

# *The Great Debate: Parliament versus Congress*

*Keith Penner MP and Morris Shumiatcher*

*versus*

*Steve Neary MHA and Sir Charles Gordon*

**A**s part of the Ninth Canadian Regional Seminar a debate was held on the motion "be it resolved that the American Congressional System is better suited to meet the needs of a modern democratic society than the British Parliamentary System". A complete transcript of the seminar was prepared by the Saskatchewan Legislative Assembly. The following is an edited extract from those proceedings.

## **The Congressional System Encourages Cooperation**

**Keith Penner MP:** Our debate today is on the topic of the suitability of one or the other, parliament or congress, in meeting the needs of a modern and a democratic society. As one who has been active within the parliamentary system for the past 16 years, I think Canada would be far better served if we adopted a modern congressional system and relinquished the inappropriate and unsuitable parliamentary system which we inherited from the United Kingdom during the 19th century and have retained ever since.

The following quote from a recent editorial in the *Edmonton Journal* is, I think, illustrative. "Canada is ill served by an imported political system designed for a small island several centuries ago, and characterized by simple majority rule, dominated by an extremely powerful executive branch."

Parliament is, in almost every respect, an ineffective instrument for controlling the executive. The executive in our parliamentary system dominates — in fact, suffocates parliament. A Member of Parliament is little more than a slave to the system, and at times that poor slave yearns to cry out, in the words of a spiritual: "Lord, there 'aint no breathin' space down here."

The Business Council on National Issues, representing Canada's largest corporations, noted in a recent book *Parliamentary Democracy in Canada*, as follows: "Parliament is no longer able to exact effective accountability from the Prime Minister and

the executive for policy and administration, or for public expenditure. Members of Parliament, whether as individuals, members of committees, or in opposition, have lost ground in two important respects: (1) in holding the executive accountable; and (2) in shaping legislation. In Canada, our MPs are unable to act as checks and balances against the executive. In Canada, our MPs cannot be considered as legislators. Federal power is increasingly concentrated in the cabinets, in the bureaucracy, and to some degree outside parliament itself, through federal provincial agreements. There is a need, an urgent need, to control and direct to a great extent these privileged sources."

Reform of the parliamentary system is not enough. Mere tinkering will not do. In a modern democratic society like Canada's, with a federal system of government, we would be much better served with a congress than we are with parliaments.

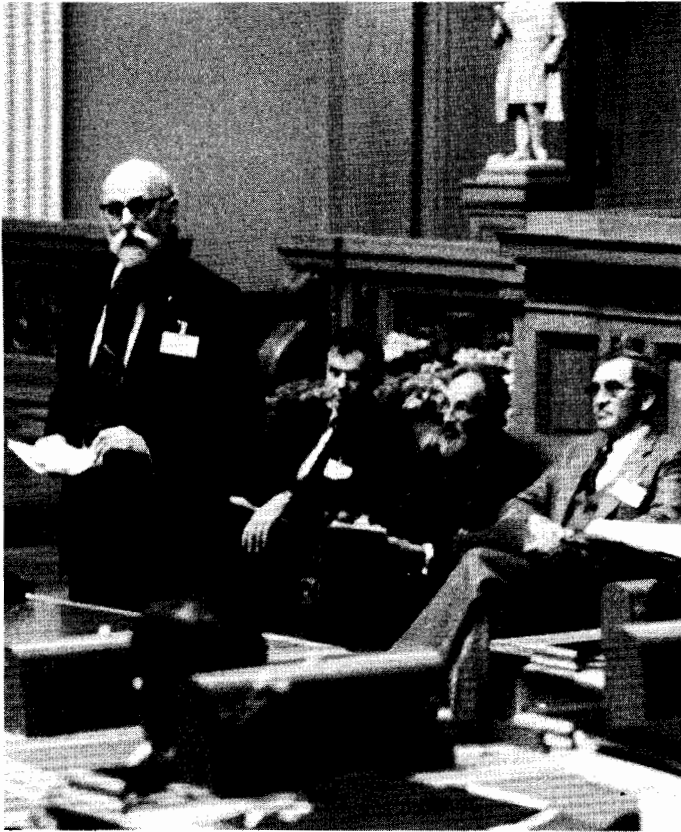
Michael Pitfield, a former principal secretary of the Prime Minister, now secure in the Canadian Senate and able to observe the political scene more objectively, has commented recently that our parliamentary system does not operate as it should. The senator, I submit, has missed the point. The parliamentary system is operating as best it can. The parliamentary system is operating as it was intended to do. It is not, however, functioning as would a congress.

