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## **Process and Politics: Thoughts on the 1988 Canadian Election**

**Dr. Gary Levy**

Editor, *Canadian Parliamentary Review* and Visiting Fellow, Canadian Affairs/Americas Society, New York, NY

Following the keenly contested election last November, the Canadian political scene has been quiet lately. Parliament approved the Canada-US Free Trade Agreement in December and then promptly adjourned for a three month cease fire. With festivities set to resume next week this is an opportune moment to reflect upon recent developments and speculate about the future.

### **1. Divided Government**

During the last decade Canada has moved slowly toward a more American style of government characterized by a constitutionally entrenched Charter of Rights and an increasingly belief in the need for checks and balances. There are, of course, still significant differences with the US congressional system. However one of the consequences of these changes is that for the first time we can talk in terms of “divided government”

This term, of course, is usually associated with the American form of government with one party holding the presidency and the other in control of one or both Houses of Congress.

Strictly speaking a division between the executive and the legislative branches is impossible in a parliamentary system. But if one party does not control both the House of Commons and the Senate and if the latter decides to exercise its constitutional right to block legislation, I think you have essentially the same situation, except worse if there is no provision for an override or an effective dispute settling mechanism.

The Canadian Senate is an appointed body where the Liberal Party enjoys a large majority as a result of having been in office for about three quarters of this century. The Senate forced the 1988 election with its announcement that it would not pass the Conservative government's legislation implementing the free trade agreement unless the issue was put to the people in a general election. This was an unusual, indeed unprecedented, exercise of the Senate's power.

For most of its existence the Upper House has been criticized as little more than a haven for the party faithful. It generally avoided confrontations with the House, approved legislation and contented itself with studying matters, occasionally obtaining changes through quiet persuasion rather than public confrontation.

The move toward an activist Senate did not begin with the free trade debate. It can be traced back to 1979 when the Conservatives, under Joe Clark, managed to form a minority government. With few

seats from Quebec, a province that usually has anywhere from 8 to 12 members in the cabinet, Mr. Clark decided to appoint a number of Conservative Senators from Quebec to the Cabinet and to give them some important portfolios such as Justice.

There is nothing intrinsically wrong with having cabinet members in the Senate. It was done with some regularity in the last century, in fact at least one prime minister held a seat in the Senate rather than the House of Commons for a brief period. But this poses obvious problems for the theory of responsible government.

The two chambers being completely independent there is no easy way for the elected members of the House to hold accountable cabinet ministers who are senators.

This responsibility was taken up with some relish by Liberal members of the Senate in the form of questions to these ministers. But unlike the House of Commons there was no set question period. Nor was there any time limit to the length of interventions, nor does the Speaker of the Senate have the same role as the Speaker of the House in calling members to order.

The Upper House had always functioned on the assumption that Senators were mature legislators and would behave as such. In the new circumstances the Senate became rather disorderly very quickly.

The minority Clark government was short-lived and following its defeat Pierre Trudeau returned from retirement to win the 1980 election. However, he too found that because of an absence of elected members from the western provinces he had to appoint a few ministers to the Senate. The Upper House continued to operate more like a miniature House of Commons. In terms of the age and background of its members the Senate has become less distinguishable from the lower House. Just before the 1984 election several young and active Liberal MPs including many former ministers and the former Deputy Prime Minister were appointed to the Senate.

After the massive Conservative victory in 1984, in which the question of these and other appointments played no small role, the need to use the Senate for representational purposes in the cabinet vanished. Mr. Mulroney had sufficient members from all parts of the country that he appointed the minimum one Senator to the cabinet.

This reduced interest in question period among the Liberal Senators but they began to find other ways to make their presence felt. After delaying several minor bills and forcing amendments to others their strategy reached its logical conclusion with the Senate's refusal to pass the free trade agreement unless there was an election.

That election has been held and the Free Trade Agreement has been passed. In other respects the political situation is still the same. There is still a Conservative government with a majority in the House of Commons and a Liberal dominated Senate. The problem of resolving disputes between the two houses is not going to disappear.

From 1984 to 1988 the government House of Commons declined to negotiate with the Senate as an equal partner in the legislative process. If this continues will we see a form of government designed

for adversarial debate across an aisle transformed into one characterized by debate between chambers separated by a corridor?

The Fathers of Confederation who drafted the original Canadian constitution in 1867 are sometimes criticized for failing to anticipate certain aspects of modernity. But one problem they did anticipate was the possibility of disagreement between the House and Senate. They outlined a mechanism for joint conferences to work out such disputes.

This procedure has been used so little, the last time in 1947, that no one really has a practical idea of how it should operate.

Unless Canadian legislators have lost all sense of perspective as a result of the heated debates of the last few years, I think we will see some progress in working out a dispute settlement mechanism in the coming parliament. It will be interesting to see the extent to which Canadian legislators look to the United States for examples.

