The Role of the Governor General: Some Lessons from Australia and the Commonwealth

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As Canadians wrestle with issues of prorogation, coalitions, fixed elections and even the nomenclature of their head of state it is useful to look at practices in other Commonwealth countries. Of course each country will have its own tradition and conventions but we can better understand Canadian issues by putting them in a comparative perspective. This paper looks at recent developments relating to the role of the Governor General including his/her role in the making or unmaking of Governments.

Canada has an ancient, some would say antique, Constitutional charter, which until the *Constitution Act 1982*, had no autonomous, self-operating amending machinery, and even today has only a very cumbersome and difficult amending process. Thus there is an ever-increasing gap between the Constitution-as-written, the Law-in-Books, and what actually happens under it. It becomes a burden of the constitutional Conventions and many other sensible tolerated informal governmental practices, to try to help fill the gap.

Ever since the passage of the Second Reform Bill of 1867 in the United Kingdom and the resulting sweeping extension of the electoral franchise to the adult male population, the prime arena for constitutional-legal change and for new law-making in the United Kingdom has been the House of Commons.

Since 1867 the Crown in Great Britain has always deferred to the advice of the Prime Minister as to Dissolution of Parliament and new General Elections. This would not prevent or impede the free and frank, private exchange of views as to the merits of particular, proposed actions or policies at any time. It is here, on all the evidence, that the role of the present Queen who, after all, has met with more than a dozen successive Prime Ministers, beginning with Winston Churchill, continues to be effective and persuasive within the British constitutional system.

The effectiveness stems from the pragmatic experience and commonsense and realism, coming from a long life in public service and available in friendly persuasion and not through the invocation or menace of constitutional prerogatives, whatever they may have become through developing custom and Convention today. These are the crucial personal qualities to look for in the quest today for a modern Governor General. One should avoid any unnecessary fixation on Constitutional Law expertise, as such. Governor General Clarkson happened to have it too, but it was the other, personal qualities that guaranteed her success in the exercise of her office.

A Word about Nomenclature

The term Head-of-State is not a constitutional-legal term-of-art in Canada. It is not mentioned in the original *British North America Act* of 1867 or in any of its subsequent Amendments, including the last major constitutional reform project, the *Constitution Act* of 1982. Employed, lower case, as "head-of-state", whether with or without the polite prefix of

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"titular", it is merely a convenient political science term to differentiate the office and its functions and powers from that of head-of-government under the Westminster-model dualist executive system.

By way of comparative Constitutional Law experience under other Westminster-style Constitutional systems which, like Canada and Australia, had past historical connections with the old British Empire and later Commonwealth, the Republic of Ireland has had its most recent heads-of-state, styled under the Constitution of 1937 as President under a dualist (head-of-state/head-of-government) executive system, directly elected by nation-wide popular vote. The Republic of India, operating also under a Westminster-style dualist executive system, has followed course, with its President, as head-of-state, also elected, though under an indirect electoral system including all the Members of both Houses of the federal parliament, but also Regional bodies.

> ***To call our Governor General the Head of State does not, and cannot of itself, alter or diminish the role of the Queen in Canada today, notwithstanding occasional rather anguished public comments to the contrary.***

The Prorogation Debate

Prorogation, an arcane legal process, with English historical roots going back to the Wars of the Roses, that notionally had been "received" in Canadian law with the adoption of the *British North America Act* of 1867, was hardly known to Party leaders and their MPs generally at the time it became the focus of so much angry public argumentation in the last days of November, 2008. An evident lack of comprehension of its basic incidents and conditions is readily understandable for a process that is a vestigial survival from another era, but it was surely not warranted to assert then that its usage today would be "unprecedented".

Comparative, Commonwealth practice with countries that, like Canada, have Westminster-model systems, indicates clearly enough that Prorogation has been and will be grated routinely on request of an incumbent Prime Minister. In Canadian practice, it has apparently been granted one hundred and five times since Confederation in 1867, at the behest equally of Liberal and Conservative Prime Ministers over the years, and right up to the present day clearly related to those governments' calculation of their own immediate political advantage or profit at the particular time.

A case can be made for establishing precise limits or conditions to the grant of Prorogation today (including time duration, and restrictions on executive appointments during its pendency), or even for abolishing it altogether by subsuming it within the larger, better understood corpus of Parliamentary Rules as to Adjournment. The constitutional competence to undertake some such reform and modernisation of House of Commons practice and procedure is in the federal Parliament, acting alone, possibly as part of a comprehensive *Act of Codification*.

