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The Influence of Parliament on Human Rights in Canadian Foreign Policy

Cathal J. Nolan

Despite much excellent scholarly literature written in recent years concerning Canadian foreign policy, surprisingly little has been written about the role of Parliament in foreign policy, and almost nothing about Parliament and human rights.¹ Among the literature that does touch on the role of Parliament there is evident a general perception that the Canadian legislature has very little influence on the formation of foreign policy.² There is general truth to portrayals of Parliament's limited intervention into decision-making. Nevertheless, the main contention of this paper is that Parliament has managed to influence the development of Canada's human rights policy in a variety of ways and on a number of different levels.

PARLIAMENT AND FOREIGN POLICY

The nature of foreign policy places large constraints upon the participation of the legislature in policy formulation. For instance, when Canada is re-

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1. For example, of the three most recent books on Canadian foreign policy only one refers explicitly to parliamentary involvement with human rights in foreign policy, and this in a footnote. Michael Tucker, *Canadian Foreign Policy: Contemporary Issues and Themes* (Toronto: McGraw Hill, 1980), 141–142 n.39.
 2. For example, David Dewitt and John Kirton maintain that Parliament has usually been a forum of mere debate on policy already decided upon by the executive, and conclude that "except during minority governments, there is little evidence that . . . Parliament . . . influence[s] foreign policy decision-making enough to induce changes." David Dewitt and John Kirton, *Canada as a Principal Power* (Toronto: John Wiley and Sons, 1983), 177. In his recent treatment of the processes of Canadian foreign policy, Kim Nossal deemphasizes the role of Parliament with the strong assertion that "control over the formulation and implementation of foreign policy remains vested firmly in the hands of the political executive in cabinet." Kim Nossal, *The Politics of Canadian Foreign Policy* (Scarborough: Prentice-Hall, 1985), 163.

quired to react to new developments abroad, Parliament's inability to respond quickly almost necessitates that the executive should play the major role.³ Even regarding matters of a longer-term nature, Parliament's involvement is hindered by an inadequate research ability and frequent exclusion from relevant information in favor of the ultimate authority and responsibility of the government. In addition, Parliament lacks channels of communication with relevant actors in international relations, and suffers from the inherent difficulties public bodies experience in dealing with problems—particularly those of human rights—that often require the secrecy of quiet diplomacy as a *sine qua non* of effective performance. Finally, unlike the conduct of any other area of concern and responsibility of a government, foreign policy questions are rarely subject to passage of legislation, which is the principal task of Parliament.⁴

Aspects of the parliamentary form of government also help reduce the legislature's potential for acting as an important forum for foreign policy formulation. In contrast to the United States, legislative control over foreign policy in Canada has been greatly diminished by a "fusion" of the executive and legislative powers within the cabinet.⁵ Nevertheless as former External Affairs Minister Paul Martin has pointed out, this absence of complete separation of powers in the constitution means that Parliament cannot be entirely excluded from the foreign policy process.⁶ Parliament has, of course, the ultimate power to withhold finances and even to bring down the government with a vote of nonconfidence. In practice, however, the Canadian Parliament has witnessed exceptionally tight party control over its Members. In this fashion, with the exception of periods of minority government, successive governments have maintained a secure control of the institution itself.⁷ Lastly, Canada's dominant political parties have demonstrated few important disagreements over the main tenets of external relations, including the broad principles of human rights policy.⁸ As a result, foreign policy seldom has been prominent on the Canadian political agenda.

Despite these fetters on decision-making, Parliament has retained a capability to influence Canada's human rights policy. It has exerted this influence principally through the House of Commons and its special commit-

3. For a brief discussion of this see Nossal, note 2 above, 163.

4. Paul Martin, "The Role of the Canadian Parliament in the Formulation of Foreign Policy," *The Parliamentarian* 50 (Oct. 1969): 260.

5. Nossal, note 2 above, 163; Allan MacEachen, "Parliament and Foreign Affairs," 30 April 1984, Department of External Affairs Statement at 2, Secretary of State for External Affairs, Government of Canada, Ottawa.

6. Martin, note 4 above, 259.

7. Tucker, note 1 above, 46.

8. See remarks by Allan MacEachen in note 5 above, at 3. At times there has been a considerable difference in emphasis between the different parties on which rights, and which areas of the world, warrant the most attention. However, there has been a notable degree of consensus on the level of policy principles.

tees and task forces.⁹ Perhaps the single most important reason for this continuing potential for parliamentary influence is the special status Parliament commands as an integral and legitimate part of Canada's history, culture, and government. This status commands the government's attention, and demands a public accountability, which cannot be ignored easily.¹⁰ Parliament's unique position adds force both to the fulfillment of the secondary functions it performs and to its primary task of law-making. Among these secondary roles are the legitimization of government policy and the enlightenment of the government, individual Members of Parliament (M.P.s), and the public at large on issues of interest to the legislature. In the course of carrying out these nonpolicy functions Parliament exercises certain prerogatives which afford it influence along a whole range of points in the policy process. Chief among these powers are the right to compel debate, and to force elaboration and clarification of official positions by interrogation of the Prime Minister and Cabinet members on the details of policy-setting and administration.