Pitfield goes on to make two other cogent observations. Both of these support my contention that what we need in Canada is a congress and not a parliament. First, he finds a tendency within the executive to conclude that once it has arrived at a policy decision, the job is 95 per cent done. Well, of course it is, because a government can then rely upon an unthinking majority in parliament to support that decision and because it can depend upon nothing more from the opposition than confrontation, thereby eliminating the possibility of intelligent and substantive debate on the issues. Governments do not like too much debate.

Gordon Gibson, another former principal secretary to the Prime Minister and at one time a member of the Legislative Assembly in British Columbia, has written: "Nothing is more convenient to a government than to have a supine legislature to do its bidding." The President of the United States does not have that. He must wheel and deal with the Congress every day. And so it should be. The parliamentary system is structured in such a way as to make

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**Sir Charles Gordon (left) defends parliamentary institutions while Dr. Morris Shumatcher argues in favour of a congressional system for Canada. (Saskatchewan Government Photo Services, Linda Marusiak)**

confrontation necessary. The congressional system encourages co-operation in political decision-making.

The other point noted by Mr. Pitfield is that politicians are dependent for their career advancement upon those above them in the ladder. Now choosing a cabinet from the legislative branch, from among the elected MPs on the government side, not only stills the ambitious, it also limits the range of talents and it restricts regional representation. I ask you, three cabinet ministers from Windsor? It also creates enormous conflicts of interest where ministers use their powers and prerogatives to give their constituencies special attention. Some have even been known to take their entire departments home with them.

Now, under a congressional system where the ministers or the secretaries of the cabinet, as they're called, do not hold elective office and therefore have no constituencies to represent, this does not happen. They have the opportunity to focus on the national interest, and, as with most other presidential appointments, they must receive congressional confirmation before they can take office. In Canada, Privy Council appointments are the sole right of the Prime Minister, a shocking state of affairs, but part of the parliamentary system. With the parliamentary system a majority government is supreme, subject only, in Canada's case, to the restraints of the Charter of Rights and Freedoms, and that leaves a lot of ground in which to play.

Gibson has argued that it's time to change our system so that the ordinary elected MP can be more representative of what

their constituents think on a day-to-day basis, and a bit less responsible in the sense of always voting, supporting, and speaking the party line. By agreeing, Gibson is really advocating adoption of the congressional system and abandonment of the parliamentary system.

## **Parliamentary System has Withstood Test of Time**

**Steve Neary MHA:** With all due respect to my worthy opponent, only one political system on this earth manifests in practice the following combination of virtues, new ideas, principles, conventions and rules that evolve daily — that daily reflect the spirit of the times as well as the realities, and above all the will of its personalities, the people — only one system that has been used and perfected for more than 700 years in the United Kingdom, and is still used and is still being shaped, that has been tried and truly tested and approved by time and change. Under it the voice of the masses — the people they choose to represent them in the House of Commons — is supreme.