The political will to do so has simply not been there, and this would account for the fact that the issue seems to have disappeared now from the political agenda in Ottawa. Prorogation, on this view, would have been simply a convenient pretext, rather than cause in itself, of the late November, 2008, political confrontation, for which the prime motivation would always have remained persuading the Governor General to withdraw the mandate of an incumbent Prime Minister in favour of a new, "alternative" government based on the associating then of the three Opposition parties.

When Prime Minister Harper called on Governor General Jean in December 2008 to request Prorogation of Parliament when faced with a non confidence motion, there has been a "Much Ado about Nothing" from assorted media people who were waiting outside Rideau Hall for the full two hours between the Prime Minister's arrival and his departure taking with him the grant of Prorogation. Why did it take two hours? Did the Governor General deliberately try to snub the Prime Minister by making him wait so long and as a weapon for re-asserting claims to inherent Reserve discretionary powers?

One point is clear in any case: all the historical precedents going back to Edward IV and Richard III, and reinforced after the Glorious Revolution of 1688 and from William and Mary on, are clear and categorical that the grant of Prorogation is non-discretionary, on request. More impressively now in a Canadian context is the weight of cumulative Canadian experience since Confederation in 1867.

With correct constitutional-legal advice available to the Governor General, if she felt she needed it, it could certainly have all been dealt with, after the normal exchange of greetings, in ten minutes, as the media themselves concluded at the time. One prefers to believe that the remaining time was taken up by the Governor General's inviting the Prime Minister to have

a cup of tea with her and for the two to profit from an all too rare opportunity to converse freely on non-State matters. The alternative version, ventured on by the media, seems foreign to the natural dignity and warm and gracious personality of Madame Jean, and outside head-of-state protocol and its studied courtesies as classically exemplified over all the years by the Queen.

Making and Unmaking Governments

There is today an impressive body of what may be identified as Commonwealth Constitutional Law, with an original core element of English Conventional Law and general English Legal History, and including the Constitutional doctrines and jurisprudence of "new" countries like Ireland and India, and not least Pakistan where some of the most eloquent and courageous interventions in its defence have come from its too often politically embattled Supreme Court justices.

It is alive and well in Australia too, with interesting nuances to be found in the continuing critical re-examinations of the 1975 *Whitlam/Kerr cause célèbre* where the Governor General peremptorily dismissed Prime Minister Gough Whitlam without prior consultation and, again without the Prime Minister's consent or prior knowledge, meeting with the Leader of the Opposition, Malcolm Fraser, whom he then commissioned to form a government in Whitlam's place. It is suggested that the secrecy of the operation was designed to prevent any preemptive strike by Whitlam to approach Whitehall and ask for the dismissal of the Governor General.

In post-*Statute of Westminster, 1931* terms, it is difficult to argue that the request would not have immediately been acted upon by Whitehall. A form of political legitimation for the Governor General's action in 1975 may perhaps be seen in the results of the immediately ensuing general elections, with Fraser as new Prime Minister, being returned to office, but with the elections being decided on economic grounds and not on the constitutional issue of the Governor General's actions. It remains, however, an issue of public controversy, politically and constitutionally. Governor General Kerr, a long standing Labour Party stalwart chosen for the post by a Labour Prime Minister, Whitlam, found himself shunned and excoriated by his former political and legal associates and then opted to take early retirement from the post and to move overseas to a secondary diplomatic office offered by the Fraser Government. Fraser, though a strong personality, governed, according to present-day analysts, cautiously and with an observable self-restraint in his economic policies, in apparent recognition of public doubts as to the constitutional legitimacy of his original accession to office.

One of the more intriguing and moving elements of the latter-day historical revisionism on *Whitlam-Kerr* is, today, thirty five years later, an apparent reconciling and personal embracing between Whitlam and Fraser. Fraser had, in early 2010, pointedly and publicly resigned his membership in the Party he had led as Prime Minister and carried through successfully to reelection – this over a disagreement as to changes in long-range Party policies and hardening of his Party's positions on illegal immigrants and related questions. Whitlam, by now well into his nineties, has almost reached the Japanese status of "national treasure", remembered for the grace and literary elegance of his parliamentary role which was recently commemorated in a filmed documentary by the Hansard division.