CONCEPT OF INFLUENCE

Before turning to examples of how M.P.s have used parliamentary rights and prerogatives to penetrate the formulation of Canada's human rights policy, it is necessary to develop a concept of influence that allows for a more subtle understanding than the usual equation of influence solely with a direct legislative impact upon policy. Of course, M.P.s are strictly involved in decisions about human rights policy only when legislation is passed in this area, which has been a rare occurrence. However, by adopting a more graduated concept of influence it becomes possible to see legislators intervening in the policy process at levels below that of law-making "outputs." The most important element of this more flexible concept of influence is a willingness to

9. For an excellent discussion of the organization and processes of the Canadian Parliament see Nossal, note 2 above, 165–181. Also see Bruce Thorardson, "Foreign Policy and the Committee System," *The Canadian House of Commons Observed*, ed. J. P. Gaboury, (Ottawa: University of Ottawa Press, 1979). Bruce Thorardson points out that Canada's Standing Committee on External Affairs and National Defence (SCEAND) is the only such committee dealing with foreign policy in any parliamentary system. He notes that in Britain and Australia, for example, parliamentary committees meet "only occasionally and then in camera for the purpose of providing advice that may be of assistance to the Minister. In no Parliamentary system except Canada's has there been an attempt to develop an active committee on MP's charged with the task of scrutinizing and attempting to influence the foreign policy developed by the administration." Thorardson at 114.

10. John Kirton and Blair Dimock, "Domestic Access to Government in the Canadian Foreign Policy Process: 1968–1982," *International Journal* 39 (1) (Winter, 1983–84): 85. See also Martin, note 4 above, 259–260.

measure the effects of parliamentary participation over time and in ways other than through legislation. If Parliament's influence is seen as cumulative, and as operating at different stages or levels in the formulation of policy, one can avoid the error of viewing policy-making as entirely divorced from process. As Jean Blondel expressed the concept, "the decision-making process . . . must be seen as one which, over a period of years, leads to a number of changes in a variety of areas. Legislatures and individual legislators exercise their influence, even if slowly, within this ongoing process." The problem becomes one of "adequately measuring involvement which manifests itself through limited and incremental actions at a whole variety of levels."¹¹ With such a concept of legislative intervention there is no clear distinction between decision and nondecision. How then, in the absence of straight-forward indicators such as bills passed and motions accepted or rejected, can one gauge parliamentary influence? One method of analysis is an adaptation of a typology originally developed by Denis Stairs for measuring the influence of societal actors on the larger foreign policy process.¹²

Adapting Stairs' typology, legislative influence can be viewed as penetrating Canadian human rights policy on four different levels: agenda of issues, policy parameters which condition options and limitations, setting of policy per se, and the administration of a set policy. According to this scheme, one would demonstrate parliamentary influence if it could be shown that M.P.s had been able to induce changes at one or all of these levels. Thus, an effect on the agenda of issues would be apparent if "without necessarily controlling the policy-maker's response, [Parliament] can serve to place an issue on his desk and can influence his perception of its urgency and importance."¹³ Parliament's effect on the parameters of policy would be indicated if it helped to establish limits to "the policy community's range of politically workable choices." Parliament could directly affect policy-setting if it could determine the chosen course of policy by "narrowing the range of options to one."¹⁴ Finally, influence on the administration of human rights policy would be detectable if Members of Parliament displayed an increased "close attention to the diplomatic process, a measure of expertise with regard to the problems involved, and a capacity for challenging, and perhaps even creating, policy proposals in substantive detail."¹⁵

To establish that Parliament has in fact met most of these conditions with regards to Canada's human rights policy, it is essential to outline some

11. Jean Blondel, *Comparative Legislatures* (Englewood Cliffs: Prentice-Hall, 1973), 15, 28.

12. Denis Stairs, "Public Opinion and External Affairs: Reflections on the Domestication of Canadian Foreign Policy," *International Journal* 33 (1) (Winter 1977-78): 128-149.

13. *Ibid.* at 130.

14. *Ibid.* at 131.

15. *Ibid.* at 138.

of the criteria that one can use to detect influence at each of the four levels. Accordingly, the initiation of new issues or ideas that are later passed on as topics of policy discussion can reasonably be regarded as evidence of an effect on the agenda of issues. An initially negative response by the government need not indicate a failure to alter the agenda, because influence must be measured over time. However, to be truly "on the agenda" an idea should percolate through to the point where it is accepted as a legitimate option under consideration, or an issue of sufficient importance to warrant increased attention. This type of influence would be particularly clear if the government at first admitted ignorance of a problem, but later accepted it as a legitimate issue for consideration.

If a government is required to declare the limits on policy-making, by questioning and pressure in the House and in committee, this action would connote Parliament's contribution to the parameters set by the government on the policy being formulated. In other words, when the privileges, status, and demands of Parliament compel the declaration of human rights restrictions on Canada's freedom of action abroad, Parliament has contributed to the establishment of policy parameters. Parliament's influence on policy-setting would be evident where the government is obliged to elaborate a principle or action that had previously been considered only in general terms. Of course, one could find influence on policy most clearly where the government accepts motions that are contrary to standing principles or established practice. One can infer leverage regarding the administration of established policies from the creation of new fora (either within Parliament or in response to parliamentary pressures) for investigating and monitoring Canada's involvement with human rights abroad. Influence on policy administration would also be suggested if the locus of debate shifted from the House to committee or from committee to subcommittee. A change in the quality of debate from discussion of general principles to a focus on the details of policy practice strongly indicates influence over the administration of policy. Finally, the development of a corps of parliamentarians with particular expertise in human rights would represent Parliament's increased commitment and capacity to criticize and oversee Canada's human rights obligations.