Remember the old saying: The voice of the people is the voice of God. In this one single unique political system, the British parliamentary democracy, and only this system, is that assertion and principle deployed in truth. Under this magnificent democracy,

the executive is completely responsible and subservient to its legislature, and thereby to the people. Under the congressional system this is not so. The President is not held accountable to the Congress to answer in debate his policies as is the Prime Minister under the British system through daily oral questions and so on. If the British legislature feels the executive is not acting in the best interests of the people it can withhold support. The executive, in its throne speech, for example, must present its policies before parliament and be prepared to defend them after detailed scrutiny not only by backbenchers, but by the opposition members as well. All public expenditures must be approved by parliament which can actually withhold sanction if it deems fit. If this were to happen, then of course the administration must resign. If a new one can't be found, then once again the people have the decision-making power, through the electoral process, to choose a new cast of members for a parliament or for a legislature.

In the American system the President merely explains his policies through press conferences and televised addresses to the nation. This system is weak and inclined towards easy abuse. For example, the possibility of Watergate cover-up progressing as far as it eventually did in the United States would be highly unlikely in Great Britain or Canada because of the executive's direct accountability to the legislative body. The long and cumbersome impeachment process would have been unnecessary. If it became necessary to excise the head of the executive, a simple change in the leadership of the party, and hence the office of Prime Minister, would do the trick. A good example of this process can be studied in my own province of Newfoundland and Labrador. When Frank Moores resigned from public office he was still premier of the province. His party held a convention forthwith. Brian Peckford won the leadership and became premier — simple, quick, and clean.

The British parliamentary system works. Look at how it handles cabinet appointments and ministerial responsibility. Under the British system, cabinet ministers are chosen from an elected parliament, a parliament chosen by the people. As the cabinet shares the collective responsibility for their actions, they must defend both the administration and their own departments in parliament. Under the American congressional system, cabinet ministers, or secretaries, as they are called, are chosen for their loyalty to the president and are not responsible to congress, only to the president.

The parliamentary system also allows various minority and small ethnic groups representation in the legislature, either through the established party system or through the formation of their own parties. It also allows for the formation of political parties that differ radically in ideology from the governing party or established parties. In Canada this has led to the establishment of the New Democratic Party, a minority political entity that has had a great influence on Canadian society and Canadian politics. In Great Britain the flexibility of the electoral system has seen the Labour Party replace the Liberal Party as one of the country's two major political engines.

Under the American system, however, it is still to be branded "un-American" if you express a difference of opinion with the establishment. Recall, if you would, Senator Joseph McCarthy in the 1950s and his source of anti-Communism that swept across the United States in one of its darker eras. McCarthyism is never far

below current American consciousness. Today, citizens are required to register as foreign agents if they engage in paid lobbying, for example, for a foreign country. You may recall a couple of years ago, Billy Carter, brother of the then president Jimmy Carter, had to register as a foreign agent when he received money for lobbying on behalf of Libya.

The enormous flexibility of the Canadian system was demonstrated in 1949 when Newfoundland joined Canada under the special terms of union enjoyed today under the Constitution Act. Under the parliamentary system enjoyed in Canada and Britain, political leaders must be ever ready to accept the defeat of government. The opposition, therefore, must be particularly prepared to offer alternatives and policies that may at any moment be called upon to guide the country. Oppositions must be vigilant in seeking faults and contradictions in government measures and can actually learn to correct these shortcomings through the process of official opposition.

It is the beauty of the parliamentary system that government and opposition exist in the same legislative body, yet represent opposing points of view. I can think of no political system healthier than this, that allows for ultimate political freedom, each party at the mercy and whims of the electorate, and therefore both sides doing their best for the people at all times.

In the British parliamentary system, the people vote for a party and a leader they expect will form the government. In the United States, where elections for the Senate and the House of Representatives are held at different times, you do not necessarily vote for the party which will ultimately produce a president. If the presidency and the congress are of different political stripes, then you have a built-in political conflict where policies which the public endorsed are chosen, and selecting a president becomes distorted under various compromises and ballot coalitions with Congress, whose members are often chosen on the basis of individual and local issues rather than on that of a broad, national platform.