Whitlam/Kerr, in its outcome of apparent ratification by the people, voting in general elections, of the Governor General's actions, bears comparison to Canada's constitutional *cause célèbre* of 1926, *King/Byng*, where the Governor General, Lord Byng, having refused Prime Minister MacKenzie King's request for Dissolution and installed Opposition Leader Arthur Meighen as Prime Minister in King's place, found Meighen promptly defeated in the ensuing general elections which were widely seen, at the time, as having been fought and having turned in substantial measure on the Governor General's use of claimed Reserve, Prerogative powers. MacKenzie King returned to power as Prime Minister.

Byng returned to Great Britain, his regular term having been completed though not having been extended. Viewed in its immediate context and sequence of political events, *King/Byng* was widely regarded as basing a general constitutional principle that the Governor General must always yield to the advice of the Prime Minister of the day, becoming elevated to a form of constitutional absolute, with the Imperial Conference of 1926 and its enactment in legal form in the *Statute of Westminster* in 1931 in Dominion Status and sovereignty in then the new British Commonwealth of Nations. When Byng was first appointed, the Canadian Government had been consulted under the new arrangements adopted after Prime Minister Sir Robert Borden's protest in 1916 over non-consultation as to the Duke of Connaught's successor. By any count, Byng was a fine choice, with his record as a caring commander of Canadian troops in the then recent War; but at that historical point in time he was, like his predecessors, an Imperial officer ultimately responsible to the British government for the exercise of his powers as Governor General. The formal instructions and confidential briefings that he

was given in London before arriving in Canada would surely have reflected that constitutional reality of the pre-Statute of Westminster era.

Our late eminent constitutionalist, Eugene Forsey, always considered that Byng has been unfairly judged by history and he never accepted the conclusion that Byng had acted beyond his powers. A gifted and activist group of Canadian constitutional lawyers from the 1930s onward – WPM Kennedy, Vincent MacDonald, FR Scott, Rafael Tuck, the young Bora Laskin – would take note of the new intra-Commonwealth constitutional relations created by the *Statute of Westminster* and try to spell out concrete implications for Canadian law. One prime objective, the abolition of the Appeals from Canadian courts to the highest Imperial tribunal, the Judicial Committee of the Privy Council in London, was achieved in 1949 with the passage of legislation by the Canadian Parliament terminating that jurisdiction.

At the level of Conventional law, emerging new practice as between Ottawa and Whitehall confirmed that the Canadian government would not merely, as before, be consulted but would in fact effectively choose the next Governor General and, after 1952, would always name a Canadian citizen. It left open, however, the further, logical enough question that if the Governor General should have lost an original, intrinsic Imperial character and become effectively "Canadianised" in this way, was there any reason for maintaining the postulated absolute rule from *King/Byng* in 1926 that the Governor General must always defer to the Prime Minister? Should there not perhaps sensibly still be room for exercise of an autonomous, independent discretion, in cases where that might be deemed rational and necessary in objective, public policy terms?

In the absence of any major Canadian constitutional crisis situation in more than three quarters of a century after the 1926 conflict, there has hardly been any real occasion or opportunity for testing or innovation in this direction. The 1979 situation where Governor General Edward Schreyer failed immediately to grant a dissolution that was requested, after defeat in House vote by Prime Minister Joe Clark who had been elected with a minority government earlier in that same year, has been claimed by some to vindicate the principle that there still remains a Reserve, discretionary power in the Governor General to refuse the Prime Minister's advice. While the Governor General himself has never commented publicly on it, the empirical record suggests otherwise. The whole episode, beginning with Clark's arrival at Rideau Hall and then departing, and ending with Schreyer's then telephoning Clark, as promised, to tell him that dissolution had been granted as requested, could not have lasted more than ninety minutes. One version has Schreyer, in the brief interval, trying to contact a friend and former supervisor from his graduate student days, James Mallory, a rare, recognised Canadian constitutional authority of the period, to have his views; another version, fully compatible with Schreyer's well-evidenced, consciously non-partisan approach to his office, and a certain personal kindliness, has him seeking merely to allow a little more time for sober second thoughts to a very young, politically still inexperienced Prime Minister seemingly bent on rushing into a constitutionally quite unnecessary election which he would lose. It is the human element in the head-of-state/-head-of-government relation and the opportunity of also reaching common-sense solutions without escalating into outright constitutional confrontations that remain the most positive constitutional lesson to be drawn from this 1979 encounter.

In February, 1982, Governor General Schreyer, convened a special conference and seminar in Victoria, BC, with the Lieutenant-Governors of the Provinces, to discuss advanced constitutional issues, including Reserve (discretionary) powers of Provincial heads-of-state and, necessarily then also, of his own office. Schreyer had an informed interest not only in Canadian experience, but also of the other Commonwealth Countries, and he encouraged the seminar side of the conference to range very widely. Developing new practice within the Republic of India, indicating a possible new, pro-active role for the head-of-state in facilitating the building of support for a majority government after a no-clear-majority result from general elections, was raised and discussed critically.