SETTING THE AGENDA

Throughout the late 1960s and into the 1970s, one of the critical tasks facing Canadian proponents of an international regime for human rights was convincing foreign policy-makers that this country should take seriously obligations under the various United Nations human rights agreements to which

Canada was a party.¹⁶ This demand arose from the perception that the prerequisite to a significant human rights component in Canada's foreign policy was an acknowledgement of the country's international legal obligations.¹⁷ Consequently, pressures for ratification of the 1966 Covenants on Civil and Political, and Economic, Cultural and Social Rights began within Parliament in January, 1967. Prime Minister Pearson was asked if Canada intended to ratify the two United Nations agreements for which she had recently voted. Remarkably, considering his background and interest in foreign affairs, Pearson confessed that he was unaware that the Covenants existed but welcomed the inquiry as to ratification.¹⁸ Four days later, after hurriedly conferring with his officials, Pearson informed the House that his government was committed to beginning consultations with the provinces (this was required by the constitution, as some provisions of the Covenants impinged upon provincial jurisdiction) and would set up an interdepartmental committee to "review the covenants as finally approved . . . to the end of ensuring signature and ratification by Canada at the earliest possible date."¹⁹

Of course, it would be a considerable exaggeration to suggest that an inquiry in Parliament placed ratification of these major international arrangements on Canada's foreign policy agenda. However, it follows from Pearson's admission of ignorance, and from the comprehensive nature of the report he delivered to the House and the establishment of a review committee, that the full weight and authority of the Prime Minister's office was brought to bear on the relevant officials in the bureaucracy. At the very least, this question in the House placed the matter of ratification on the Prime Minister's personal agenda, and in so doing increased its importance for the government as a whole. Clearly then, Parliament met two of the criteria of influence on the agenda: first, by introducing the issue to key policy makers; and second, by helping to change the ranking of the issue within the government's order of priorities. Undoubtedly, in time Canada would have eventually embarked upon the process of ratifying what it had already voted for. But that is not the issue here. When it came to timing and the priority given to ratification, Parliament was instrumental in moving the issue out of the realm of latent possibility and into the domain of active consideration, even at the Prime Ministerial level, as a policy commitment.

It can be argued that this influence on the agenda was minimal because Canada did not actually ratify the Covenants until more than ten years after

16. Canada voted for adoption of the Universal Declaration in 1948, for the Conventions on Economic, Social and Cultural Rights and Civil and Political Rights (with the Optional Protocol to the latter) in December 1966.

17. "Canada Needs U.N. Covenants on Human Rights," *Toronto Daily Star* 28 December 1971.

18. *Debates*, House of Commons, 27th Parliament, 1st Session, 19 January 1967, 11983-84.

19. *Debates*, House of Commons, 27th Parliament, 1st Session, 23 January 1967, 12101-02.

this first commitment given by Prime Minister Pearson. But the evidence tends to support the contention that the question of ratification was kept on the active agenda in part because of agitation within the House of Commons. For example, the new government of Pierre Trudeau regarded ratification as considerably less important than the entrenchment of a domestic charter of rights in the constitution.²⁰ (That it identified these two separate concerns in this way suggests a minimal commitment to ratification.) But as more M.P.s became involved in promoting human rights, this policy came under increasingly specific and well-informed criticism.²¹ By 1971 more than one hundred M.P.s and over half the Senate had joined national lobby groups and thousands of ordinary citizens in a petition calling for ratification of the Covenants. In direct response to this public and parliamentary pressure, Prime Minister Trudeau issued a comprehensive and unequivocal statement of support for ratification, and called on recalcitrant provinces to agree.²² A federal-provincial conference on ratification of the Covenants was held in 1975. The conference ended without agreement, however, and this situation led to a further upsurge of interest and debate in the House of Commons.²³ Canada finally ratified the Covenants in May 1976.

Canada did not sign and ratify these important United Nations agreements because of repeated questions and petitions in the House of Commons and Senate. Yet, partly due to the persistence of numerous M.P.s, the question of ratification began to receive active and ongoing consideration. This was certainly true of the Pearson government, and even during the early years of indifference under Trudeau the issue was debated in the House at the level of both principles and process. When Parliament finally ratified the Covenants, the action signalled a strengthened avowal of Canada's international obligations to promote and protect human rights. Ultimately, adherence to international human rights conventions became one of the cornerstones of Canadian human rights policy. Formalizing this international commitment was an important achievement, and one in which Parliament played a modest, but not an altogether insignificant role.²⁴

20. *Debates*, House of Commons, 28th Parliament, 2nd Session, 26 June 1970, 8645.

21. *Debates*, House of Commons, 29th Parliament, 1st Session, 10 December 1973, 8547-49; 1 March 1973, 1803-07.

22. *Toronto Daily Star*, note 17 above.

23. *Debates*, House of Commons, 30th Parliament, 1st Session, 5 February 1976, at 10653-54, 12 March 1976 at 11945-46, April 1976 at 12397-98, 12 April 1976 at 12713, and 18 March 1976 at 13609.