As well, you often have in power a Congress and a president managing the country while simultaneously hoping each other will fail because of different political alignments. Some optimistic political dreamers may feel that is a great fail-safe method of running a country, but I say this is the establishment of a mountain in the path of progress and expediency. The only system of democratic government on the earth that daily moves to the changing pulse of the people and the times is the British parliamentary system. No other has the same freedoms, the same fail-safe devices, the same fluid motion, the same forward shift as this system of government. It has withstood the test of time. With all its weaknesses and shortcomings, there is no other system on the face of this earth today that can take its place.

## **Loosen Chains that Bind Members to the Party**

**Dr. Morris Shumiatcher:** When we speak of a modern democracy and the needs of a modern democracy, I think it is incumbent upon us to remember that we are not talking about a kind of democratic system that existed in the Greek city state when all Athenian free men could gather in the Acropolis and make decisions for the people of Athens. Quite the contrary. We're talking about a type of

representative democracy, a centralized kind of democracy when we view the kind of political organizations which exist in Canada today.

The centralized democracy that we have become accustomed to raises two key questions. The key question here today is: what are the needs of our modern democratic society? There are two possibilities. Viscount Hailsham, who has for some years been the Lord Chancellor of England, recently considered this question. He pointed out that there are two kinds of centralized democracy; both, of course, depend upon universal adult elective suffrage.

The first asserts the right of a bare majority elected on the principle that winner takes all, which is our system, the right of that majority to assert its will over the whole of the nation. Hailsham called this elective dictatorship. We've learned the maxim that when parliament sits no man's life or property are safe. The fact of the matter is that traditionally parliament has prided itself on its right to do anything. It is supreme. It can do anything, it's been said, except change a man into a woman and a woman into a man, and I suppose these days with the help of the surgeons it's able to do, and is doing, just that.

The second stems from the ancient principles that go back to the time of Bracton and Bacon. It's the concept that those holding political authority may not rule absolutely. Neither kings nor cabinet ministers nor parliament itself ought to be above the law. It is the principle that those in political authority may not make laws which affront the instructed conscience of the commonality.

Austin's political doctrine was that the will of the ruler is law. That concept, married in the time of Bentham to the idea that the greatest good to the greatest number is the end-all of political activity, has produced a kind of society where parliaments and legislatures use that awesome power to do most anything they wish, justifying it all on the basis that they are helping the majority, and that they, with their power and superior knowledge, know better than the individual what should and ought to be done. They have ignored the old Chinese maxim, that the art of government is like the art of cooking a fish — don't overdo it! They have overdone it. This, I suggest, can be controlled — this vast power — in two very simple ways. The first is by loosening the chains that bind the member of parliament to his party, and the second, by a constitution that limits the powers not only of prime ministers but of parliament itself. Upon these two principles rests the basis of the congressional system. It is the concept which distinguishes the congressional system in America from the British or our own. Together, they assure that the democratic form of government will survive, and surely that's the first and most important need of a modern democratic society.

Let us talk about political parties. In respect of the parties, Congressmen in fact are legislators, and they represent their constituents. In this country and in Britain Members of Parliament are simply voting tokens, with all deference, and they represent not their constituencies so much as their party. There's no pressure of the same kind upon the Congressman as there is upon a Member of Parliament, who must always be looking back to see whether he is following his leader's directive.

MPs, of course, are compelled to vote for the party and the party line, and we find this to be so, by virtue of one of the oldest,

and I don't know why it still is regarded as one of the most respectable, instruments in parliament. It's called the party whip! Surely the very name is repugnant to all concepts of a free and democratic society. The whip is a weapon — the whip is a weapon to inflict on recalcitrant individuals; to inflict punishment upon prisoners; to inflict pain; to train horses, and to discipline dogs; and to punish parliamentarians who don't do their leader's bidding.

I wonder that today we are so concerned about wife beating and child abuse, to say nothing about the abuse of Members of Parliament at the hands of the whip. Whips and scorpions — that is what makes parliament tick today. Cattle were never so driven!