The Lieutenant-Governor of Ontario, John Black Aird, was present: he would later in May, 1985, add his own particular gloss to the Indian President's successful, informal interventions in such matters by approving a mandate for a new, minority Liberal Government for Ontario, on the basis of a legally iron-clad, detailed, programme-based, written offer of support for the proposed Liberal Government coming from the Provincial NDP leader, which would guarantee thereby a numerical majority of seats in the Provincial legislature. This advance, written undertaking (the Peterson-Rae agreement), as published and presented to the Lieutenant-Governor, was denounced by the incumbent Conservative Premier as "either unconstitutional, illegal, or improper", but it was nevertheless accepted and acted upon by the Lieutenant-Governor.

In late November, 2008, the three Opposition Party Leaders in the federal Parliament seemed to be trying to invoke this Ontario practice from 1985 as constitutional precedent for their asking the Governor General to replace the incumbent federal Conservative Government by their own, Troika-sponsored "alternative" government. But they fell significantly short of being able to offer the ironclad guarantee of continuing stable majority, built around a concrete legislative programme for a determinate number of years, as demonstrated in the 1985 Ontario Agreement.

The Governor General, in late November, 2008, could hardly have granted a mandate to form a new, "alternative" government on the basis of the Troika agreement as published: it was, in its text, too vague and open-ended as to programme commitment, and, beyond that, only two of the three Troika party leaders – in numbers well short of a numerical majority in the House of Commons, – had clearly and unequivocally signed on. The "Third Man", the Bloc québécois leader, whose party's numbers would be crucial to ensuring control of the House, elected merely to tag along by way of his own separate, detachable and essentially open-ended policy statement.

The Governor General, in fulfilment of her constitutional mandate to ensure stable, continuing government for the country, could hardly credibly have proceeded on the basis of the 1985 Ontario precedent which was clearly distinguishable from the particular facts present in November, 2008. Neither could she, in the first place, have entertained accepting communication from the Troika group without a prior consultation and advisement from the incumbent Prime Minister, this in accord with the protocol applied by her predecessor, Governor General Adrienne Clarkson, in regard to an earlier, similar Troika-style approach addressed to her in September, 2004, by the then Leader of the Opposition, Stephen Harper, and the NDP and Bloc leaders, acting together.

The 2010 Australian General Elections

Australia provides the most recent example of the possible role of a governor general in the making or unmaking of a government. When the votes were counted following the August 21, 2010 election the Labour Government and the Conservative Opposition (a long-standing coalition of urban Liberal Party and rural National Party ended up in a dead-heat with 72 MPs apiece, leaving the ultimate decision as to who would be able to ask for and obtain a mandate from the Governor General to form the Government in the new House in the hands, effectively, of six remaining elected MPs who were not affiliated with either Government or Opposition.

There was a large-scale public debate as to what the six "free" MPs should do, with strong pressures and generous blandishments offered equally by Government and Opposition Coalition to persuade or influence their final choice. Two of the MPs, with a somewhat conservative bent, soon rallied to the Opposition Coalition. These were balanced, on the Government side, by the prompt adhesion of the single Green Party MP whose Party's policies, particularly on environmental issues, were closely aligned with Labour policies, and of a colourful Independent from Tasmania, who had argued uninhibitedly for massive new injections of federal funds into health and hospital facilities for Australia's smallest state which seemed too often neglected in the competition for federal government financing and regional development programmes. With the two additions on either side, that still left Labour Government and Opposition Coalition tied with 74 MPs apiece.

Public attention now focused on the two remaining, as yet uncommitted MPs (Rob Oakeshott and Tony Windsor), who were wooed extravagantly by Prime Minister and Opposition Leader, including, by both Parties, the offer of a Cabinet seat (as Minister for Regional Development in which Mr. Oakeshott had some claims to expertise). The two hold-outs were constantly interviewed on nation-wide television and in the newspapers, and pursued also, (from outside the Government and Opposition) with offers of "expert" help in putting together a shopping list of ideas and programmes to impose as a condition for their rallying to either side. In the result, the programmatic proposals of those two independents achieved a high level of technical sophistication and potential for general public endorsement going beyond conventional Government/Opposition party lines. The two independents may have been influenced, negatively, by the Opposition Leader's initial refusal to supply answers, in depth and detail, to their questions as to the financial costing of some of the more extravagant public spending promises made by the Opposition Coalition during the August 21 elections campaign – questions which the two independents had directed, also, to the Prime Minister. Their decision, in any case, announced on September 7 in a joint statement, was to accord their support to the Labour Government.