24. The persistent promotion of ratification of the U.N. Covenants is but one example of parliamentary agenda-setting. Parliament also involved itself heavily in the Biafran conflict and helped place aspects of the Viet Nam war on the agenda of discussion. Currently, M.P.s are personally and directly involved in monitoring election and rights abuses in Central America. On a less grand, but perhaps more effective scale, family reunification cases, and both refugee cases and refugee policies are commonly brought to the government's attention by individual M.P.s.

Parliament also contributed to the interpretation of the significance of the United Nations Covenants when it caused the ratification issue to be kept on the federal-provincial and foreign policy agenda. The government recognized this contribution. In 1978 Allan MacEachen, the External Affairs Minister at the time, prefaced a strong declaration of Canada's support for the Covenants with an acknowledgement that he was doing so "as a result of recommendations made by the executive of the inter-parliamentary union in the House of Commons."²⁵ He then linked Parliament directly with concern for international human rights promotion when he stated that "Canada, and certainly the Canadian House of Commons, are firmly committed to efforts to improve the performance of the United Nations in the human rights field."²⁶ This statement was not mere rhetoric; it was an explicit recognition of Parliament's legitimate concern with human rights policy. In short, the government displayed a willingness to see the legislature involved in Canada's international human rights obligations, and acknowledged that it already played a role in this area.

ESTABLISHING PARAMETERS

Ratification of international conventions set human rights parameters to Canada's foreign policy, but only in the very widest possible sense. Large questions remained as to how these new international obligations were to be interpreted. Before human rights criteria could be applied on a case-by-case basis, it would be necessary to define general principles which would delimit permissible Canadian involvement with countries that violated human rights. One important area which witnessed a parliamentary contribution to the evolution of such limits to policy was the problem of whether human rights conditions should, in principle, be attached to Canadian aid programs. When this question was first raised in the Commons, the government dismissed it as a potentially damaging and counterproductive suggestion.²⁷ But, as will be shown, over a period of several years a number of changes were brought about in this position, changes in which parliamentary rights and privileges were used by concerned M.P.s to offer well-informed criticism and to monitor aid practices. Significantly, the persistence of parliamentary criticism made it necessary for the governments of the day to defend and elaborate their aid policies in an open forum and in the face of deepening pressures from, and widening human rights expertise on the part of, dedicated M.P.s and the broad foreign policy community.

25. *Debates*, House of Commons, 30th Parliament, 4th Session, 8 December 1978, 1838.

26. *Ibid.*

27. *Debates*, House of Commons, 30th Parliament, 2nd Session, 2 March 1977, 3574; 18 February 1977, 3158.

Upon taking office, the Carter administration moved quickly to cut United States assistance to several nations considered severe violators of human rights. When Prime Minister Trudeau was asked in the House if Canada would consider a similar move he replied: "Until now we have not made it a condition of our assistance to starving people in the Third World that their government be above reproach. That is our general approach."²⁸ The following day a private member's bill was introduced, aimed at prohibiting Canadian aid (and some trade) with consistent and gross violators of human rights.²⁹ Over the course of the subsequent year, the presence of this bill on the parliamentary agenda helped focus criticism on the human rights component in Canada's aid policy. As a result, the government felt obliged to issue a series of policy-clarifying statements. At first, however, the argument was made that the complexity of international aid programs made the application of clear human rights standards particularly difficult:

[T]he crucial question [is] whether the installation of an irrigation system or a cement plant in a developing country helps the unemployed or the poor most, or whether it helps most a regime which might be unresponsive to the case for human rights. This is a very difficult question to answer. . . .³⁰

On other occasions government spokesmen were less cautious in making it clear that it was not Canada's policy to link aid and human rights. For example in February 1977, the External Affairs Minister argued that "international aid is aimed at the ordinary and very poor people of a country. It is questionable whether we should tie our aid to any kind of ideological [human rights] questions."³¹

Nevertheless, Canadian M.P.s pressed hard for clarification of human rights principles in Canada's aid policy, and by June 1977, the government was obliged to give a comprehensive reply. (It can be taken as a measure of Parliament's role that this prepared statement was given in the House, and not in press conference or in a public release.) The Parliamentary Secretary for External Affairs, Fernand Leblanc, insisted that the best way to influence human rights conditions in other countries was through quiet diplomatic channels, not public denunciation of those receiving Canadian aid. He proposed that even this minimal linkage of aid with human rights concerns would have at least three deleterious effects as it would: (1) worsen bilateral relations; (2) bring about a situation where a law of decreasing efficiency would operate (because over one hundred countries could be listed as severe violators); and (3) possibly even worsen the conditions for the victims of abuse one was trying to assist.³² In spite of this great reluctance to apply

28. *Debates*, House of Commons, 30th Parliament, 2nd Session, 2 March 1977, 3574.

29. *Debates*, House of Commons, 30th Parliament, 2nd Session, 3 March 1977, 3610.

30. *Debates*, House of Commons, 30th Parliament, 2nd Session, 18 March 1977, 4118-19.

31. *Debates*, House of Commons, 30th Parliament, 2nd Session, 18 February 1977, 3158.