In the United Kingdom a whip may be withdrawn, it's true, but if the whip is withdrawn so is the seat in the next election. I think of this whole system as it was exemplified by Gilbert and Sullivan. You remember it. . . . (singing)

"I always voted at my party's call,  
And I never thought of thinking for myself at all.  
I thought so little they rewarded me,  
And now I am the ruler of the Queen's navy."

Well, times haven't changed very much since *Pinafore*. The only difference in Canada is that as a result of our parliamentary system we haven't even got a navy. None at all!

Now a word about the constitution, and this is the other important factor that proves the superiority, I think, of the congressional over the parliamentary system. To prove the superiority of the congressional system, we in Canada, on April 17, 1982, adopted a Constitution and a Charter of Rights for Canada. The British parliamentary system brooks no restraints upon its powers and authority, and this was understandable in the days when public life was a contest that existed between parliament, on the one hand, and the executive represented by the king on the other. But since the Act of Settlement of 1701, all that has changed. The powers of the monarchy are trifling compared with what they were prior to that date; so that there has been concentrated not in the Crown, but in the executive, now grown vastly in power, all of the ultimate authority for drawing legislation, for developing budgets, for levying taxes, which of course, Members of Parliament simply approve in order to keep their places.

The executive and a compliant Parliament have virtually assumed all the powers of the king, and has added a few to their mighty arsenal. So parliament no longer can be expected to restrain its powers, especially under the party system which depends so much upon rewards and punishments since there must be some restraint upon absolute authority and that restraint is one which can come from a written constitution and a charter of rights. That is exactly what we have established in Canada. It is a congressional kind of law, our constitution. It is a law which is described now by the courts as "the supreme law". For the most part, it now stands over and above the authority of parliament.

I submit that our acknowledgment of the significance of this constitutional law really decides the question we are considering. The congressional system is being adopted in Canada this very day. Call it plagiarism if you will, but by our acts, we have already agreed that the congressional system of government best serves the needs of all of us who live, and hope to continue to live, in a free and democratic society.

## What A way to Run A Railway!

**Sir Charles Gordon:** I have to start off by admitting that I myself have never seen the congress in action and I have no personal experience of United States politics. My knowledge is therefore limited to what I have gathered from colleagues who have been in Washington and seen Congress in action and reported to me about it, and also that incomparable work, *Congress and Parliament*, written by Kenneth Bradshaw, my present successor as Clerk of the House, and David Pring, another of my former colleagues. On the other hand, I do have 37 years experience of the parliamentary sytem in the United Kingdom and I can testify that it works — after a fashion, maybe, but it does work. It is not perfect, but it is susceptible of improvement and indeed it has been improved in numerous ways during my time.

We have seen the great development of the committee structure and we have now gone some way to meeting the criticism which has been advanced against us that we do not have sufficient control over the financial operations of the executive. That is being remedied. But what we are talking about today is not a matter of improvement but replacement. If we were to agree to this motion, what we would in effect be saying is that the United Kingdom ought to replace its present system by another. Well now, I do not think that it ought to do anything of the sort, for several reasons.

First of all, there is the nature of the political system in the United Kingdom. Ever since I've had anything to do with it there have been two main parties opposing each other. There have been other smaller parties; there are now perhaps rather more smaller parties than there used to be. But the conflict, the confrontation, to use the expression which my opponents have used, is between the two main parties and it is not a simple question of ins and outs. Nor, except for some of the minor nationalist parties, is it a question of local interests. There are genuine philosophical differences between the parties and in general in the main, the electors are voting not so much for people as for parties.

This one cannot carry to its total conclusion. I myself would be inclined to support some members and candidates even though I was temporarily out of sympathy with their party. On the other hand, there are some members and candidates that I would in no conceivable circumstances support even if their party had my total support. Nevertheless, the personal influence of a member, I have been told, is perhaps limited to 500 votes one way or the other.

