

DIEU ET MON DROIT:
THE MARGINALIZATION OF PARLIAMENT AND THE ROLE OF NEOLIBERALISM IN
THE FUNCTION OF THE ONTARIO LEGISLATURE FROM 1971 TO 2014

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Function of the Ontario Legislature from 1971 to 2014*

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ABSTRACT

In recent years, considerable attention has been paid to the increasingly popular trend among western governments to use arcane parliamentary mechanisms to circumvent the legislative process. However, despite growing concern for the influence of parliament, there are few comprehensive studies that capture the evolution of this pattern in the detail necessary to draw substantive conclusions about why it is occurring. This dissertation seeks to address this gap in the literature by undertaking a detailed archival analysis of the evolution of the role and function of the Ontario Legislature between 1971 and 2014. Using an interpretivist approach, it draws upon the Marxist political economy literature to assess the nature of the relationship between the marginalization of parliament and the emergence of neoliberalism as the dominant policy paradigm in Ontario over the course of the same period.

This project makes the case that the Ontario Legislature has undergone a profound shift from an assembly characterized largely by cooperation between the three major political parties in the 1970s, to one in which governments have routinely made use of all methods of parliamentary procedures to undermine the opposition. An important explanation for the emergence of this trend, it is argued, has been to insulate controversial neoliberal reforms from democratic control by hastening their passage through the legislature. The utilization of these restrictive instruments

has been coupled with a growing tendency by governments to overcome institutional obstacles to the implementation of neoliberal restructuring measures by granting themselves increasingly significant powers to govern through regulation. Thus, while a confluence of factors have contributed to the marginalization of the legislature in Ontario, the compulsion to shield neoliberal reforms from exposure to institutional processes emerges as arguably the most significant explanation.

It is hoped this dissertation will make several contributions to the literature. First, although the scholarship has largely ignored the role of parliamentary institutions to the implementation of neoliberalism, this study shows that they are central to the story of neoliberal restructuring in Ontario. Second, it shows that all three major parties have not only moved Ontario in a neoliberal direction, but have also been responsible for significant changes to the legislature's procedures. Third, it provides a historical canvass of the evolution of procedure at Queen's Park, demonstrating that while restrictive measures were initially exceptional, employed only to facilitate the passage of highly controversial measures, over time they have become commonplace, routinely used for all varieties of legislation.

In memory of Barbara McDowell

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CHAPTER ONE

DEMOCRACY IN CRISIS: A THEORETICAL OVERVIEW

The decline of parliamentary institutions in interwar Europe is a central, if often overlooked, explanation for the rise of fascism in the 1930s. At the end of the First World War, liberal parliamentary assemblies were established throughout Europe, as a method for ending the dynastic and imperial tendencies of the rule of monarchies throughout the *Ancien Regime*. Within a decade of the war, however, newly established parliamentary democracies that had sprung up in European nations such as Spain, Poland, Germany, Serbia, Croatia, and Hungary began to show signs of decline as governments frustrated with parliamentary deadlock sought methods to circumvent the authority of parliament and govern through the executive authority, despite the fact that the new constitutions heavily concentrated power in the legislative assemblies.

Political theorist Carl Schmitt developed the idea of a “state of exception,” which would allow governments to invoke emergency constitutional authority during periods of crisis in order to allow the government to respond more aggressively to urgent circumstances without having to consult their often fractured and deadlocked legislative assemblies (Schmitt as cited in Mazower, 2000, p. 20). For Schmidt, parliaments had become an “empty formality” that functioned as a, “superfluous decoration, useless and even embarrassing, as though someone had painted the radiator of a modern central heating system with red flames in order to give the appearance of a blazing fire” (Schmitt, trans., 1988, p. 6). The only way for governments to save democracy from itself, was to amend the constitutions so that executives could exercise power where necessary to break deadlock and make important decisions. Within a decade of the war, governments throughout Europe were beginning to amend their constitutions to make provisions for such emergency clauses, to be used only in urgent circumstances. However, with the onset of the

Great Depression, governments were tempted to make use of these emergency constitutional provisions to address the economic crisis at hand. In Germany, the increased use of Article 48 of the German constitution, which gave the president the authority to circumvent parliament by using its executive authority, “made it difficult to determine at what point democracy slid into dictatorship” (Mazower, 2000, p. 21). Between 1925 and 1931 the provision was only used 16 times. In 1931 alone, the president used his emergency powers on 42 separate occasions, while only 36 laws were passed through parliament. The following year, there were 59 emergency decrees and only five total laws passed (Mazower, 2000). While it is often assumed that the beginning of authoritarianism in Germany occurred when the Nazis took power in 1933, it was already well down the path to totalitarianism in the years leading up to Hitler’s appointment as chancellor. While Hitler, too, would use Article 48 as an instrument to curb civil liberties and establish a police state, parliament for two years before he took power ceased to be the primary location of political power in Germany. Indeed, despite the shift towards executive-controlled, presidential systems during the Great Depression, parliaments “were rarely abolished entirely or suspended indefinitely; they lingered on in a shadowy half-life in Hitler’s Germany, Fascist Italy and in many authoritarian states” (Mazower, 2000, p. 21). In other words, while the form of the state became increasingly totalitarian, the architecture of parliamentary democracy remained in place. Parliaments continued to meet to ratify the policies of the president, as though so doing gave these decisions a semblance of popular or legal legitimacy.

In recent years, there has been much discussion about a decline of parliament in the western democracies as governments have become increasingly brazen in their use of the executive authority to circumvent legislative authority. Although parliamentary democracy is more deeply entrenched in modern western nations than it was in most of Europe during the

interwar period, where parliamentary assemblies were recent innovations, there are nonetheless striking parallels between the devolution of legislative authority today and interwar Europe. As was the case in Europe during the early 1930s, the use of arcane parliamentary procedural tactics to rush contentious legislation through parliament with little opportunity for debate or consultation, has become commonplace. Governments have increasingly utilized tactics such as packaging hundreds of amendments and new legislation into omnibus bills, which are debated as single pieces of legislation. The advent of time allocation allows governments to place limitations on the time available for opposition parties to debate and review legislation. It has become a common occurrence today for governments to rush controversial bills through parliament as a method of reducing the scrutiny and public resistance they will face. Perhaps the least understood, but most important approach to emerge in recent years has been the expansion of the use of the order in council to grant the executive the capacity to regulate on matters that would traditionally have to be debated in parliament. When applied broadly, these provisions allow the executive to make major policy decisions without having to so much as consult or inform parliament that they have done so.

Despite periodic public outcries about a democratic decline, there has been surprisingly little comprehensive research done to understand how, to what extent, or why these changes have been occurring. While there does exist an extensive body of literature investigating the concentration of power in the hands of first ministers, the preponderance of this research studies the role of the executive itself, and largely relies upon a methodological approach founded upon elite interviews with political insiders. This project attempts to address this considerable gap in the literature by conducting a comprehensive, archival case study of the Canadian province of Ontario to explain how and why the decline of its legislative assembly is

occurring. While it will make an important contribution to our understanding of this phenomenon simply by tracing this process in a parliamentary body over a period of more than four decades, the extensive material made available on the public record also holds considerable untapped explanatory potential.

One of the central contentions of this project is that social phenomena can only be understood by examining the historical context in which they occur. To conduct an examination of the decline of parliament in interwar Europe by focusing only on political institutions themselves, for example, would fail to offer a holistic perspective of the complex social and economic circumstances that led to the rise of authoritarianism. Keeping this in mind, this project will proceed from the theoretical presupposition that this phenomenon can at least in part be explained by the central historical trend in recent of the last few decades, namely the shift in the state form in the west from a Keynesian to a neoliberal state form. It is hypothesized that the decline of parliament has been the result of the necessity for the state to insulate certain decisions from popular control in order to undertake the far-reaching restructuring of the state apparatus that neoliberal ideology necessitates and the subsequent consolidation of these changes. Similar to the decline of parliament during interwar Europe, where parliamentary institutions remained in place despite the descent of several countries into totalitarianism, this project begins from the assumption that this process has occurred by what Gramsci (trans., 1999) called “passive revolution,” in which the transition to a more authoritarian neoliberal state form has occurred internal to traditional parliamentary institutions (p. 289). The maintenance of parliamentary institutions as the state’s central architecture, on this view, has managed to conceal the nature of this transition by presenting it in a democratic dressing. However, upon closer investigation, the marginalization of parliament through the use of arcane procedural mechanisms have functioned

as the primary instrument for carrying out this transition internal to existing institutional arrangements. The central findings of this project corroborate this hypothesis.