32. *Debates*, House of Commons, 30th Parliament, 2nd Session, 27 June 1977, 7122-23.

human rights conditions to aid, it was announced in December 1977 that Canada was taking unilateral action against South Africa because of that country's continuing gross abuses of human rights.³³ Sanctions specifically on aid were also applied to Uganda over the brutal excesses of the regime of Idi Amin.³⁴ Thus, however reluctant the government was to enunciate general principles in this area, its actions signalled a new realization that in some sense human rights had become a necessary parameter to Canada's aid policy. However, after a year of trying, those M.P.s concerned with human rights were still unable to convince the government to declare as an accepted policy principle the idea that there should be human rights limitations, however difficult to implement in practice, to Canadian economic assistance to developing countries.

The breakthrough came during debate on a private member's bill, the proposed Foreign Aid Prohibition Act, in March 1978. Speaking on behalf of the government, Kenneth Robinson implicitly recognized human rights restrictions on economic involvement with severe rights violators; he identified as qualifying conditions the gross and continuing character of the violations, the existence of a global consensus in favor of condemnation, and in the case of aid per se, the inability to effectively administer the program in the face of extensive abuses.³⁵ The point of main interest here is that even though the government opposed this private member's bill its presence on the agenda compelled a public elaboration of policy, and thus contributed to the progressive expansion of a definition of a human rights component in Canada's aid programs. In this way, parliamentary prerogatives were used to assist in the development and promulgation of a general principle of human rights limits to development assistance, a principle which would later be defined in more explicit form in a House committee report.³⁶ Aid administrators continued to argue, rightly, that human rights judgments about other countries would be extremely difficult to make. But it was at last accepted that within the context of all factors involved in Canada's bilateral relationship with an aid recipient there was room for, as Robinson put it to the House, "a determination of the relative importance of the human rights parameter."³⁷

Parliamentary debate over aid and human rights linkage did not stop at a contribution to the elaboration of Canada's position. Debate also encouraged the creation of a broad consensus among all parties on the place

33. For a good summary discussion of this see T. A. Keenleyside and Patricia Taylor, "The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma," *Behind the Headlines* XLII (2) (1984): 8-12.

34. *Ibid.* at 12-14.

35. *Debates*, House of Commons, 30th Parliament, 3rd Session, 21 March 1978, 3989-96; see especially 3991.

36. See *supra* text accompanying notes 38-47.

37. *Debates*, House of Commons, 30th Parliament, 3rd Session, 21 March 1978, 3992.

of human rights in foreign assistance. For example, it was during debate in the House that the leader of the Conservative opposition, Joe Clark, publicly committed his party to a policy of disallowing aid to gross violators of rights.³⁸ When the Conservatives came to power in 1979 they gave human rights a prominent place on their foreign policy agenda.³⁹ The Conservatives followed through on Clark's pledge to link aid and human rights when aid was withheld from Viet Nam in part because of what the External Affairs Minister described as "gross human rights abuses" involved in the expulsion of the "boat people."⁴⁰ By 1979, therefore, linking aid with human rights considerations was no longer the policy of any one party or government; it was a universally accepted parameter to Canadian foreign policy.⁴¹

The consensus among the three parties in Parliament on aid and human rights linkage culminated in an all-party subcommittee report in 1982.⁴² This report argued that human rights considerations should be at the center of Canadian foreign policy, an over-ambitious and radical proposal. However, some of the report's recommendations proved to be of lasting impact and practical value, among which were several on the relationship of aid to human rights:

Canadian development assistance should be substantially reduced, terminated, or not commenced in cases where gross and systematic violations of human rights make it impossible to promote the central objective of helping the poor. In other cases, the government should exercise caution in tying development assistance programs directly to the human rights performance of governments.⁴³

The subcommittee went on to recommend an increase or decrease in aid according to whether or not violations were being addressed by the recipient government, and direct aid to nongovernmental organizations working for change independently of their governments.⁴⁴

How did this report help set human rights parameters to Canada's aid policy? It gave the government an agreed-upon framework and authoriza-

38. *Debates*, House of Commons, 30th Parliament, 3rd Session, 31 May 1978, 5924.

39. For example, see Department of External Affairs Statement, 13 September 1979, 17 September 1979, 25 September 1979, Secretary of State for External Affairs, Government of Canada, Ottawa, for speeches by Flora MacDonald on the place of human rights in Canadian foreign policy under the Conservative government.

40. *Debates*, House of Commons, 31st Parliament, 1st Session, 14 November 1979, 1316, 1323–40.

41. The third party in the legislature, the New Democratic Party, also held to this position. For example, see *Debates*, House of Commons, 30th Parliament, 3rd Session, 21 March 1978, 3994–95.

42. Final Report of the Sub-Committee on Canada's Relations with Latin America and the Caribbean. *Minutes*. SCEAND. 78: (23 November 1982): 8. (It should be noted that a significant minority of M.P.s dissented from the conclusions of this report, but that this may not have been exclusively due to its human rights prescriptions.)

43. *Ibid.* at 24.