With the survival of her Government now assured, Prime Minister Gillard immediately announced that Parliament would resume, three weeks later, on September 28. As for the two independents and their crucial, determining role in the post-election

governmental succession, it should be noted that, with the continuance of her mandate to govern now in place, Prime Minister Gillard apparently repeated the offer of Cabinet appointment and was, politely, refused. The independent MP directly concerned (Rob Oakeshott) said publicly that he felt it might impair his ability to deliver politically on the important changes to which he was publicly committed, including Parliamentary reform, if he accepted a government Ministry. Since his own Parliamentary seat was a small town and rural one, with a usually strong conservative vote, as indeed was that of the other independent who had joined with him, it is a commentary, one may suggest, on his integrity and also perhaps his political courage in the light of possible future electoral challenges in his own constituency in committing his support in the new House to the incumbent Labour government.

Six Constitutional Observations

First, as a constitutional-legal starting point, a Prime Minister, going into general elections is constitutionally entitled to continue as head-of-government until the electoral results have been officially certified and returned to Parliament. If there is a clear, politically uncontroversial outcome of the counting of votes, Conventional courtesies normally ensure a rapid transfer in power from a defeated government without waiting for Parliament to return. In some cases even where there is an indirect, no-clear-majority outcome from the counting of votes, the incumbent Prime Minister may choose, nevertheless to resign early, as Canadian Prime Minister Paul Martin did on the evening of January 2006 elections vote, even though there was a political option of biding his time a little longer until he could test the various alternative possibilities as to majority-building in the newly elected House. The Governor General in this sort of situation properly retains as part of the vestigial Reserve, Prerogative powers, the constitutional discretion to ask the incumbent Prime Minister to call Parliament together "with all deliberate speed" to resolve the issue.

Second, it is constitutionally irrelevant, in terms of the exercise of the Governor General's powers to withdraw or to grant the mandate to form a new government, that one or other party or standing-coalition of parties, has attained the greater number of seats in the new House (though falling short of a majority), after general elections. In fulfillment of the Governor General's prime obligations to ensure a stable, continuing government, it is the number of seats (amounting to a majority) and the assurance, beyond reasonable doubt one may suggest, of continuance of that, that must be controlling. In post-War Canadian experience, where a constitutional Convention is supposed to have originated that the party holding the largest number of seats after elections must always be accorded primacy as to the mandate to try to form a government, the so-called "precedents" (Diefenbaker in 1957; Pearson in 1963 and again in 1965; Joe Clark in 1979; Harper in 2006), are readily explicable on other grounds (including, one may suggest, the outgoing government's acceptance of the politically inevitable in the elections' outcome and its then ceding more or less gracefully without the Governor General having to become involved).

> ***The scenario where an incumbent government persists in hanging on to office, without calling the legislature back, is rare enough, since, at a certain point in time, ordinary common sense and public pressures will operate.***

Third, it is constitutionally irrelevant that a particular party or standing-coalition of parties has obtained the largest number of votes, nationwide, once all the votes cast in all the individual constituencies across the country are put together in one total. We do not live under a "plebiscitarian" system of government, but under a Parliamentary democracy, Westminster-model, where it is the number of seats, amounting to a cumulative majority in the Lower House of Parliament, that determines who should form the government. The "plebiscitarian" majority argument was raised after the early 2010, British general elections, to induce the third Party, the Liberals, who came out from the elections holding the effective balance-of-power in a "hung Parliament", to rally to the Conservative Party, rather than the incumbent Labour Government, in a post-elections coalition. But, as rhetorical argument, its impact, if any, would have to be political-psychological: it is never constitutionally determinative. It was advanced fleetingly, on the British, 2010 elections claimed "precedent" in the post-elections public debates in Australia by the Opposition Coalition whose combined two parties, in total votes nation-wide would outnumber the Labour party, a situation that would be reversed, however, if the Labour-leaning Green Party's total nation-wide votes were added to those of Labour.