It concludes that the Ontario Legislature has indeed undergone a considerable decline from a legislative assembly governed largely by collegiality and cooperation between the parties in the 1970s, to one in which governments over the last twenty years routinely make use of all methods of parliamentary procedures to undermine the opposition. This phenomenon has emerged due to a confluence of factors, ranging from an increased partisanship in the Legislative Assembly in the post-1985 period, to a series of economic and deficit crises, which caused governments to use the procedural rules at their disposal to implement controversial restraint measures. Crucially, however, the implementation of neoliberalism in Ontario plays a fundamental role in the emergence of the use of these parliamentary instruments to constrain debate. In the 1980s and early 1990s, nearly every major procedural threshold designed to undermine the established parliamentary process occurred during the passage of highly contentious neoliberal restraint measures. Over the course of the Mike Harris era, these parliamentary approaches proved to be an indispensable vehicle for the implementation of the government's radical state restructuring program through the political apparatus. It did so by allowing the government to fast-track legislation through the legislature with a minimum of debate, and by using its executive authority to insulate the restructuring process from all forms of democratic control. During the short-lived Premiership of Ernie Eves and the Liberal governments under Dalton McGuinty and Kathleen Wynne, the abuse of parliamentary procedure became entrenched as a customary part of the parliamentary process, utilized to implement all forms of policy initiatives. This final period looms as a crucial part of the story of parliamentary procedure at Queen's Park, resulting in the consolidation of the extraordinary use

of these approaches under the Harris government, and leaving in place a political machinery ideally configured for future rounds of radical reform. While further research is necessary to analyze whether the conclusions that hold true in this case apply elsewhere, there can be little doubt that the use of parliamentary tactics to undermine the role of the legislature has played a vital role in the implementation of neoliberalism in Ontario. It is hoped that the comprehensive overview provided by this dissertation will contribute to our understanding of not only how the transformation of parliament has played out historically, but also to a comprehension of the process through which neoliberal reforms have been actualized through the political apparatus.

Democracy in Crisis

During the summer of 1973, at the height of that decade's inflation crisis, American business magnate David Rockefeller founded a discussion group of elite intellectuals from North America, Western Europe and Japan called the Trilateral Commission to discuss common strategies for addressing the dual economic and social crises confronting western nations. In its first report released in 1975, the Commission identified the excesses of democracy in the late 20th century as the primary cause of institutional break down. According to the report's authors, the extension of social and democratic rights to larger percentages of the population in the latter half of the 20th century, generated an erosion of traditional means of social control, which were the result of "an overload of demands on government, exceeding its capacity to respond" (Crozier, et al., 1975, p. 9).

The report struck upon a fundamental contradiction at the heart of the Fordist compromise that had enabled the growth of the welfare state during the post-war upswing. The decline in economic fortunes of the western nations, which began in the mid-1960s with the flooding of the global marketplace with cheap commodities from Japan and West Germany,

revealed itself as a crisis of galloping inflation, which acted as a brake on the average rate of investment in the early 1970s (Dumneil & Levy, 2004). At the core of the commission's report lies the hypothesis that the post-war social consensus has resulted in demands upon the state that were made possible by the unprecedented growth in during this period, but which are not possible during periods of scarcity. Its central concern was not to identify the character of these contradictions, but rather to provide a theoretical rationalization for the scaling back of the democratic gains made in the post-war era. The extension of government had, "produced a substantial increase in governmental activity and a substantial decrease in governmental authority" (Crozier, et al., 1975, p. 64). While the inflation crisis was not caused by democracy, the report contended that it may be, "exacerbated by a democratic politics, and is, without doubt, extremely difficult for democratic systems to deal with effectively" (Crozier, et al., 1975, p.164). Demands in democratic regimes from various interests, the Commission argued, became so overwhelming under Fordism that its authors saw it fit to label inflation as, "the economic disease of democracies" (Crozier, et al., 1975, p.164).

Although the report made few specific recommendations, it viewed economic and political crises as problems primarily of "governability" and of "immediate and practical concern" (Crozier, et al., 1975, p. 38). The democratic system, by its very chaotic nature, left the western nations at a competitive disadvantage, because its political institutions lacked the centralized control to respond to rapidly changing circumstances given the counterforces that exist in modern democratic societies. In order to rectify this problem, the Commission was unambiguous in its recommendation that to restore social, economic, and political order, western governments must re-assert the authority of the state and as an extension, the elite groups that it serves.

Two central insights emerge from the Trilateral Commission Report. First, the commission argued there exists an intimate relationship between the political composition of society and its economic and social outcomes. It conceptualized the inflation crisis as being an immediate cause of the democratic composition of western nations in the post-war period. Secondly, the Commission acknowledged a deep tension between the extension of democracy to the masses and their long-term economic fortunes. For the Commission, the extension of democratic rights to the entire franchise had exhausted the economic system's capacity to satisfy these increased demands while at the same time ensuring that profit margins remained high. While such conditions could be sustained during the upswing, during downturns in the economy these contradictions were laid bare. This argument amounted to the rejection of both the Keynesian welfare state as well as the institutional framework that surrounded it, since democracy was one of the primary causes of the economic malaise.

Reading the Trilateral Commission Report nearly forty years after its publication, one is struck by the prescience of its central recommendations. Over the past four decades, much has been written about the extent to which power, both in its public and private forms, has become increasingly centralized in the hands of a few actors. A general consensus has emerged within the traditional political science field that power has been increasingly shifting away from parliament towards the centre of the political apparatus. While views differ on why and to what extent this shift is occurring, the position that such a concentration of power has occurred is no longer in dispute. Savoie (1999a) has claimed that institutional power has evolved into what he has called "court government," in which virtually all of the power of the state is held by the prime minister and his or her partisan political staff. Others, such as Bakvis (2000) argue that the notion of the first minister as an autocratic figure is "overdrawn," and that cabinet retains

considerable power. Regardless of the position, however, there is little debate that parliamentary institutions have become marginalized in recent decades, as power shifts increasingly towards the centre.

A separate field of thought, largely from the critical theory school, has also emerged over the last four decades. It has claimed that neoliberal reforms, which began in the early 1970s, have necessitated a more autocratic state form than the more distributive Keynesian model could accommodate. Jessop (1993) has defined this shift in the state's form as having moved from a Keynesian Welfare State (KWS) in the post-war period, to a Schumpeterian Workfare State (SWS) since the beginning of the 1970s. While these reforms have occurred at different times and with varying degrees of severity in each jurisdiction, the near universal application of their key elements implies that there are structurally determined phenomena external to the nation state itself that influence policy. In the SWS, which may be understood as synonymous with the process of neoliberal restructuring, the state's central function has evolved from an emphasis on full-employment and the promotion of demand-oriented policy strategies to an emphasis on "the subordination of social policy to the demands of labour market flexibility and structural competitiveness" (Jessop, 1993, p. 9).

The widespread adoption of neoliberal reforms has created a political vacuum in spaces that were once filled by the state. A growing body of literature has emerged examining the methods the state has used in the neoliberal period to address the subordination of its legitimization role to its accumulation role. Peck and Tickell (2002) have argued that the latest phase of neoliberalism can be characterized by what they call a "roll out" phase in which the state is now taking an active role in, "the purposeful construction and consolidation of neoliberalized state forms, modes of governance, and regulatory relations" (p. 37). Recent

developments in Greece, where the government passed legislation that enables it to ignore parliament and govern unilaterally by presidential decree as it scrambles to implement an externally imposed austerity agenda, serve to underscore the relevance of this argument to unfolding political circumstances (Ghellab & Papadakis, 2011).

The preservation of social stability in the age of neoliberalism requires what Jessop (1993) has referred to as a “political shell,” which can act as a mask for an accumulation-centric policy (p. 7). For Jessop, the dual and organically related problem that the state must both address the eroding legitimacy of the social order and is increasingly under pressure to privilege the accumulation of capital over other considerations due to the imperatives of global competition has necessitated changes to the formal organization of state power. An emerging field of critical literature has begun to address the extent to which the state has embraced an authoritarian model of governance as a means of accommodating these concerns. Stephen Gill (1994) has argued that the state has adopted a form of “new constitutionalism” when entering into international trade agreements, which embeds neoliberal principles into their frameworks, thereby insulating them from democratic control. Meanwhile, a new school of thought has emerged founded upon the premise that we have entered a period of post-democracy in which democratic institutions remain, but have been deprived of their substantive content by a political class obsequious to corporate interests (Crouch, 2004).

The significance of the Trilateral Commission Report today, then, is its early articulation of the now commonly accepted view that resolving economic crises required that the state reform its institutional configuration in order to empower the executive to make unpopular reforms without having to consult the electorate. This assumption, that the economic and political relations of a given period are typically intimately related, will underlie the theoretical

framework of this dissertation. It will attempt to examine the concentration of political power over the last four decades by posing the question as to whether, and to what extent, a relationship exists between the contemporaneous heightening of executive authority internal to the state and transition from a Keynesian to a neoliberal regime of accumulation. Is it the case that the latter may explain the former, or is it a mere coincidence that these two phenomena have evolved in tandem with each other? Furthermore, what forms have these changes taken, and how have they affected the exercise of democracy?

While considerable work has been done to establish a theoretical link between the anti-democratic structural changes brought about to the state apparatus and neoliberalism (Cerny, 1999; Crouch, 2004; Gamble, 1988; Jessop, 1993), including its application in the international arena (Gill, 1994), there has been comparatively little work done on the concrete manifestations of this process at the domestic institutional level. Although Gamble (1988), for example, offers a survey of the Thatcher government's attempts to strengthen the state apparatus as means of implementing its agenda, his analysis does not delve into the changing institutional form in the United Kingdom during the 1980s with sufficient degree of depth. Seeing as there is no detailed analysis of how the neoliberal state form has evolved through domestic political institutions, there exists a need for a study that can put this theoretical framework to the test by providing an account of how power has been centralized, and examine whether the reasons this process are indeed related to the emergence of a neoliberal state form.