44. *Ibid.*

tion for the idea of human rights conditionality, even if policy moved in this direction only slowly and reluctantly. For example, in June 1983 (seven months after completion of the subcommittee's work), External Affairs Minister Allan MacEachen stated:

I found [the subcommittee's] conclusions reasonably acceptable, namely, that in all cases it would be wrong to deny economic collaboration or assistance to a country because of human rights violations. Certainly where the violations are so gross that it is impossible to implement appropriate programs to assist people, then that ought to be a conclusive factor.⁴⁵

Four months later MacEachen repeated this appraisal of the subcommittee's recommendations in language which closely approximated that of the report itself:

I thought the conclusions of the committee were sound because, in the main, the committee did not recommend the suspension or termination of aid in countries where there had been violations of human rights. It did say that where the violations were so gross that aid programs would be inconsequential or inoperative, then that would be a matter to influence not granting, reducing, or terminating aid.⁴⁶

The government's willingness, even eagerness, to use a parliamentary report as a reference and legitimization for the direction in which its policy was moving would seem to confirm an assessment made by MacEachen, in a speech in April 1984, of this important parliamentary function:

The influence of [committee] studies on Government policy is a longer story than I can tell you tonight. I can say that every report has contributed significantly to decision-making in the relevant policy area. Even when the government has been unwilling to adopt particular recommendations, that has not been for lack of serious and detailed attention. Under the new House of Commons rules the government also is required to make a "comprehensive response" to any SCEAND [Standing Committee on External Affairs and National Defence] report which calls for one.⁴⁷

Canadian policy had come a long way since human rights conditionality was first dismissed as difficult to define, possibly counterproductive, and even "ideological" in character. Instead, in its first definitive acceptance of human rights parameters on aid, the government found Parliament a useful vehicle

45. *Debates*, House of Commons, 32nd Parliament, 1st Session, 23 June 1983, 26, 719-720.

46. *Debates*, House of Commons, 32nd Parliament, 1st Session, 3 October 1983, 27, 670.

47. MacEachen, note 5 above, 5. A necessary caveat to MacEachen's sanguine assessment of governmental responsiveness to SCEAND studies is Bruce Thorardson's conclusion that "influence is likely only if the Committee makes a conscious effort to undertake studies that are unlikely to prove politically embarrassing to the government and that concentrate on an area in which the government is still seeking advice before establishing its policy." Thorardson, note 9 above, 128.

and ally. In the process, policy did not proceed untouched by the contribution of activist M.P.s; after six years of debate, questions, and proposals in the House and in committee, decisions on Canada's aid program could no longer be taken in ignorance of the human rights situation in the recipient nation. Moreover, decision-makers could now expect to be held publicly accountable in Parliament if they failed to keep policy within commonly accepted human rights parameters.

INFLUENCING POLICY-SETTING

It has been noted previously that Parliament cannot dictate foreign policy in Canada. Rather, the legislature's influence proceeds from an ability, emanating from its status and the exercise of its rights and privileges, to oblige the setting of limits on permissible action, to alter the political agenda, and to oversee the implementation of policy. The one major human rights initiative within Parliament, the Foreign Aid Prohibition Act, had lasting influence but never presented a serious challenge to the governing party's authority or to cabinet's monopoly on decision-making. This is not to say, however, that it is entirely inconceivable for Parliament to be more directly involved in setting human rights policy.

There are at least two possible scenarios under which Parliament could play a greatly enhanced role in creating policy. As yet, no government or political party has made a major effort to encourage Canadians to regard human rights obligations abroad as an issue with domestic political implications. But the day may come when one party or another sees a significant electoral advantage to be had from politicizing the human rights concerns of interest to the geographically concentrated "ethnic" ridings of the larger Canadian cities. A broad consensus in support of human rights promotion and a traditional indifference to foreign policy on the part of most Canadians militates against this possibility, but does not render it out of the question.⁴⁸ If some such domestic politicization of international human rights concerns occurred, Parliament could loom much larger as a forum of policy-setting than it does at the present time.

A second possible development that could affect Parliament's role in policy-setting would be the election of a minority government. The last period of federal minority rule in Canada in which Parliament sat for an ex-

48. A parallel example might be the Conservative government's promise to transfer the Canadian embassy in Israel from Tel Aviv to Jerusalem. Most observers have seen this as an attempt to garner the Jewish vote in important Toronto and Montreal ridings. For a background discussion of this see Jeffrey Simpson, *Discipline of Power: The Conservative Interlude and the Liberal Restoration* (Toronto: Personal Library, 1980), 145-159.

tended time was 1972–1974.⁴⁹ This was a session when human rights had not yet achieved their current prominent place on the foreign policy agenda. Since then the party most likely to hold the balance of power in a minority government, the New Democratic Party, has grown increasingly vocal, even strident, in its demands for action on international human rights obligations—particularly with regard to its *bêtes noires* of South Africa and what it perceives as United States client states in Latin and Central America.⁵⁰ However, it can only remain to be seen what weight, if any, the different parties would give to international human rights in a Parliament dominated by the domestic politics of minority government. It is more fruitful, therefore, to investigate the present dimensions of Parliament's influence on the administration of Canada's human rights commitments abroad.

