s claim that its Referendum Act could not entail meaningful spending limits because they would unreasonably restrict the right to free speech, a
Quebec Superior Court subsequently decided that the Quebec referendum law’s limitation on independent expenditures during referendum campaigns met the several tests of the Charter (Libman and Equality Party v. Attorney General of Quebec, July 30, 1992, Superior Court of Quebec). The recommendation of the Commons’ Special Committee to limit independent advertising expenditures to a $1000 for individuals or groups applies only to direct support for or opposition to a candidate or party. All non-partisan or indirect ‘advocacy advertising’ would be permitted; the pro-free trade advertising in the 1988 general election, for instance, would have been subject to no limit, as it did not relate the issue directly to a particular candidate or party. The recommendation of the Commons’ committee, in short, is about as meaningful as the spending limit provisions in the federal Referendum Act. They are, nonetheless, vehemently opposed by the National Citizens Coalition.

One way or the other, it is highly likely that at least this question of electoral reform will at some point be before the courts again.

The second set of factors are those pertaining to the dynamics of party election strategy and internal party governance. What these mean for electoral reform is obviously more difficult to predict at this time. It may turn out that the pattern of electoral law reform that occurred in the early 1970s will be replayed in the 1990s. In 1971, the House of Commons Special Committee of Election Expenses recommended changes in a belated response to the 1966 Barbeau Committee report, only to have the bill incorporating its recommendation fail to reach second reading before Parliament was dissolved for the 1972 election. Although some legislative changes to the current elections act will occur before the 1993 election, it would not come as a major surprise if major changes related to election and party finance failed to see the light of
day before the coming election.

If the outcome of the 1993 election is anything like that of 1972, and there is ample evidence to suggest that it might, a minority government situation may again be the catalyst to reform. The 1972 election resulted in a minority Liberal government and the two major opposition parties, but not the Social Credit Party, were able to influence the legislative outcome that was the Election Expenses Act of 1974 (Seidle 1985). A greater number of parliamentary parties may provide the political justification for limiting independent expenditures, on the grounds that a truly multi-party system itself provides for the expression of a sufficient diversity of views at elections. At the same time, greater competition between the parties may provide the intra-party justification for enhancing not only the roles of members within parties but also, and perhaps paradoxically, the capacity of party leaders to structure and manage their parties as nationally integrated institutions.

The third set of factors that needs to be considered entails demands for greater representativeness and inclusion in the political process. There exists a variety of demands here. They include the question of provincial representation in the House of Commons for those provinces now underrepresented as a consequence of the present formula for assigning seats to provinces. Although the Charlottetown Accord was rejected, it did serve to raise this issue and it is unlikely to go away as British Columbia, Alberta and Ontario would benefit from any new formula that secured greater proportionate representation. Recent court decisions relating to the drawing of constituency boundaries at the provincial level have likewise given a salience to the question of voter equality or representation by population. As both women and members of
various ethno-cultural communities, especially visible minorities located primarily in urban areas, would be among the chief beneficiaries of changes in this regard (Sancton 1992 and Moncrief and Thompson 1991), the momentum for reform may be maintained. Finally, the democracy movement should give some thrust to demands, again especially in so far as women and members of visible minority communities are concerned, for internal party reforms that serve to promote greater access to political power and access to elected office, including those extending the electoral law to local constituency associations.

In all of this, what can be said of the potential influence of the Lortie Commission? I suggest that the Commission will have an impact in at least three ways.

First, because it focused explicitly on constitutional rights and freedoms as they apply to the electoral process, the Commission’s work will have an influence on the courts. This has already been the case in a decision concerning reimbursement and, indirectly, independent expenditures (indirectly because the case in question dealt with such expenditures in a referendum vote). Discussions leading to the failed Charlottetown Accord gave credibility to the Commission’s recommendation for a new constitutional formula for assigning seats to provinces in the House of Commons, a constitutional change that falls exclusively within the jurisdiction of Parliament. Although the Accord assumed a reformed Senate, the Commission’s proposed formula does not assume any change to the Senate or to the constitutional protection for the number of seats assigned to the smallest provinces. On these and other matters, the work of the Commission is pertinent for it provides a justification for reforms that meet the objectives and tests of the Charter.
Second, the Commission provides a comprehensive comparative perspective which enables reformers to assess the Canadian record against the best practices of electoral democracy elsewhere in Canada and abroad. Reformers are thus armed with evidence of what works in contexts comparable to the Canadian system. For example, the Committee on Electoral Reform recommends that Canadians living abroad be able to register and vote; it also accepts the Commission proposal for a "special ballot" as an alternative voting mechanism for those who cannot vote at a regular polling station either before or on election day. In each case, comparative experience rules out any objection based on practical administrative considerations. Similar conclusions on the basis of comparative analysis can be reached on a wide variety of matters related to, among other things, election administration, the provision of free access to broadcasting, financial disclosure, the regulation of local constituency associations, election law enforcement and the drawing of constituency boundaries. A major limitation on the potential influence of the Commission in the political, as opposed to the judicial, arena derives not from the substantive character of the Commission's report but rather the disinclination of Canadian politicians and other political participants to read reports of the length produced by the Commission. Evidence is unlikely to have much effect in political debates when it is not digested by the intended audience!

Third, the Commission provides a contemporary "constitutionalist" case for those who favour reform from this perspective, as opposed to the direct democracy paradigm. Although party affiliation may be simultaneously declining and fragmenting in Canada generally, as elsewhere, there is evidence that party systems can respond in innovative ways to be more inclusive and participatory (Jenson 1992). The recognition by the leadership of the Reform
elsewhere, there is evidence that party systems can respond in innovative ways to be more inclusive and participatory (Jenson 1992). The recognition by the leadership of the Reform Party, in contrast to the Progressives in the 1920s, that even populist political reforms require more than a political movement illustrates the extent to which party has come to be accepted as the means to representative and responsible government. At issue, therefore, are the degree to which and the means by which the law should be used to promote equality and fairness in both the electoral system and the internal processes of parties themselves. The Commission’s position is that Canadian and comparative experiences demonstrate that positive law can enhance equality of participation and fairness between competing forces without diminishing competition or requiring an equality of condition. Given the performance and behaviour of our major parties within what Carty (1992) calls the "third party system", however, the Commission’s reforms to strengthen political parties as primary political organizations may well appear to be insufficiently ‘democratic’ to attract much in the way of broad public support.

CONCLUSION

Royal commissions are useful devices for governance in an indirect manner. In the case of the Royal Commission on Electoral Reform and Party Financing, the governing party gained time for its response to an internal party demand favouring financement populaire. It also was able to extend the number of participants in this policy arena beyond the confines of parliamentary parties in the hope that a broader public consensus would enable it to demonstrate leadership without acting in a unilateral manner. And, it was able thereby to support an initiative to address the issue of electoral reform in a more independent and objective manner.
reform is, of course, a question for political debate and ultimately the assessment of historians. Although it formulated its recommendations in an impartial manner as regards the partisan interests of the parliamentary parties, the legacy of its report will consist of its partisan defence and promotion of the constitutionalist pole of political thought on electoral democracy. To the degree that Commissioners were faithful to the reform spirit of Joseph Howe, they may then be characterized, to use the twin descriptions of J. Murray Beck, Howe's foremost political biographer (and with apologies to commissioner Bill Knight), either 'conservative reformer[s]' or 'liberal[s], but with qualifications' (Beck 1982 and 1984).
References:


Canada, Royal Commission on Electoral Reform and Party Financing, Reforming Electoral Democracy, Volume 1 (Ottawa: Minister of Supply and Service, 1992)