Defining Democracy

Establishing a working theory of democracy is essential to establish a foundation for an analysis of its transformation over the course of the last four decades. The term democracy is derived from the Greek word *demos* and translates literally to "rule by the people." Bobbio

(1987) describes a democratic regime as, “a set of procedural rules for arriving at collective decisions in a way which accommodates and facilitates the fullest possible participation of interested parties (Bobbio, 1987, p. 19). Democratic legitimacy in this regard is emerged from the notion that “the authorization to exercise state power must arise from the collective decisions of the members of society who are governed by that power” (Cohen, 1997, p. 95). To this end, the institutional character must take on a shape that affirms “the decisions of members, as made within and expressed through social and political institutions designed to acknowledge their collective authority (Cohen, 1997, p. 95). A democracy, then, can be understood as a society in which the procedural rules are organized so as to grant the greater part of the body politic the right to participate in equal shares in political decision making processes, either directly through plebiscite, or by retaining the right to locate and dislocate political leaders who act on their behalf.

Conceptions of the role of the state range from broad, idealistic interpretations of democracy wherein “liberty, security and fraternity are security to the greatest possible degree and in which human capacities are developed to the utmost,” to more narrow descriptions in which the state’s role is defined in largely procedural terms (Pennock, 1979, p. 6). Schmitter and Karl (1991), for example, argue that a proper institutionalized democracy demands a system of governance in which “rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives (p. 103). To work properly, political institutions must be popularized, which means that “various patterns must be habitually known, practiced and accepted by most, if not all, actors” (Schmitter and Karl, 1991, p. 103). It follows, then, that where such institutional structures break down, so too does their capacity to hold these political operatives to account. This project seeks to explore

the modern form of democratic accountability, parliamentary democracy, to determine whether and to what extent it continues to function as a counterforce on political actors. While the concept of parliamentary democracy will be explored in greater detail later, it is crucial to first comprehend the central theoretical presuppositions that lie at the bottom of the modern liberal democratic model.

Theories of Democracy

Throughout its long history, the notion of democracy has undergone a number of theoretical reinterpretations. The traditional Aristotelian view had been to conceive of democracy as “a charming form of government, full of variety and disorder; and dispensing a sort of equality to equals and unequals alike” (Ferrari, trans., 2000, p. 272). Aristotle did not believe democracy to be the ideal form of government since democracies, “define freedom badly... in democracies of this sort everyone lives as he wants and ‘toward whatever [end] he happens to crave’” (McCarthy, trans., 2006, p. 154). However, while democracies did not produce the most virtuous form of government—this was to be provided by a small group of aristocrats who were sufficiently enlightened to govern in the interest of the whole body politic—its virtue was that it allowed individuals to participate in society as both political and economic actors.

Aristotle understood democracy as having a class dimension, directed in the interest of the poor. He articulated this clearly when drawing upon what he called “a farming demos” among the Aphyteans who “divided their land into very small plots so that everyone, even the poor, has enough to meet the financial requirement for sharing in citizenship” (Martin et al., trans., 2003, p. 1319a). This passage contains two important recognitions. First, the source of political authority for Aristotle, was theoretically founded upon the notion of citizenship, or an individual who has, “both a share in ruling and being ruled” (Martin et al., trans., 2003, p.

1283b). In other words, rights were conferred to individuals on the grounds that they belonged to the collective social order. This notion implies that everyone who has a claim to citizenship in society has a corresponding right to participate in its political and social benefits. Second, because the origins of political inclusion emerged from one's belonging to the collective, democratic values were extended to the entire community and required the extension of both legal and economic rights.

The emergence of the liberal theory of democracy, which has its roots in the 17th century political philosophy of Thomas Hobbes (trans., 1996), conceived the political legitimacy of the state in a fundamentally different way than the classical theorists. Hobbes posited that political authority was founded upon a social contract between members of society who grant authority to, "a common power to keep them all in awe," with power to enforce laws in order to keep them out of the dystopian and anarchical state of nature in which is characterized by a ceaseless war of "every man, against every man" (p. 89). Although Hobbes recommended a monarchical form of government rather than a democracy, his thesis that political obligation is built upon social contract between "rational" actors who consent to give up the freedoms they have in their natural state before government in order to leave the chaos of the state of nature, established a new way of understanding the state which would influence conceptions of democratic governance in the centuries to follow.

Hobbes's theory departed from the dominant view of the era, which understood political power as having its origins in the divine right of Kings to rule through ordainment by God; nor was the principal source of legitimacy for the state anchored in the collective pursuit of the good life, as the classical theorists understood it. Instead, the well-spring of political power originated in the minds of rational individuals who consent to be ruled out of fear of the alternative. As soon

as the state began to take the individual rather than the collective as its starting point, however, it became theoretically plausible to rationalize both democracy as well as a form of governance that excluded significant portions of the population as coexisting ideals.

John Locke, who published his *Second Treatise on Government* nearly forty years after *Leviathan*, disagreed with Hobbes's premise that society without government was a frightful and grim state of being. Instead, he conceptualized it as a perfect state of equality in which individuals are free from under the bosom of the state to pursue their own interests. Individuals seek to escape the state of nature and enter into political society as a means of protecting their property, which is under continual threat of being violated where no laws exist. In contrast to Hobbes, Locke believed that this power should be limited to ensure that the government can only assume as much authority as is necessary to protect the life, liberty, and pursuit of happiness of the public. As a consequence, he recommended that the state take the form of a legislative democracy, which would be accountable to civil society as a whole. Locke built upon the liberal-individualist foundation established by Hobbes by arguing that the state was the product of a social contract among individuals seeking to escape the state of nature. Locke's much different conception of the state of nature allowed him to conceive of this individualist state through a democratic legal framework designed to protect the ownership and exchange of personal property.

This liberal-individualist conception of democracy differed fundamentally from the view of democracy articulated by the Greek philosophers. Democracy ought only to extend to those who were deemed rational enough to belong to civil society by owning property. God, Locke claimed, gave the earth to "the industrious and the rational" to cultivate for their own use and enjoyment, but not for the frivolity of the "quarrelsome and contentious" who did not use their

labour to appropriate the land (Locke, trans., 2014, p. 18). He claimed that natural law held that this latter group of individuals who, either by choice or by conquest, did not hold property could not possibly belong to civil society for they lacked the reason to do so. He wrote:

These men having, as I say, forfeited their lives, and with it their liberties, and lost their estates; and being in the state of slavery, not capable of any property, cannot in that state be considered as any part of civil society; the chief end whereof is the preservation of property (Locke, trans., 2014, p. 43).

Two important conclusions emerge from this perspective. First, Locke is able to logically justify the exclusion of all members of the “quarrelsome and contentious” from the democratic franchise on the grounds that are not considered a part of civil society. Second, Locke drew a clear distinction between the political and economic functions of the state. In contrast to the Aristotelian view, Locke saw the establishment of the state as a social contract between free and consenting individuals in seeking to preserve property they had acquired through their own industriousness. The state existed primarily to serve the legal function of providing protection for this economic wealth, and as such, was not authorized under any circumstances to redistribute wealth from the industrious to the quarrelsome. The chief function of the liberal democratic state, then, was to serve as a legal vessel for the accumulation of property among those who used their labour to acquire it.

While liberal theory adapted to the popular struggles throughout the 19th and 20th centuries that sought an expansion of the democratic franchise to ever-larger segments of the population, the logical separation between the state’s legal and economic roles remained largely unchallenged. In the middle of the 20th century Canadian political theorist C.B. Macpherson emerged as one of democracy’s most important analysts. He claimed that liberal-democracy was grounded in an orthodoxy of “possessive individualism” in which the function of the state is to preserve the rights of individuals to pursue their own ends both as members of general society

and as well as market society. In his book the *Political Theory of Possessive Individualism*, Macpherson claimed that the philosophies of Hobbes and Locke are early articulations of an emerging market system and the need for a political apparatus to accommodate this emerging system. He contended that early liberal theorists were using the language of a previous historical paradigm to describe the transition to a new economic system. This system is structured on the logic of individual industry in opposition to the existing feudal paradigm, and viewed the authority of the state as being rooted in a divine natural order that privileged some over others by virtue of birthright. In order to come to terms with the petty market economy and system of mercantile trade that emerged in the 17th century in Europe, the early liberal thinkers began to conceive of new state models that could provide an explanation for a new economic order that could not be understood through the old theoretical framework (Macpherson, 2011). Macpherson (1965) argued that the liberal state grew historically out of the necessity for a political system that could address the contingencies of an emerging market system. He wrote of the early liberal state:

The government was treated as the supplier of certain political goods—not just the political good of law and order in general, but the specific political goods demanded by those who had the upper hand in running that kind of society. What was need was the kind of laws and regulations, tax structure, that would make the market society work, or allow it to work, and the kind of state services—defence, and even military expansion, education, sanitation, and various sorts of assistance to industry, such as tariffs and grants for railway development—that were thought to make the system run efficiently and profitably (Macpherson, 1965, p. 9).

The job of the liberal state, then, was to uphold market relations through the mediation of trade, the protection of property, and the security of certain individual rights and freedoms. However, these principles were never meant to be applied equally—indeed from the beginning only propertied men were given the right to vote. Given that the very logic of liberalism was to legitimize and to rationalize the exchange of money as capital, and to protect property from

intervention by feudal governments, it required a state form that would not reach so far as to abolish the division of labour, which was necessary for the ascension of this new liberal class.