OVERSEEING ADMINISTRATION

In its role as "watchdog" over the implementation of Canada's human rights commitments Parliament has achieved substantial successes and has exerted its greatest influence on policy. Accordingly, at this point it is worthwhile to recall what a graduated concept of influence considers measures of an ability to affect the administration of policy; M.P.s should display an increased awareness of the diplomatic process, an element of expertise with regards to the problems, and a capacity for challenging, criticizing, and creating policy proposals in substantive detail. Thus, evidence of parliamentary influence would be seen in the creation of new forums for investigation and monitoring policy, an increased attention to the issues and an expertise in their management, and lastly, a change in the quality of debate from general principles to specific inquiries on details of policy.

There can be little doubt that Parliament has met all of these criteria in its overseeing of the administration of the country's human rights policy. For instance, Parliament has certainly given increased attention to the diplomatic processes of human rights negotiations such as are involved in the Helsinki Accords, the United Nations Covenants, and related human rights bodies. As a result, monitoring groups have been organized and joined, both inside and outside Parliament, by a significant number of M.P.s.⁵¹ Members of these groups have even actively participated as part of

49. During the Conservative minority government of 1979 Parliament sat for only two months. Although human rights issues achieved a notable prominence in public statements at this time (see *supra* text accompanying notes 38–41), there was little opportunity for parliamentary debate or review before the government fell.

50. *Debates*, House of Commons, 32nd Parliament, 1st Session, 16 June 1981, 10, 650–683.

51. *Debates*, House of Commons, 30th Parliament, 3rd Session, 27 October 1977, 347; 32nd Parliament, 1st Session, 15 September 1983, 27, 139. See also Jack Silverstone, "The Canadian Parliamentary Helsinki Group," *Canadian Parliamentary Review* III (Winter, 1980–81): 9–11.

Canada's official delegation to international conferences on human rights.⁵² Through such involvement individual M.P.s and Parliament as an institution have become more experienced and expert in human rights matters. Perhaps most encouraging, this experience has borne fruit in an elevation of the tone and quality of debate in the House, an improvement especially apparent in the detailed work of committees and task forces, where the criteria of influence of generating substantive and specific policy proposals has easily been met.

Perhaps the best illustration of Parliament's effectiveness in overseeing administration of policy is its involvement with the "Third Basket" human rights provisions of the Helsinki Accords. In the early 1970s, discussion of human rights violations in Eastern Europe among M.P.s tended to be couched in the undifferentiated language of "the rights of peoples to self-determination," demands for denunciation of the persecution of minority peoples, and so forth.⁵³ The first evidence of an improved understanding of the issues and sophistication of approach came in 1973, with the participation of an all-party delegation in an Inter-Parliamentary Union conference prior to the Conference on Security and Cooperation in Europe (C.S.C.E.) meetings in Helsinki.⁵⁴ With the precedent set, M.P.s also participated in preparations for the Belgrade review in 1975. Discussions of violations in the Soviet bloc began to take on the special language and interests of the Helsinki Accords, as M.P.s began to introduce draft resolutions in the House on principles and mechanisms to promote human contacts, the free movement of people and ideas, religious freedom, and the reunification of families.⁵⁵

The change in the quality of understanding and debate did not stop at the adoption of more precise language. Contacts with other parliamentary groups in the United States and Europe led to demands for Canadian M.P.s to participate as part of the official delegation to the Belgrade Review. As one M.P. put it:

[The government] should include in the delegation going to Belgrade some representatives of the House of Commons so that we at the political level will know what is going on there, and so that we can assess the progress of our own efforts to pressure for progress in that respect. . . . We [M.P.s] are having our noses rubbed into the agreement which we signed. We were party to it, and therefore I think it is in our interest to negotiate criteria at Belgrade which would ensure that we can respond to our citizens. Therefore I think we ought to be represented at Belgrade.⁵⁶

52. *Debates*, House of Commons, 30th Parliament, 3rd Session, 19 December 1977, 2001.

53. *Debates*, House of Commons, 28th Parliament, 4th Session, 29 February 1972 at 377-378, 6 July 1972 at 3821-22.

54. *Debates*, House of Commons, 29th Parliament, 1st Session, 1 March 1973, 1803-07.

55. *Debates*, House of Commons, 30th Parliament, 1st Session, 17 June 1975, 6853.

56. *Debates*, House of Commons, 30th Parliament, 2nd Session, 20 May 1977, 5871.

These forceful demands for involvement and information did not go unheeded (in part because constituency pressures affected both sides of the House on this issue); the government agreed to keep Parliament fully informed of the results of its internal monitoring of the Helsinki signatories.⁵⁷ Gordon Fairweather, later Canada's High Commissioner for Human Rights, but then in opposition, noted that there had been broad cooperation with Parliament:

I am not quite as discouraged as [another M.P.] seems to be about the Department of External Affairs . . . the Department gave a most extraordinarily frank statement to the external affairs committee on Basket III and the monitoring system that has been set up as a result of the Helsinki Agreement. . . . Members of Parliament and agencies of government have to keep on monitoring occasions when undertakings in Basket III are not fulfilled by the signatories to this treaty [sic] . . . Parliamentarians from all parties have raised this from time to time. We should have the opportunity to think beyond the boundaries of our country occasionally. This is an illustration that we can do this once in a while.⁵⁸

Increasingly, a corps of M.P.s were "thinking beyond the boundaries" of Canada, and doing so in a detailed and substantive way.