Fourth, the Governor General, in full accordance with contemporary constitutional Conventions, did not intervene, directly or publicly, in the rapid unfold-

ing of political events, post-elections, in the two-and-a-half weeks between the closing of the polls and commencement of counting of votes on elections night, and the final decision of the two hold-out independent MPs on September 7 which effectively resolved the problem. Quentin Bryce brought unusual qualities to the head-of-state office – both personal as scholar, academic administrator, senior civil servant, arbitrator, and professional as a constitutionalist in her own right, acquainted with all the British and Commonwealth jurisprudence and the precedents. The thereby acquired constitutional wisdom includes, necessarily, the knowledge when to intervene constitutionally, and when, prudently, not to intervene and to leave the unfolding political events to operate of their own momentum and produce a sensible result, acceptable to the main competing players but also, in the contemporary era of participatory democracy, to the general public at large.

Fifth, building on Conventional practice of the Indian President from the 1980s of insisting on advance/formal understandings in writing from parties or groups seeking to form part of new governmental coalitions, the Australian Governor General was able to take note of an agreement co-signed on September 7, 2010, by the Prime Minister and Deputy Prime Minister in the Labour Government and the two independent MPs (Windsor and Oakeshott), with a substantial fleshing out of the policy commitments in the lengthy, detailed annexure document accompanying it.

A most refreshing new element, from the viewpoint of new, "participatory democracy" imperatives, is that it is all beautifully written, in a way comprehensible to the general public and to lay, non-expert audiences, for whom, (in addition to, of course, the Governor General), it was no doubt also intended by the authors. This adds the new element of transparency in public terms, recently demanded in Canadian public opinion as to the head-of-state/head-of-government exchanges. The "constitutional company" (in Jeremy Bentham's phrase) would seem to have been enlarged now to include not merely head-of-state and head-of-government and the attendant Parliamentary players but also the larger public which, in its own special way in Australia, was involved in a sort of dialectical unfolding of a post-elections general consensus on how to deal with a potential "hung Parliament" constructively and pragmatically, without having to turn to the pathological alternative of immediate new general elections.

The concrete proposals in the September 7 Agreement and Annex involved major substantive reforms and changes to Parliament and to re-defining House procedures and rules, and also called for new, independent, vastly augmented roles for House Committees and, even more, for individual MPs (both Government and Opposition). The case for some fundamental reform is certainly not new: it was raised years ago by fine scholars like George Keeton with his monograph on the British Parliament, "The Passing of Parliament". It has been some years since these issues were examined in Canada. I believe the McGrath Parliamentary Committee of 1982 looked at them briefly but with the Australian experience in mind it is to be hoped that the Canadian Parliament might decide to study the whole issue of the making and unmaking of governments as part of a renewal of Parliament agenda..

> ***My last point is a word of caution in respect to two distinctive elements in the Agreement signed on September 7, 2010.***

The section 3.1.(f) of the Agreement records the specific provision that "Parliament should serve its full term [three years] and that the next election will be held on a date to be agreed in September or October 2013". The signatories to the document seem to recognise that the constitutional question remains open, with their further undertaking in the same section, to "investigate legislative proposals, which are within the terms of the Constitution and give greater certainty to the Australian people about the Parliament serving full three year terms". The Reserve, Prerogative powers to dissolve Parliament (at the request of the Prime Minister, in contemporary Law of the Constitution), cannot in Canada be abolished or limited by constitutional indirection by a simple act of legislation defining or extending Parliament's statutory term of years but would require formal constitutional amendment (in Canada, wholly within federal law-making power).

Also it should be noted that both Prime Minister Gillard and Opposition Leader Abbott became Party leader (and thus acceded immediately to their present posts) by decision of the Parliamentary caucus of their Party. In each case, it was, in essence, an internal, caucus political *coup d'état*. The US-style, nation-wide Party Convention, where selected Party delegates choose the leader by secret ballot, that has been in operation

in Canada since MacKenzie King's succession early in the 20th century, is unique among Westminster-style Parliamentary systems. Yet the two offices at stake in Australia are Parliamentary offices and Parliament is not obligated, constitutionally, to follow or heed the decisions of a purely extra-Parliamentary body such as a leadership convention.

In Canada during the recent spectacular failure of the attempt to install the then Liberal Party leader (and Leader of the Opposition) as head of a new, three-Opposition party government, it was the members of the Liberal Party caucus within the House of Commons who effectively replaced the Liberal Party leader of the time as Leader of the Opposition, by installing one of their own caucus MPs in that post. That caucus consensus decision was effectuated constitutionally quickly and easily by simply notifying the Speaker of the House of Commons accordingly: the replaced Leader of the Opposition continued as titular Party leader until a new Party Convention, held some months later, could install his successor in the Parliamentary post finally also in the Party Leader post.