The democracy of the early liberal age was not of the Athenian school, which advocated rule by the many. The liberal form of democracy through the responsible party system was a movement by an emerging bourgeois class to establish a state system that was both logically and substantively consistent with their collective goals (Macpherson, 2011). The maintenance of a disempowered working class would be crucial to the attainment of their class objectives (Macpherson, 1965). Representative democracy, then, “came as a late addition to the competitive market society,” and as a “top dressing” to the liberal state was admitted only as a means of maintaining the legitimacy of the liberal order as increased demands on the state to extend the franchise became impossible, and logically inconsistent to ignore (Macpherson, 1965, pp. 5-9). Once applied, democracy had to, “accommodate itself to the soil that had already been prepared by the operation of the competitive individualist market society and by the operation of the liberal state, which served that through a system of freely competing, though not democratic political parties” (Macpherson, 1965, p. 5). In short, by the time democracy was universalized it had to be de-fanged of its revolutionary and class characteristics, and the liberal state was able to absorb the entire franchise without having to resort to a wholesale change of the liberal system itself.

Two foundational assumptions about the nature of democracy today may be drawn from Macpherson’s critique. First, the modern form of liberal democracy found throughout the western world is inseparable from the economic system from which it has historically emerged. It has taken on the indispensable role of providing structure, order, and legitimacy to capitalism and functions as the primary vehicle through which this mode of production is maintained and

reproduced. The state's primary role, then, is to facilitate the accumulation of capital and to shield it from any external forces that might interfere with this objective. Secondly, democracy as understood in the classical sense is fundamentally different from liberal democracy in that the latter does not provide for the inclusion of all citizens. As a consequence, so long as the liberal state fulfills its obligation to provide the conditions necessary for the reproduction of capital, it does not matter whether the state is democratic or authoritarian in its form. On this view, the modern system of parliamentary democracy where legal and political rights are extended to the entire community is not the intended form for the liberal state. Democracy, which came only later on in the chronicles of the liberal state, was neither essential to its theoretical foundation, nor to its sustenance as the dominant historical system of our age. As a consequence, the more authoritarian neoliberal state form has been able to accommodate itself easily to the theoretical structure of the liberal state. The section to follow will explore the emergence of this new state form and its implications for democracy.

Neoliberalism and the Crisis of Keynesianism

At its heart, neoliberalism is fundamentally a class project aimed at improving the conditions for accumulation at the expense of the working class. Dumenil and Levy (2004) characterize neoliberalism as, “a specific power configuration, the re-assertion of the power of capitalist owners...a new discipline imposed on all other classes, and an attempt, or set of attempts to implement a new social compromise” (p. 247). Harvey (2005), meanwhile, in his book *A Short History of Neoliberalism* describes neoliberalism as:

in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police and

legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets. Furthermore, if markets do not exist (in areas such as land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary. But beyond these tasks the state should not venture. State interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit (p. 2).

Neoliberalism is both an ideology, in that it consists of a closed set of principles and ideas, and also a policy approach in that it demands concrete reforms to the system of government and its outcomes (Harvey, 2005). According to neoliberal thought, government intervention in the economy acts as an impediment to the rational and natural progression of the market. By intervening in the economy, the government serves as a disincentive to entrepreneurship and individual achievement through its tendency towards an equal and fair distribution of treatment. As such, it calls for government to withdraw from as many areas of social life as possible. In accordance with this view, governments throughout the world have adopted policies that have witnessed privatization of public services and infrastructure, the deregulation of industrial, financial, environmental and trade standards, the reduction or outright abolition of tariffs restricting the free flow of capital, a general reduction in taxation rates for corporations and the wealthy, and an active government policy to erode collective bargaining rights belonging to labour (Peet & Hartwick, 1999).

The neoliberal orthodoxy emerged as a response to the long downturn in global capitalism at the beginning of the 1970s, and the nature of this crisis marked a crucial turning point in the trajectory of government policy away from Keynesian solutions, and towards pro-accumulation, market-based policy strategies (Arrighi, 2007; Brenner, 2002, 2006; Dumenil & Levy, 2001, 2005; Harvey, 2005; Mandel, 1978; McNally, 2006, 2008). According to Mandel (1978), the

central problem with Keynesian policy was that perpetual increases in public spending could not resolve the crisis of overproduction that revealed itself in the early 1970s, without further constricting investment through galloping inflation or without creating unsustainable levels of public debt. Keynesianism's ultimate failure to provide solutions to the crisis led policy makers in the west to pursue different approaches. The monetarist school offered a variety of solutions to restore the rate of profit through pro-accumulation policies that would reduce impediments to investment through reductions in interest rates, corporate taxes, regulations, and the use of the state largesse to subvert investment (Dumenil & Levy, 2004; Mandel, 1978). Critical theorists have typically identified five central policy measures employed by the state to overcome the economic stagnation of the 1970s: the curtailment of inflation, wage suppression, trade liberalization, financialization, and the downsizing/privatization of the state as means of increasing the rate of accumulation (Albo, 1994; Dumenil & Levy, 2001; Gill, 1995; Harvey, 2005; Leys, 2003).

For the social structure of accumulation (SSA) school the policy transition to neoliberalism was the result of a need to create a new institutional framework to deal with the conditions of the downturn. SSA theorists contend that each period of capitalism has been characterized by a structure that supports the process of capital accumulation and augments the expansion of capitalism during upswings in the system (Aglietta, 2000; Aglietta & Breton, 2001; Kotz, 1994). However, SSA theorists claim that given the internal contradictions of capitalism each SSA eventually reveals its own contradictory nature and collapses. The SSA school argues that in the early 1970s, the Keynesian SSA began to break down, resulting in the need for a new structure, which could address the fall in the average rate of profit by subverting the process of capital accumulation. The neoliberal SSA served this function by taking aggressive measures to

adopt policies that would increase the average profit rate, and thereby the rate of accumulation (Kotz, 1994).

These competitive pressures placed upon the state under globalization have given rise to what Cerny (1997) has called the “competition state” (p. 251). In its efforts to adapt to the changes brought about by the freeing of capital from national boundaries, “Both the state and market actors are attempting to re-invent the state as a ‘quasi-enterprise’ association,” on the basis of competitive market principles (Cerny, 1997, p. 251). For Cerny then, the competition state infers not a withdrawal of the state from intervention in the market, but rather a re-orientation of its energies from a Keynesian demand-oriented approach to policy an accumulation-oriented, neoliberal strategy. While neoliberal philosophy advocates a reduction in the activity of the state, Cerny (1997) argues that such a reduction in activity is an illusion. The interventionist role for government is expanded in the age of the competition state with the government taking on the responsibility of creating a policy climate most conducive to the attraction of foreign investment. Cerny (1999), contends that, “crosscutting and overlapping government structures and processes” of the competition state take on, “increasingly oligarchic forms where hegemonic neoliberal norms of economic freedom and personal autonomy are delegitimizing both democratic governance in general and the credibility of those who try to make democracy work” (p. 2).

The result is what Albo (1994) has called a “vicious circle of competitive austerity” (p. 147). Governments abandon programs designed to stimulate demand in favour of neoliberal, export-oriented strategies that rely upon finding drains for its surplus production in other markets given the reduction in demand on the home front. The threat of competition from other jurisdictions often compels governments to adopt neoliberal policies out of a fear of being left

behind (Albo, 1994). To confront these pressures, social democratic governments throughout the west have embraced a policy of what Albo (1994) has called progressive competitiveness. This approach uses a traditional social democratic supply-side economic theory to encourage growth through a strategy of “shaped advantage” in which governments invest resources to create competitive advantages for local industries in emerging high-tech sectors (Albo, 1994, p. 147). This strategy entrusts the government to select winning and losing candidates for subsidies in the hopes that investment in high value-added sectors will result in a surplus profit, since companies are able to socialize the costs of high-risk innovation costs (Albo, 2004b). By subsidizing industry, government literally becomes an active partner with industry in its attempt to carve out for itself a competitive niche that will separate it from other jurisdictions in a global race to the bottom for high-wage private sector investment (Albo 1994).

The New Authoritarianism

Nicos Poulantzas was one of the earliest to identify a link between the crisis of capitalism and the rise of an authoritarian statism. In the early 1970s he recognized that the increasingly influential role of transnational capital had resulted in a shift of what he termed “the balance of forces” in western nations (Poulantzas, trans., 2008, p. 167). For Poulantzas, the state retained a relative autonomy to favour the interests of one particular class over another, depending upon what it deemed necessary to achieve a social equilibrium among competing class interests. Crucially, this meant that power relations among competing social classes were in perpetual flux, as the state mediated between various interests in pursuit of social stability.

In his mature work from the late 1970s, Poulantzas (trans., 2008) assumed the view that the emerging power of monopoly capital over the marketplace had the consequence of eroding “the relative autonomy of the state” (p. 309). The increased power of these multinational

institutions caused the state to begin to curb its policies, “under the hegemony of a given faction of monopoly capitalism” (Poulantzas, trans., 2008, p. 309). The trouble was not merely that the state had lost power, but that the capacity of multinational institutions to transcend national boundaries allowed them to circumvent domestic laws. Furthermore, their increased influence over global trade and the flow of capital placed pressure on nation states to comply with their objectives, or risk destabilizing their own domestic economies.

For Poulantzas, then, the economic crisis of the early 1970s was coupled with a political crisis of the state given the increasing power of multinational corporations (Poulantzas, trans., 2008, p. 315). This compelled governments to engage in areas of policy that had traditionally belonged to the public or collective interest through privatization, deregulation, and wage suppression in a variety of these sectors as a means of attempting to restore the rate of accumulation. Whereas the state had previously only sought to limit the damage of economic crises, in the age of monopoly capital the state became the “prime mover” in combating crises (Poulantzas, trans., 2008, p. 315). The state began to actively intervene on behalf of the private sector in a number of areas of social reproduction which it had never before entered such as transportation, health care, and urban development. In so doing, the state was in fact politicizing these areas by “organizing compromises between the power bloc and the dominated classes” through neoliberal policy measures (Poulantzas, trans., 2008, p. 311).