It follows from this that the electors wish to have their party predilections translated into action. Now the idea that a properly elected president — a properly and directly elected president — being in conflict with a directly elected legislature, simply is not acceptable and would not be acceptable in the United Kingdom. The electors whose party have won a majority expect their representatives to support the prime minister who leads that party. But this does not mean that they expect uncritical support. The electorate expect their representatives to prod or restrain the government as appropriate, and, my goodness, they do. This is achieved, in the main, by the fact that the ministers are members and therefore they are in parliament, they are in the arena, they are directly answerable in parliament to criticisms, not only from their opponents, but from their supporters as well. Thus parliamentary committees can have a great deal of influence on governments by constructive criticism which they voice in their reports, and they may even serve

to embarrass the government by this means. But what they cannot do directly is to obstruct a government program, least of all because that happens to be against the personal predilections of the committee chairman. This I believe can happen in a congressional system and in my view comes perilously near to a negation of democracy.

Woodrow Wilson once described the congressional system of government as government by the chairmen of standing committees. Well, one may allow here for an element of pique, but is not a criticism that any British prime minister has ever come near to uttering.

Of course, we all know that the original intention of the United States' congressional system was to separate the powers. Was not this what Montesquieu prescribed in his great work *L'Esprit des Lois*? The president should administer; congress should legislate; the supreme court should adjudicate. But this is not how it was worked out. The power of congressional committees, I understand, is such, and their continuing supervision of government agencies so all-pervasive, that it has been seriously suggested that the committees exercise more influence over administrative agencies on a day-to-day basis than does the president himself. I think that the majority of my compatriots would say, "What a way to run a railway!"

The result of all of this is that Congress, although its individual members cannot claim to be more democratically elected than the president himself, has achieved an overspill of its powers into what ought to be the presidential preserve. Now under the Westminster system this couldn't happen except in the case of a prime minister who had lost, or was in the process of losing, the confidence of the democratically elected body on which his power is actually founded. But in such a case there would be no dichotomy. The democratic representatives would withdraw the power which they had conferred on the prime minister and confer it on another.

But apart from these, there is another quite different reason which compels to resist this motion. Over two centuries ago, Alexander Pope wrote the *Essay on Man*, which was described by a schoolmaster at whose feet I sat as "pools of common sense in the middle of a lot of rather rum stuff." Four common sense lines have stuck in my mind:

For forms of government let fools contest;  
Whate'er is best administered is best:  
For mode of faith let graceless zealots fight;  
He can't be wrong whose life is in the right.

Now translating the particular to the general, a modern democratic society is the equivalent of an individual whose life is in the right. The U.S. with its congressional system and the U.K. with its parliamentary system are both, in their different ways, shining exemplars of right-thinking, right-living societies. The congressional system is accepted by the citizens of the United States to be the way the United States is best administered, and from my own personal knowledge, the Westminster system is similarly accepted as the only acceptable way of administering the United Kingdom. To say therefore, as the terms of this motion do, that one system is "better suited to meet the needs of a modern democratic society" is quite indefensible and I could not support the motion whichever way round it was phrased.

# Rebuttals

**Keith Penner, MP:** Mr. Speaker, Sir Charles very defensively pointed out that parliament is capable of improvement. Well, parliament is always, always in the process of improving itself or showing that it's in need of reform, and by his own admission it works after a fashion. Well I submit that that's not good enough. What we must have is an institution that is effective, that is representative, and that serves the nation and does not dominate it.

I want to thank Mr. Neary so much for contributing to the arguments that I made. He talked about the oral question period being accountability. Please, Mr. Neary, oral question period is nothing more than political theatre and we all know that. Watergate unlikely in Canada? Yes, certainly unlikely. Watergate in Canada would last in question period for about a week. It would end with a motion by the opposition which would end in a vote of confidence for the government.