## **2. Meech Lake**

One question that was not an issue in the last campaign, unfortunately in my opinion, was the package of constitutional amendments known as the Meech Lake Accord.

Among other things the Accord recognizes that Quebec constitutes within Canada a distinct society and requires that the constitution be interpreted in the light of that fact. More significantly it provides for a new method of choosing Senators and Justices of the Supreme Court giving the provinces responsibility for supplying the list of names from which the appointments will be made by the Prime Minister. There are also changes which, according to critics, will increase the importance of the provinces at the expense of the national government.

In order to come into force the Accord must be approved by Parliament and all ten provincial legislatures. So far Ottawa and eight of the provinces given their approval. In the other two provinces there have been elections and changes in government since the accord was signed. Manitoba and New Brunswick are threatening to withhold ratification unless certain changes are made. We now have a situation where some (but not all) provinces that have approved the agreement are submitting lists of persons to be named Senators; other provinces such as Alberta are talking of holding an election to come up with the name of the person to be submitted; others are refusing to submit names either because they have not approved the agreement or because it is not technically in force.

Confusion is perhaps is too kind a word for the constitutional carnival about to take place in Canada. If the agreement is not passed in the next eighteen months it will expire although some constitutional experts are arguing that the three year limitation for the adoption of constitutional amendments does not apply in this case. In any event one of the Mulroney government's first priorities will be to convince the recalcitrant provinces to approve. If he does the price might be such as to antagonize some or all of the eight provinces that have already agreed. If he does not, and the Accord collapses, the government of Quebec will be tempted to call an election where the question will once again be whether they wish to remain in the federation . This time the federal

forces will be much weaker than before.

Despite its obvious importance why was the Meech Lake Accord not an issue in the last federal election. Mainly because both opposition party leaders favoured the agreement. Some have been so unkind as to suggest that Quebec Premier Robert Bourassa promised both of them his support if they voted in favour of Meech Lake. A more generous interpretation is that they made a political decision that by supporting it they could win some badly needed seats in Quebec. If so this proved a complete miscalculation as the only ones to gain seats in Quebec were the Conservatives.

### **3. The Free Trade Issue**

The dominant issue in the last election was the US-Canada Free Trade Agreement. On one hand the result seems quite clear. After a campaign that amounted to little more than a referendum on the free trade issue the Conservatives won a clear majority with 170 of 295 seats. As the Prime Minister was quick to point out this was the first time any party had won back-to-back majorities since 1953 and, in terms of percentage of seats, larger than that of any other Prime Minister since 1958.

The *Wall Street Journal* proclaimed “Canada has voted against protection” (This is the same journal that during the campaign had reminded Canadians that Argentina was once a great country before suffering economic chaos as a result of political mismanagement and dubbed Liberal leader John Turner as “Juan” Turner.) One must take their analysis with some scepticism.

Assuming the election was a referendum on free trade the opposition parties won 52% of the popular vote compared to 48% for the Conservatives. More importantly the Conservatives owe their majority to an overwhelming victory in the province of Quebec where they took 63 of 75 seats. If you remove those seventy-five seats from the calculation the Conservatives would have been 2 or 3 seats short of a majority and the Free Trade Agreement would have been dead.

Among the questions remaining after the election are these : Is Quebec's support for the Conservatives tied to the free trade issue? Will free trade be an issue in the next election?

The latter depends entirely on the overall economic situation. Every time a plant closes in Canada in the next few years it will be blamed on the Free Trade agreement. If there is a recession in the United States it will spill over into Canada and the problems blamed on the Free Trade Agreement. If negotiations over what constitutes a subsidy <197> a question left unresolved by the agreement and to be determined over the next 5 to 7 years <197> prove futile or if some of the early decisions of the binational dispute panel are perceived as merely applying American trade law to Canada, there will be a great temptation for opposition parties to campaign for repeal of the agreement.

As to the first issue, there is no doubt Quebec was a very enthusiastic supporter of the agreement and this marks a major departure for a province whose industries have traditionally been among the most protected. There is, however, a simpler explanation for Quebec voting behaviour, which has always been the key to success in Canadian politics.

Given a choice between a party with a Quebec leader or readily identifiable Quebec lieutenant and

one led by a non Quebecer, the Quebec electorate has always voted overwhelmingly in favour of the native son. At one point Mr. Trudeau held 74 of the 75 seats so Mr. Mulroney's majority has to be seen in that context. When none of the parties has a strong Quebec leader than the chance of a more even division of seats is much greater.

There has never been an election when both major parties were led by Quebecers but that is a distinct possibility for 1992. Presumably that too will result in a more even distribution of seats.

The worst possible scenario would be for English and French Canada to divide over continuing support for the Free Trade Agreement. While unlikely, I would certainly not rule out such a possibility until we see how the inevitable changes in leadership in the opposition parties that will occur before the next election.

These are what I see as some issues for the next few years. If they bear a striking resemblance to those of the recent past, that is the nature of Canadian politics. And, perhaps, that is not so different from politics elsewhere.