Fundamentally for Poulantzas, this increase in involvement in the affairs of crisis management necessitated a heightening of the state executive authority as a method of confronting the masses on behalf of ‘monopoly capital’ in the newly created spaces of capital accumulation. The successful attainment of these objectives necessitated, “the prodigious concentration of power in the executive at the expense of not only popular parliamentary

representation, but also a series of networks founded on popular suffrage, on both central and local or regional levels” (Poulantzas, trans., 2008, p. 321). The changing balance of forces resulted not merely in a shift towards pro-accumulation policies, but a restructuring in the institutional machinery of the state itself. Indeed, as Poulantzas argued, the post-crisis reality of western nations was a situation in which, “neoliberalism and state reform policies co-exist alongside authoritarian statism and (are) akin to it in content” (Poulantzas, trans., 2008, p. 411).

Bob Jessop (1993) has argued that the transition to the new competition state constitutes an entirely new state form from the welfare state expansion of the post-war era. He contended that the contemporary era of politics may be characterized by a shift from the Keynesian Welfare State (KWS) to a Schumpeterian Workfare State (SWS) structured on the “promotion of product, process, organization market innovation; the enhancement of structural competitiveness of open economies; the enhancement of the structural competitiveness of open economies mainly through supply-side intervention; and the subordination of social policy to the demands of labour market flexibility and structural competitiveness” (Jessop, 1993, p. 9). Under the SWS state form the nation state has been “hollowed out” in what he refers to as a “triple displacement of power,” as some state capacities have been transferred upwards to supranational bodies, downwards to subnational levels of government, and sideways to “emerging horizontal networks of power” (Jessop, 1993, p. 10). This process has been coupled with the growth of a disciplinary state apparatus that is designed to punish those who do not actively participate in the market. For Jessop, the emergence of this disciplinary state was the consequence of the erosion of the social safety net and the increased need for disciplinary approaches to deal with social deviance and systemic resistance.

Peck and Tickell (2002) have argued that this process of reforming the state in the contemporary age can be reduced to what they refer to as the “roll-back” and the “roll-out” of the state. “Roll-back neoliberalism” refers to, "the active destruction or discreditation of Keynesian-welfarist and social-collectivist institutions" (Peck & Tickell, 2002, p. 387). However, it is the trend of roll-out neoliberalism which is most instructive to the recent phase. The contemporary agenda, Peck and Tickell argue, has moved from the retrenchment and contraction of the welfare state to the, “construction and consolidation of neoliberal state forms” (p. 384). Roll-out neoliberalism is an active process of state building structured on a “combination of neoliberalized economic management and authoritarian state forms,” that seeks not only to reform the state, but to consolidate gains and entrench neoliberal principles in the fabric of the state (Peck & Tickell 2002, p. 384). No longer merely concerned solely with the implementation of accumulation-centric policies,

Neoliberalism is increasingly associated with the political foregrounding of new modes of ‘social’ and penal policy making, concerned specifically with the aggressive re-regulation, disciplining and containment of those marginalized and dispossessed by the neoliberalism of the 1980s (Peck & Tickell, 2002, p. 389).

While early neoliberal reforms were concerned with conditions external to the ideological project itself, with a focus on macroeconomic crises and improving the environment for accumulation, the new reforms are particularly concerned with the internal social contradictions of neoliberalism (Peck & Tickell, 2002). It is for this reason that Swyngedow (1996) argued that the re-scaling of the state was not merely a means of restructuring the state apparatus, but rather, “the means through which the reorganization of the state is achieved” (p. 1502). The “double authoritarianism” of the restructuring of power both upwards and downwards, he claimed, was necessary to insulate neoliberal reforms from the democratic process (Swyngedow, 1996, p. 1503). Swyngedow (1996) argued that as the contradictions of globalization intensify, “more

authoritarian and strong forms of governance become increasingly important,” to ensure that reforms can be implemented without meaningful resistance (p. 1504). This state restructuring did not suggest a diminished role for the state apparatus. Rather, the global and local institutions use the sovereignty of the nation state as a vehicle through which they are able to attain reforms, “in close collaboration with private capital” (Swyngedow, 1996, p. 1504).

The idea that the roll-out phase of neoliberal policy involves an increasingly anti-democratic and authoritarian approach to governance is a common theme throughout the critical literature. Stephen Gill (1995a) has argued that many of the dominant practices of the present order can be described by what he calls “disciplinary neoliberalism” (p. 1). For Gill, disciplinary apparatuses have become entrenched as a means of addressing those members of society who are increasingly being thrown to the margins of the system (Gill 2008). This is combined with the growth of a repressive state apparatus in the form of increased police surveillance and acts that allow for the suspension of civil liberties in the name of state security.

Andrew Gamble (1988) has argued that neoliberals hold a paradoxical view of the world which combines, “a traditional liberal defence of the economy with a traditional conservative defence of state authority” (p. 28). The result is that contemporary neoliberal policy has witnessed a situation in which the state is, “simultaneously rolled back and rolled forward. Non-interventionist and decentralized in some areas, the state is to be highly interventionist and centralized in others” (Gamble, 1988, p. 28). Thus, while neoliberalism presents itself in the political cloak of enhancing freedom by reducing the role of government in social and economic life through the scaling back of welfarist policies, it is at the same time increasing the repressive function, seeking to fill the social vacuum that is created by the erosion of social programs through a more militarized state apparatus.

There are two primary reasons identified by the literature for the emergence of the strong state under neoliberalism. First, governments have sought to enhance the state's repressive arm in order to deal with the legitimization crisis brought about by its hollowing out (Jessop, 1993). This has resulted in the emergence of a disciplinary state in which government uses coercive policy instruments to oblige participation in the labour force (Jessop, 1993). Governments have sought to deal with the legitimacy crisis brought about by the scaling back of its previous social functions through the emergence of what Wacquant (2010) has called "prisonfare" (p. 197). On this view the neoliberal state attempts to address the problem of surplus labour through the "paternalist penalization of poverty...to contain the urban disorders spawned by economic deregulation and to discipline the precarious fractions of the post-industrial working class" (Wacquant, 2010, p. 198).

Secondly, the state has sought to overcome resistance to the neoliberal project *internal* to the state apparatus itself through both the centralization of political power at the centre of the executive branch and a corresponding establishment of accountability mechanisms to discipline and coerce public sector organizations into compliance. The origins of this shift towards a more centralized state apparatus can be found in the transition to a logic of fiscal restraint in the western democracies as governments sought solutions to overcome institutional obstacles and path dependency within the public sector.

Shields and Evans (1998) argue that public sector restraint has "worn numerous faces" over the last four decades (p. 18). They identify four approaches typical to the implementation of restraint measures in the west. First, a *restrictive* approach, is mild in form and is based on the principle that base line spending growth should continue, but remain in line with the rate of inflation. Second, a *budgetary freeze* is based upon the maintenance of existing spending, but

seeks to achieve reductions through increases in inflation. Third, *revenue generation*, is an approach in which government income is raised through the leveraging of taxes, duties or other measures with the express purpose of debt or deficit relief. The fourth approach, *retrenchment*, has witnessed the reorganization of government spending priorities by proactively cutting resources from the budgets of virtually all ministries (Shields & Evans, 1998).

While each of the approaches Shields and Evans identify have fostered the emergence of progressively centralized administrative structures, it is during periods of retrenchment that these accountability structures have been most notably put to use. Centeno (1994) argues that the need to “insulate decision makers from the pull of “distributive politics” or social pressures” has necessitated that directives be made by a small cabal of functionaries, usually located in the state treasury, and enforced by top-down managerial hierarchies, which demand accountability (Centeno, 1994, p. 136). Menz (2005) notes the “pivotal role of the treasury and its minister” to the aggressive public sector restructuring process in New Zealand during the early 1990s (p. 64). The Treasury functioned as a “gatekeeper” for public spending across all government departments and agencies, exercising a “monopoly on all questions of economic policy” (Menz, 2005, p. 64). Similarly, in Ontario, the evolution of an increasingly centralized management structure occurred contemporaneously with the province’s transition from restraint to retrenchment, and functioned as a crucial instrument to the implementation of neoliberalism. This dissertation will tell the story of how these trends evolved in Ontario from the early 1970s to the present.

The New Constitutionalism

Stephen Gill’s (1995a) notion of “new constitutionalism” (p. 1) marks an important contribution to the question of the state’s capacity to uphold the central theoretical pillars of

representative democracy in the age of global capital. He argues that governments have enshrined pro-accumulation policies in international trade treaties as a means of locking in such reforms by insulating them from democratic or parliamentary control and assuring that such policies, “become the only method for future development” (Gill, 2008, p. 139). These usually implicit provisions often “imply or mandate the insulation of key aspects of the economy or citizens by imposing, internally or externally, binding constraints on the conduct of fiscal, monetary and trade and investment policies” (Gill, 2008, p. 138). In reacting to the pressures of the international economy to create an optimal investment environment for capital, governments have entrenched assurances that their investments will be exempt from possible interruptions by public or governmental interference in the accumulation process. In so doing, however, they have conferred, “privileged rights of citizenship and representation to corporate capital, whilst constraining the democratization process” (Gill, 2008, p. 139). Gill isolates the central question as to whether the present international configuration of democratic rights as embedded within national state forms is compatible with the need for capital to shield accumulation from public resistance. As I hypothesize, this process is being replicated at the national and subnational levels of political institutions, as international pressure to enact reform has impelled governments to increasingly shift power towards the executive and away from legislatures.

