Review of Joseph Maingot and David Dehler Politicians Above the Law (Ottawa: Baico Publishing Inc., 2010)

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Despite its provocative title this book is not about ethics, conflict of interest or corruption. Rather, it is a plea for the abolition of parliamentary inviolability a practice found in most legislatures in the world with the notable exception of former British colonies or present members of the British Commonwealth. The British tradition generally adheres to the concept of parliamentary immunity rather than inviolability.

The authors are well qualified to discuss the differences. Joseph Maingot is a former Law Clerk of the House of Commons, an international consultant on parliamentary matters and the author of *Parliamentary Privilege in Canada*. the authoritative reference book in this area. David Dehler is a retired jurist who has taught law, political science and political philosophy at the University of Ottawa.

The immediate origins of the book appear to have been some high profile cases of Italian, French and other politicians who have been effectively shielded from prosecution because the basic law in these countries provides total protection from civil and criminal prosecution for sitting parliamentarians. British style parliamentary immunity is much narrower in its application and provides no protection from criminal prosecution.

Nearly one half the book is a collection of extracts from constitutions of the 132 countries, from Afghanistan to Yemen, identified as having provisions relating to parliamentary inviolability. It is difficult to understand reality based on short excerpts from constitutions, so a good part of the book consists of examples, often from newspapers, which refer to individual cases involving politicians accused of crimes from murder to corruption. They have all enjoyed protection under the doctrine of inviolability.

The book is useful in that it provides some context for looking at our own approach to parliamentary immunity. There are probably few who would trade our approach for the alternative. However the newspaper accounts and anecdotes are less convincing of the "evils" of inviolability particularly when we have seen that the courts can dispense with inviolability in high profile cases such as that of Mr. Berlusconi.

Common sense should also tell us to be cautious and distinguish between how inviolability is used in places like Belgium, Denmark, Finland, Norway, Sweden or Switzerland and the way it may be used in Belarus, Panama, Haiti, and North Korea.

The authors fail to make such distinctions and are adamant about the superior-

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ity of parliamentary immunity. They argue for the abolition of parliamentary inviolability everywhere but seem particularly concerned about the European Parliament.

> Members of the European Parliament need to screw up their courage by stepping off their pedestals and rejecting their mantle of inviolability when they are outside Parliament among their fellow citizens and electors. Inviolability constantly intrudes upon modern constitutionalism, the separation of powers and the rule of law. It erodes the citizens' rightful expectation in a modern democracy that everyone is equal before the law. It encourages disrespect for and clashes among the three branches of government as the Juppé affair in France and the Berlusconi affair in Italy amply demonstrate. One must wonder and ask: Are the member states of the European Union not functioning democracies. Do they not claim to live by the rule of law? pp. 138-139

Despite such exhortations, long established democracies are unlikely to change, although there is some evidence that the European parliament has examined the issue in the past.

But what about the newly created democracies? The authors point out that East Timor, where Joseph Maingot was an advisor, has opted for immunity for its legislators whereas in Iraq and Afghanistan the American influenced constitutions provide for parliamentary inviolability. It is unfortunate that so few paragraphs are devoted to these cases as such examples demonstrate this can be a real and practical issue and not just a theoretical debate of interest to lawyers.

Finally, it is perhaps unfair to criticize a book for what is not in it but if the authors are going to leave us with the impression of the superiority of our British approach to privilege they should perhaps not pass completely over some of the problems in their home country.

For example, over the last seven years of minority government we have seen parliamentary committee members abuse witnesses and threaten them with contempt which is entirely beyond the power of a committee to impose. We has seen members take refuge in their privilege to destroy reputations of ordinary citizens who do not enjoy any such immunities. We have even seen the concept of contempt twisted in unprecedented ways in order to bring down a government. Nor can all the problems be attributed to a few minority parliaments.

We have a parliament that, unlike Great Britain, does not make periodic studies of privilege in order to update the concept and educate its members. Even though our entire system went through an upheaval with the adoption of the *Charter of Rights* in 1982, no serious parliamentary attempt has been made to think about the impact of the *Charter* on Privilege. Do we not need to patriate our privileges instead of leaving them hanging on the 1688 United Kingdom Bill of Rights (and not to exceed those of the United Kingdom in 1867). Should we be looking at codifying privilege as Australia has done?

Canadians love to teach others about governance but we are less inclined to take a critical look at our own procedures. If the authors are unsuccessful at moving the European Union toward a system of parliamentary immunity perhaps they could, in a future work, apply their considerable knowledge and abilities to restoring our somewhat battered and bruised system of parliamentary immunity.