Mr. Neary indicated that the voice of the people is the voice of God. So be it. For my final point I go directly to the people — the root and source of all democratic institutions. According to a recent Gallup poll, Canadians have little or no interest in the activities of parliament. No wonder, it's impotent. That same survey, however, reveals that 62 per cent of those polled want more independent MPs who put constituents' needs before party loyalty.

Well, the message is clear. A congressional system such as the Americans have is much better suited than a parliament to meet the needs of a modern, democratic society.

**Sir Charles Gordon:** I have fully taken account of what my worthy opponents have expressed about the shortcomings which do exist in the parliamentary system. Yes, there is the party whip. Yes, members do from time to time vote without thinking what they are voting for. Nevertheless, they are there and the ministers are there on the floor of the House. They are being assailed by members; they are being assailed by members even on their own side. At question time in the House of Commons, just as many questions and just as many hostile questions are directed at ministers from behind them as come from in front of them. There is no way in which a minister, and particularly a prime minister in parliament, cannot be conscious of the fact that he is riding a wave. The wave may be going in his direction; on the other hand, there may be the odd crosscurrent and the prime minister and a minister can very well be unseated from his surf-board.

On the other hand, we do not have what I would describe as the undemocratic element of general policy being conceived and administered, not by the president, but by committee chairmen, who may be out of sympathy with their parties, may be out of sympathy with anybody else in the country except their own constituents. Nevertheless, simply because they have been elected on local issues by their constituents, able to shape the general policy of the country in a way which would be quite unacceptable in my parliament, and in my view rightly so.

**Dr. Morris Shumiatcher:** My able opponent, Sir Charles, criticized congressional committees. It was his contention, as I understand it, that congressional committees, in effect, are the most powerful agencies under the American system. This, I submit, was, of all the contentions put forward by my worthy opponents, the only one which I think deserves some mention at this time, because the question, of course, can quite legitimately be raised, as Sir Charles has done, as to where ultimate power resides.

I don't think he would for a moment advance the theory that in the United States sovereignty actually resides in the congressional committee. Far from it. There is a Senate and of course there is a presidential veto. But in raising this issue I think he puts his finger upon an aspect which demonstrates the great weakness of the parliamentary system, both here and in the United Kingdom. It is true we do have a multiplicity of committees, but what do our committees do, and what real authority have they?

Let's take the public accounts committee or the committees in Ottawa which deal with expenditures. These are not committees designed to assist parliament in shaping laws or presenting legislation. They are simply post mortems. All they do is look at what the government has done, look at its errors and omissions over a period of a year or two, and says, "Ah, this is wrong and that is wrong." Ultimately these are the matters that come before the Auditor General in this country, and as we well know the Auditor General is a voice crying in the wilderness. He has very little influence.

**Steve Neary, MHA:** Our worthy opponents had a very difficult task before them today. It was virtually impossible for them to argue that you should vote for the congressional system over and above the British parliamentary system of government. What my worthy opponents said today was, "Let's improve the British parliamentary system." That is the message that I got. Their arguments were in the direction of improving the system rather than condemning it. For instance, Dr. Shumiatcher argued that we should change the British parliamentary system because we use the word "whip." Well, why not change the word "whip" and keep the British parliamentary system?

In Canada, under the British parliamentary system, a coal miner or a farmer from Saskatchewan, a coal miner from Cape Breton, can become premier or prime minister of his country. In the United States, with the powerful machine, it's virtually impossible for a newspaper boy to become president of the United States. There's too much back room politics, too much politics played on television, whereas the prime minister and the premier have to answer to the legislature.

Now, Dr. Shumiatcher, you were in great form this morning. You were in good voice when you sang us a few verses, so I will end up by seeing if I can do as well as you did, and I'll sing you a few verses: (Editor's note: Sung to the tune of "where have all the flowers gone.")

"Where have all our democratic freedoms gone?  
Someone took them, every one.  
When will we ever learn?  
When will we ever learn?"