It must be emphasized that while considerable work has been done to establish the increasingly authoritarian tendencies of the neoliberal regime of accumulation, the overwhelming majority of these studies have either addressed these issues abstractly through a primarily theoretical analysis or in the realm of international affairs. While the establishment of a theoretical framework for the decline of democracy is arguably the most important first step, the literature is calling out for a study that closely examines how this process has been carried out at

the domestic level to give an empirical and concrete foundation to this growing theoretical field of discipline.

Gramsci's Passive Revolution

The change in the institutional form of the state over the last forty years can be captured by what Gramsci (trans., 1999) called a “passive revolution” from above (p. 300). Gramsci used this term to describe the process through which political and institutional reform occurs without the need for social revolutions. Such reforms were arrived at through a slow and gradual process of social evolution internal to the state’s social formation that caused it to adopt a change in form over time. Gramsci (trans., 1999) argued that the state can be understood not only in its concrete form, which includes its institutional ensemble and its formal political processes, but also as a subjective entity in which power structures are diffusive and constantly in evolution. To view the state only in its concrete institutional form, for Gramsci, was to misinterpret it. Behind the formal institutions there lurked a variety of subjective forces, which caused the state to gradually make adjustments to its policy trajectory while institutions remained in place. It was possible, then, for the state to assume a new form without having to change its concrete institutions. This subjective power offers a framework for understanding how institutions have shifted towards an increased authoritarianism while the formal processes of democracy have remained largely unchanged.

Building upon Gramsci’s notion of passive revolution, Stuart Hall (1985) claimed that the transition to neoliberalism constituted a revolution from above, which increasingly took on the form of a heightening in the state’s repressive apparatus. Hall (1985) claimed that as the Keynesian consensus began to disintegrate, governments began to fill this vacuum with increasingly authoritarian policies designed to maintain social order during a period

characterized by an, “unstable equilibrium between coercion and consent” (p. 116). For Hall, Gramsci’s concept of passive revolution applied only in part to the present circumstances. Hall (1985) developed the term “authoritarian populism” to describe the political traction that a more punitive and militarized state has among a significant portion of the general population (p. 115). Governments, he argued, cleverly exploited deeply rooted ideological leanings held by many through the creation of moral panics, creating demand for an increasingly punitive state from below. Thus, while the creeping authoritarianism meets Gramsci’s definition in that it has constituted a revolution from above, this process has been aided through the establishment of a populist movement from below that has lent legitimacy to this process.

The Rise of the Crisis State

In a similar vein, Antonio Negri (1988) argued that the form of what he called the “crisis state” had become increasingly autocratic (p. 60). He maintained that crises, which were the result of the “unplannability” of a capitalist economy leading it to trend inevitably towards crisis (Negri, 1988, p. 22). During periods of crisis similar to the conditions that occurred at the beginning of the 1970s, the state must intervene to raise the average rate of profit by using its authority to ensure the extraction of more surplus labour from the working class. In short, the state must use its power to artificially re-establish economic equilibrium by implementing policies designed to curtail the bargaining power of in order to, “re-establish command over the wage-work nexus” (Negri, 1988, p. 23). This process, which Negri (1988) referred to as, “the political overdetermination of crisis,” thus required the state to establish a, “command over social labour where normal controls through the marketplace have broken down” (p. 46). Negri claimed that intention of such efforts, which characterize the neoliberal reforms undertaken by governments throughout the world, is to suspend the laws of economics through the

establishment of political control. As such, the government's attempt to consolidate its control over labour inevitably inclines the crisis state towards an authoritarian form. While the crisis state form has been necessary at various times throughout the history of capitalism to stabilize the system, the difference is that this time it has been implemented as a permanent, rather than temporary, state form. The result, he argued, is that democracy has become obsolete, being replaced instead by an institutional form that mirrors a type of fascism as the state becomes the instrument for the containment of the crisis.

Post-Democracy

While the emerging post-democracy school does not explicitly build upon Gramsci's idea of "passive revolution" its analysis of contemporary democracy bears notable resemblances to it. The most well-known author in the post-democracy literature, Colin Crouch (2004) contends that democratic institutions have been purged of their content by an elite class, which has seized control of the state apparatus. While the concrete democratic institutions remain throughout the western nations, "Politics and government are increasingly stepping back into the control of privileged elites in the manner characteristic of pre-democratic times" (Crouch, 2004, p. 6). Public policy today is determined, "in private interaction between private government and elites that overwhelmingly represent business interests" (Crouch, 2004, p. 4). This process, he argues, occurs on both the political and economic terrains. As advocates of the neoliberal movement seek to roll back the welfare state the political vacuum left by a reduced role for the state in the lives of ordinary citizens is filled by, "corporate interests," which, "use it (the state) more or less unobserved as their private milch-cow" (Crouch, 2004, p. 19). For Crouch, one of the central outcomes of the scaling back of the state has been to empower private interests to control the state by reducing as many of its social functions as possible to private ownership. Thus, while

formal democratic institutions may remain in place, their potency to act as representative of the public interest has been undermined by powerful private influences on government representatives (Crouch, 2004).

In a similar vein, Henry Giroux (2004) argues that we have entered an age in which the central function of citizenship has been reduced to such banal ends as consumerist and careerist objectives. The consequence of this vacuous consumerist culture has been to disengage the citizenry to such an extent that public dialogue about the role of the state as a vehicle of ethics or morality is now generally viewed as an excessively romantic view of the world, and is often discredited. Instead, the central function of the neoliberal state, he argues, is to maximize efficiency for private capital and to serve the needs of the major corporations, while the state retains its central disciplinary functions as a means of maintaining legitimacy through repressive tactics to ensure compliance with this emerging form of governance (Giroux, 2004). The essence of zombie politics, then, is that a shift in the cultural milieu in society has resulted in a scenario in which the central objective of government is to act as a support for private capital (Giroux, 2004). Democratic institutions today primarily serve in the role of legitimizing and reinforcing this system of elite governance.

Social and cultural theorist Slavoj Žižek (2000) maintains that we have entered an age of post-politics in which there are no real antagonisms left within the liberal-democratic frame. In this respect, Žižek argues, that Francis Fukuyama's infamous 1989 proclamation that humanity had reached "the end of history" in the form of liberal democracy has proven to be true thus far (Fukuyama as cited by Žižek, 2000, p. 12). Today, he argues, meaningful disputes about the nature of our political systems are not taken seriously, even by the left (Žižek, 2000). The real substantive ideological debates about political, social, and economic systems have been deprived

of their standing as legitimate alternatives to the existing neo-liberal global order. What is left in its place are disputes about cultural accommodation and human rights, but such debates are stripped of their political content to the extent that they are seen as presenting a potential threat to the system. The reduction of ideological disputes about the legitimacy of capitalism and liberalism, Zizek (2000) contends, poses a significant threat to democracy, since democratic societies must present legitimate alternatives to the status quo in order to present a meaningful challenge to the ruling class. The failure of the left to mount a meaningful challenge to neoliberalism he argues, is symptomatic of the undemocratic nature of post-political society. A society in which alternatives to the existing system of order are not considered as part of the political dialogue is unable to oppose elite rule (Zizek, 2000).

Globalization and the Decline of National Sovereignty

One of the more popular explanations for the decline of democracy in recent years has been to suggest the state's loss of control to international bodies has rendered it an increasingly irrelevant institution unable to represent the interests of its own citizens. The effort by governments to rearrange their domestic policies as a means of adapting to the new realities of globalization has fundamentally altered the complexion of the state. Central to these changes was the logic that the imperatives of global competition required a scaled-back state that devoted more of its resources to improving the conditions necessary for the accumulation of capital. A broad field of literature has emerged which has focused on the central role played by the markets in shaping and determining government behaviour. Although there is considerable debate within the international political economy (IPE) literature as to the role of the nation state age of global capital, there is a general consensus that the integration of global economic relations requires

even the most insular of nations to take account of the international marketplace when planning their economic policy strategies.

The divergent views on this subject surround the question as to whether governments have autonomy to make independent decisions, or whether they are bound by the systemic pressures of global capitalism to follow a path towards marketization and improving the investment climate for private multinational actors. At the crux of this debate about the power of the nation state, however, is a deeper question about the relevance of democracy in the age of global capital. Since modern forms of representative democracy are embedded within the institutions of the nation state, it follows that the issue of national autonomy becomes, more centrally, a question of whether nation states today have the capacity to uphold the essential principles of democracy. If it is indeed the case that the leverage of global capital has reduced the nation state to the role of a spectator in the global marketplace, the state's capacity to function as a democracy is definitively undermined.