The fact that M.P.s monitored and debated the Helsinki process so closely at times affected even the details of policy administration. For example, the issue of the Soviet Union placing excessive duties on gifts to its citizens from Canadian relatives was first brought to the Minister's attention in the House.⁵⁹ The government was initially reluctant to view this as a breach of the Helsinki agreement, insisting that the regulations were non-discriminatory as the Soviets applied them to all nations.⁶⁰ But the government was finally persuaded on the matter, and openly supported an opposition statement charging the Soviets with violating the Helsinki guarantee of facilitation of family contacts. Canadian policy clearly shifted in response to parliamentary involvement, and the House was used to "suggest" to the Soviet Union that acceptance of a (originally opposition) proposal for a bilateral agreement on family gifts would "improve trade and other relations with Canada."⁶¹ In other words, the House originated the suggestion and was then used as the vehicle to send a powerful diplomatic message to the Soviets from the people of Canada.⁶² Such nonpartisan cooperation on human rights issues connected with the C.S.C.E. meetings culminated in a report to the House in 1977 which stated that "M.P.s who were a part of our

57. *Debates*, House of Commons, 30th Parliament, 2nd Session, 10 February 1977, 2912-13.

58. *Debates*, House of Commons, 30th Parliament, 2nd Session, 20 May 1977, 5868-69.

59. *Debates*, House of Commons, 30th Parliament, 2nd Session, 6 December 1976, 1680.

60. *Debates*, House of Commons, 30th Parliament, 2nd Session, 8 December 1976, 1781.

61. *Debates*, House of Commons, 30th Parliament, 2nd Session, 20 December 1976, 2139.

62. Other proposals raised first in the House or committee and acknowledged by the government as worthwhile include affording citizens with relatives in violating nations greater access to the D.E.A., and to consider Ministerial level representation at Belgrade.

delegation felt a high degree of satisfaction with the position Canada took at Belgrade."⁶³

The burgeoning importance of human rights in Canadian foreign policy led to an agreement to have SCEAND empowered to examine the implementation of the Helsinki Final Act, and to consider Canada's participation and position at the second followup conference in Madrid in 1982.⁶⁴ Consequently, Canadian policy came even more closely under the scrutiny of constituency-based monitoring groups, associations of M.P.s within the House (such as the "Parliamentary Group on Soviet Jewry"), and of course most important, SCEAND itself. By this time Parliament was looking closely at other areas of the country's human rights concerns, principally through committees and task forces on relations with Latin America and the Caribbean and North-South Relations. In short, Parliament had significantly expanded its capability, involvement, and expertise to oversee the administration of human rights in foreign policy. Almost inevitably, therefore, early in 1983 there arose a request for the creation of a Standing Committee to be concerned solely with international human rights.⁶⁵ In early February 1985, External Affairs Minister Joe Clark indicated that his government supported this proposal, and forwarded it to an all-party committee presently reviewing the rules and organization of Parliament.⁶⁶ As a result, human rights issues now seem destined to assume a more prominent place in Canadian foreign policy, and the legitimate and important role of Parliament in the administration of these considerations seems all but permanently assured.

CONCLUSIONS

The purpose of this paper is modest. It is not intended to challenge the established wisdom that the Canadian cabinet, and not Parliament, is the locus of foreign policy decision-making. Rather, it is hoped that by defining "influence" as a graduated concept it might be possible to discover parliamentary influence where before all that was seen was an absence of legislation. The identification of an enlarged role for Parliament does not necessarily imply a diminution of the government's control over and responsibility for the conduct of foreign affairs. Thus, it has been shown here that while there exist sizable constraints on its decision-making abilities, Parliament exercises certain traditional prerogatives in the course of fulfilling its

63. *Debates*, House of Commons, 30th Parliament, 3rd Session, 19 December 1977, 2001. For a short summary of the activities of this SCEAND subcommittee see Jack Silverstone, note 51 above, 11.

64. *Debates*, House of Commons, 32nd Parliament, 1st Session, 26 June 1980, 2410.

65. *Debates*, House of Commons, 32nd Parliament, 1st Session, 24 January 1983, 22, 137; 9 February 1983, 22, 649.

66. "Clark Considers Human Rights Monitor," *Globe and Mail* 8 February 1985.

nonlegislative functions, and that these privileges afford it influence on the agenda, parameters, and administration of Canada's human rights policy. In this way the right of parliamentary inquiry, exercised in the pursuit of governmental accountability, enables the Commons and its associated committees to compel the elaboration and clarification of official policy. This can have the salutary effect of altering the timing of consideration and order of priority given to a human rights problem. It also assists in the important parliamentary function of critically examining government and bureaucratic performance. It has also been shown that Parliament can assist in the elaboration of general principles to govern the involvement of Canada with nations that violate human rights. Influence on policy-setting has been minimal to date, and although this is not an ineluctable situation it seems likely to remain the norm. However, Parliament has demonstrated its ability to influence the implementation of set policies by bringing to bear a considerable expertise among M.P.s and an expanded ability to research and to create policy in the focused context of its committee work. With the legislature thus penetrating policy at several different levels, over time its modest but measurable influence can affect the form in which human rights initiatives are presented and policy is elaborated and implemented. The extent of this penetration and its degree of influence is of course difficult to determine, but the fact that Parliament rarely legislates on foreign policy matters should not blind one to its ability to influence the development of human rights in Canada's foreign policy at levels lower in the policy making process.