One popular trend within the IPE literature has been to view the nation state as having lost its authority as the central site of sovereignty to regional and international bodies. This institutionalist view posits that the international state system remains organized according to the principle of national sovereignty in form only, while actual power over the most important decisions resides elsewhere. Susan Strange (2000) has argued that the deep integration between the interests of states and the financial markets has reconfigured the relationship between the authority internal to the state and the market. She contends that while international authority continues to be formally structured according to a state-based system of international governance, the nation state is in steep decline in the age of globalization. What Strange (2000) calls the "impersonal forces" of world markets and finance, which have been implemented

through the consent of states, “are now more powerful than the states to whom ultimate authority over society and economy is supposed to belong” (p. 4). In a similar vein, Hardt and Negri (2000) have made the case that, “even the most dominant nation states should no longer be considered as supreme and sovereign authorities, either outside or even within their own borders” (p. xi). Instead, they argue, sovereign power has taken a new form, “composed of a series of national and supranational organisms united under a single logic of rule” (Hardt & Negri, 2000, p. xii). They refer to this emerging form of sovereignty as “empire,” or the “decentring” and “deterritorializing” of authority into an interconnected web of power, which is constantly being redefined and expanded as global integration marches forward (Hardt & Negri, 2000, p. xii). Thus, both Strange and Hardt and Negri see power moving towards a series of supranational bodies, but argue that the transition is anything but clear as nation states cling to power over some local and domestic affairs while the authority for macroeconomic and macro-political affairs has shifted to supranational bodies. What we are left with, then, is a view of modern authority as involving overlapping and complex structures of power relations that are still in the process of their evolution towards a larger and sovereign global regime.

A variant of this school takes the more structuralist position that state has not made a formal transfer power to international institutions, but has done so more abstractly by cooperating with global financial institutions and international trade agreements. In this sense, while power ostensibly continues to reside within the nation state, the influences which condition its actions are structured by the systemic requirements of global capitalism. Streek (2011) argues that global finance is able to coerce governments to adopt policies favourable to the accumulation of capital by “blackmailing” as a consequence of their control of sovereign debt ratings and loan capital (p. 25). For Streek (2011), this internal relationship between the nation

state and finance capital has undermined, “the capacity of national states to mediate between the rights of citizens and the requirements of capital accumulation” (p. 25). Teeple (2011) contends that the capability of global finance to destabilize national economies impel governments to enact policies that augment investor confidence. The consequence, he argues is that, “liberal democracy increasingly began to appear an empty exercise” (p.232). The introduction of a global process of accumulation resulted in a larger pool of capital and of coordinated class interests than ever before, which began to pressure the state to adopt policies favourable to the accumulation of capital at ever more rapid and ever cheaper rates. The result was to undermine the strength of the working-class, “with respect to capital and lessened the leverage they had in national politics” (Teeple, 2011, p. 234). In a similar vein, Rice and Prince (2000) argue that globalization disembeds the economy from the state by “reconfiguring authority” from the nation state to international bodies such as the IMF, World Bank, the WTO and private international lenders. As a result, they contend, “the economy becomes uncoupled from the national interest and increasingly subjected to international forces” (Rice & Prince, 2000, p. 172).

There has been a growing demand to “bring the state back in” to discussions about sovereignty in international affairs. This school maintains that while a variety of global and systemic pressures internal to capitalism that affect how states behave, the nation state remains the central site for sovereign law and authority in the international system. Weiss (1997) contends that the decline of the nation state is overstated by globalists who underestimate the capacity of the nation state to adapt to changing circumstances. The nation state system, she argues, has demonstrated its capacity to adapt to significant environmental changes over the last 400 years. She argues that “strong states” have been, “facilitator, not victims of internationalization,” and have in fact become more important as the central conduit of global

interconnectedness (Weiss, 1997, p. 17). Hirst and Thompson (1995) argue that, as the primary site for sovereignty in global affairs, the state performs the crucial function of “distributing and rendering accountable powers of governance, upwards towards international agencies and trade blocs like the European Union, and downwards towards regional and other sub-national agencies of economic co-ordination and regulation” (p. 408).

Similarly, Panitch (1994) argues that those who support the globalist view tend to ignore the reality that “today’s globalization is both authored by state and is about fundamentally reorganizing, rather than bypassing states” (p.64). Those who maintain that the sovereignty of the nation state has eroded “present a false dichotomy between national and international struggles,” which creates the perception that political power is “emerging from outside the territorial nation state rather than internal to it” (Panitch, 1994, p. 64). For Panitch (1994), then, the nation state was and remains the central source of political conflict and sovereignty. Panitch argues that a Poulantzian interpretation of the state as a balance of social forces is useful to highlight changing power configuration of the modern state under globalization. The state on this view cannot be understood as a mere instrument of large multinational capitalist enterprises, but rather as the vehicle through which the internationalization of the economy and the adoption of pro-accumulation policies have been pursued. While globalization has the appearance of being an externally influenced phenomenon, the substantive changes that actualize a policy of unobstructed accumulation are achieved through the nation state apparatus itself. This project will proceed on the presupposition that the nation state remains the central actor in international affairs, and that while external pressures influence domestic policies by demanding conformity to competitive pressures, the state remains the central site for sovereign authority and action. This being the case, it follows that an examination of the role of democracy in the neoliberal era ought

to begin with the central site of sovereign power, the domestic political setting. It is this gap in the literature that my project will address.

CHAPTER TWO

LITERATURE REVIEW: *DIEU ET MON DROIT*; THE DECLINE OF PARLIAMENT IN CANADA

Etched into the pink grainy sandstone high above the palatial entrance to the Legislative Building at Queen's Park lies the Great Seal of Ontario, upon which are inscribed the words *dieu et mon droit* (God and my right). This phrase, reputedly used as a battle cry by King Richard I, is a vestige of the medieval notion of the Divine Right of Kings to rule over society by the ordainment of God. Over the centuries, as social contract theory came to replace the theory of rule by divine right, the British Monarch adopted King Richard's battle cry as its official motto, an emblem of the power of the Crown and its historical right to rule. To this day, the expression *dieu et mon droit* hangs over the front entrance of the province's legislative assembly as though to remind all who enter that while the notion of parliamentary supremacy is the foundation of modern democracy, the executive remains the ultimate source of political authority in the Westminster system of government.

It must be viewed with some irony that while observers of parliament today warn of its calamitous decline, its rise to prominence in 16th century England was steeped in King Henry VIII's efforts to cultivate it as a forum for the rubber-stamping of his political agenda. With nearly the entire clergy and the majority of the peers in House of Lords opposed to his agenda, Henry sought to have the House of Commons, previously the subordinate house, established as the chief agency for the authorization of his bid to abandon Catholicism. During this period, the House of Commons experienced considerable growth in prestige as the King saw it as being in his immediate interest to transfer the balance of power to a body he could count on to be more obsequious to him (Pollard, 1920).

A little more than a century later, England would descend into a bloody revolutionary war between parliamentarians and royalists that ultimately resulted in the establishment of the rule that the monarch could not govern without first seeking the consent of parliament. Indeed, the history of the British parliamentary system is characterized by a continual rebalancing of the power dialectic between the executive and the legislative functions. It was not until the Great Reform Bill of 1832 that “the sovereignty of the people had been established in fact, if not in law” to be exercised through the supremacy of parliament over the Crown (Trevelyan, 1922, p. 242).

Throwing off the yoke of feudalism, however, did not bring about an end to the struggle between the legislative and the executive. In fact, the dialectic between them today bears considerable resemblances to the old. Unlike the sixteenth century, however, when King Henry VIII nakedly sought to manipulate the House of Commons to his own advantage, these power relations today are much more abstract and difficult to identify. In modern times, there are, as Titmuss (1965) claimed, a multitude of forces operating on government, which are “deeply rooted in the social structure and fed by many institutional factors inherent in large-scale economies, operating in reverse directions” (Titmuss as cited in Panitch, 2009, xi). Yet there is an emerging consensus that the balance of power has swung in the direction of the executive to such an extent that parliament, more than three hundred years after winning the right to censure the monarchy, has harkened back to its feudal roots, becoming an increasingly irrelevant institution in the configuration of political power in the western democracies. The crucial question today, then, is what form this shift towards the centre of the political apparatus is taking and for what reasons is it occurring? This chapter will bring the contemporary debate into focus by providing an overview of the literature in the Canadian tradition.

Defining Parliamentary Democracy

In his seminal work on the Westminster model, Walter Bagehot (1873) described parliamentary democracy as being primarily characterized by the fusion between the legislative and executive in the same institutional body. Accordingly, Strom (2000) claims that parliament can be understood as a “form of constitutional democracy in which executive authority emerges from, and is responsible to, the legislative authority” (p. 264). The crucial link between the executive and legislative is expressed in the legislature through cabinet, which Bagehot (1873) describes as “a board of control chosen by the legislature, out of persons whom trusts and knows, to rule the nation” (p. 49). The cabinet takes responsibility for the administrative and policy making functions of the state, but must seek the approval of the legislature in order for their decisions to take the force of the law.

The defining characteristic of a parliamentary democracy, then, is the interdependent relationship that exists between the executive and legislative functions in a single institutional forum. However, the extent to which any parliament can be said to fulfill its obligation to represent the democratic interests of the body politic at large relies entirely upon the maintenance of a balance between the executive and legislative powers. While the parliamentary majority must tolerate and acknowledge the right of the executive to govern, at the same time cabinet must respect the right and responsibility of private members to oppose and hold it to account as well as to fulfill their duty to represent the public interest.

This duty of the opposition to hold cabinet accountable sometimes requires the use of delay tactics to obstruct the proceedings of the house in order to highlight a particular issue or concern. Such tactics, however, conflict with cabinet’s right to govern by passing legislation within a reasonable timeframe. It is the mediation of this conflict between the desire of the

cabinet to pass legislation in a timely and efficient manner and the role of the opposition to hold the government accountable that this project will attempt to explore in further detail. The argument put forward is that governments of all party affiliations in Ontario have increasingly pushed the limits of parliament's rules in order to insulate their decisions from influence by the legislative function. This trend shares similarities with the tendency to centralize power in the executive function itself, which has been explored in considerable detail by the scholarship in the Canadian political science tradition.

The Rise of Court Government in Canada

Denis Smith's seminal paper "President and Parliament," which claimed that the prime minister's control over both the executive and legislative functions in the Canadian parliament gave him more power than most leaders in presidential systems, spawned an increasingly rich body of literature studying the exercise of political power in Canada (Smith, 1979). While some scholars have argued that political power in Canada has long been highly centralized relative to its peers elsewhere in the Commonwealth (Malloy, 2004; Franks, 1999), a general consensus has emerged that political power has shifted toward the centre of government.

Given that the executive functions as the nucleus of political power in Canada, the majority of the research that has been published in this area has devoted its focus to a study of power dynamics internal to the executive itself. The most vigorous debates in the discipline have concerned the evolution of the role of cabinet ministers themselves in the political decision making process. While one school of thought claims that power has become highly centralized in the prime minister's office, thus rendering cabinet largely irrelevant, others maintain that it continues to play an important role in policy development. The evolutionary model finds its clearest articulation in Christopher Dunn's (2002) three stages of the "political-administrative

style.” In the first, *traditional era*, the first minister and cabinet primarily represented regional interests. The second, *departmental era*, emerged from a significant growth in the size and scope of government during the welfare state expansion of the post war era. This period was characterized by an increased bureaucratization and departmentalization of cabinet, in which ministers took responsibility over the monitoring and management of their departments. As such, the cabinet decision making process was largely a decentralized affair in which ministers had autonomy over their own areas of jurisdiction. In the third, *institutionalized era*, the cabinet structure became more complex by virtue of the establishment of cabinet committees, which took the role of primary oversight over crucial policy areas. In this model, cabinet became more inclusive, but also more highly centralized in the hands of first ministers, their staffs, and the most powerful ministers in cabinet. In the institutionalized approach, while power is centralized and the first minister takes the primary role, authority is still delegated through the committee process to other members of cabinet (Dunn, 2002).

Donald Savoie (1999a) argued that the Canadian government has moved into a fourth era, which he characterizes as “court government” in which political power and decision making authority rests, “in the hands of the prime minister and a small group of carefully selected courtiers rather than with the prime minister acting in concert with his elected cabinet colleagues” (p. 637). In court government the cabinet, parliament and the bureaucracy are all subordinated to the first minister and his or her courtiers, who exercise complete decision making authority over the activities of government. This new form of government is due in part to the rigid party discipline and leader-centric governments that have come to characterize modern Canadian politics (Savoie, 1999a).

In his account of the state of cabinet power under Prime Minister Jean Chretien during the late 1990s, Simpson (2001) argued that, “the Canadian prime minister is more powerful within this system than any democratically elected leader in other advanced industrial countries...he is the Sun King around whom all revolves and to whom all must pay varying forms of tribute” (p. 5). Such powers extended beyond the first minister to the unelected staffers, since it follows that where he or she “is not *primus inter pares*, but just plain *primus*, his advisors will axiomatically be more powerful than any cabinet minister (Simpson, 2001, p. 20). He supports this point by noting that under the Chretien government, cabinet was rarely consulted on the overarching themes established by the government. This extended to decisions regarding cabinet postings and appointments, central party messaging, and also to the ability for ministers to speak to the press or debate in parliament without first receiving approval from the courtiers surrounding the Prime Minister’s Office (PMO).

Lawrence Martin (2010) claimed that the Harper government put in place a centralized message control system, “unlike anything ever seen in the capital” (p. 58). Any government official, whether cabinet minister, Member of Parliament, military or civil servant was required to fill out a Message Event Proposal (MEP) and submit it to either the PMO or the Privy Council Office (PCO) for approval. Even the most inconsequential of decisions were to be vetted by the unelected courtiers surrounding the prime minister before being actualized. While this unprecedented degree of “Soviet-style” censorship over government officials would typically raise public concern, Martin (2010) notes that it was, “introduced in such a staggered way that it didn’t generate headlines on the curbing of democratic freedoms” (p. 59).

Peter Aucoin (1986) argued that while there is considerable evidence that power is shifting towards the centre, the personality of the prime minister himself plays an important role

in how this process manifests itself. He noted that both Trudeau and Mulroney, for example, had profoundly different leadership styles. While Trudeau's leadership style led him to implement an executive system based upon rational management, Mulroney's was largely structured upon a system of brokerage politics. Aucoin wrote: "The major determinants of such change are invariably political, and not administrative in character, and derive from the leadership paradigms of chief executive officers—their philosophy of government, management style and political objectives" (Aucoin, 1986, p. 5). In other words, Harper's executive-driven style was largely driven by his desire to have a government that both stifled dissent and avoided the pitfalls of previous Conservative governments that had too often gone off message (Martin, 2010). Aucoin's chief point, however, was that such calculations are made for political advantage; they are not part of an organic administrative shift of power towards the centre in and of themselves.

In a similar vein, H.D. Munroe (2011) also claims that human agency functions a central determinant on the extent to which power is concentrated in the PMO. Despite the very real existence of centralizing forces since the early 1970s, he claims, "the exercise of prime ministerial power is significantly shaped by personal style" (Munroe, 2011, p. 531). Munroe contends that the charismatic characteristics of certain first ministers give them greater influence within cabinet than leaders with weaker personal attributes. He offers a detailed sketch of Trudeau's ability to control his cabinet during the October Crisis of 1970, arguing that it was his skilled personal attributes that allowed him to maintain the obedience of cabinet while taking such a radical step as enacting the *War Measures Act*. Furthermore, Munroe's (2011) study demonstrated that Trudeau remained committed to a "rational management" approach to governance, even at a time when centralizing pressures were at their most extreme (p. 533). This provides strong counterevidence to Savoie's claim that prime ministerial power has become

increasingly concentrated at the centre of government, since one would anticipate that at the height of a crisis, the prime minister would close ranks and seek only the advice of her closest advisors.

Franks (1995) argues that Canada's weak federal structure and the diverse cultural, political, and economic complexion of Canada's various provinces, has necessitated a more deliberative, executive-driven relationship between the federal government and the provinces than might be the case in a more cohesive union. This has led to a relationship that is more reliant upon negotiation between first ministers, both constitutionally and in terms of key policy matters, than would be ideal. This reliance upon executive federalism has shaped a policy regime that often ignores legislatures on key policy matters, thus undermining the democratic accountability of both levels of government to its citizens (Franks, 1995).

The Continued Relevance of Cabinet

While most scholars in the political science tradition agree that government has entered the institutionalized phase in which power is centralized in cabinet, there is considerable skepticism in claims that power now rests exclusively with the first minister and his or her staff and central agencies. Bakvis (2001), for example, argued that the notion that first ministers have autocratic power within governments is "overdrawn" (p. 161). Indeed, Bakvis argues that leader-centric structures of party loyalty have long been a part of the Canadian democratic process since the days of Sir John A. Macdonald. Therefore, an analysis which suggests that court government is a new phenomenon ignores the extent to which first ministers have exercised authority in the past (Bakvis, 2001, p. 166). Furthermore, he argues,

one has to be careful in accepting the supposition that ministers have simply dropped out of the picture, or that all power automatically flows upward. It is possible to argue that even if cabinet as a forum for decision making has become less relevant, much of the power has shifted down to individual ministers and departments (Bakvis, 2001 p. 167).

He argued that Chretien's approach was to give cabinet members more responsibility in order to clear the cabinet agenda of superfluous items, and give his ministers considerable autonomy and free reign in important portfolios such as transportation and foreign affairs.

Malloy (2004) contends that while the role of parliament has been minimized in recent years as party discipline has intensified, executive relationships have long favoured the first minister. Thus, while there might be good reason to view modern developments as being different from previous eras it is impossible to universalize this trend. He raises the example of Paul Martin's cabinet revolt, which eventually resulted in Jean Chretien's resignation as prime minister, as demonstrative of the fact that cabinet remains a counterforce against the power of the first minister (Malloy 2004). Weller (2003) argues that the assumption cabinet is irrelevant is based upon a methodological flaw. Scholars who support theory of court government have done so on the basis of an analysis of prime ministers. For Weller, studies designed to draw conclusions about cabinet's relevance today should focus their study on the cabinet itself rather than drawing reductionist conclusions on the basis of the changing role of the prime minister. Taking this approach, he argued, one cannot help but come away with the view that cabinet remains a vital part of the policy making process. While the overall trajectory of government policy is becoming increasingly concentrated at the centre of government, "ministers exert authority within their portfolios and there is no consistent trend to suggest that prime ministers determine everything; they are influential in those areas where they care to act, as they always were" (Weller, 2003, p. 720). For Weller, until some kind of normative methodological approach is established, it is far too reductionist to declare cabinet dead.

Lewis (2013) provides the most recent analysis of power internal to Canadian executives by way of interviews with more than 100 cabinet ministers across the country. His interviews

reveal that while first ministers exercise significant power over the government's central agenda, cabinet members continue to enjoy a relatively high level of autonomy within their portfolios. The result is the emergence of what Lewis calls a hybrid autocratic collegial model. (Lewis, 2013, p. 800). In this arrangement, central directives are issued from the first minister and his or her staff, while cabinet continues to play a role in shaping the form these policy directives will take. Thus, while Savoie (1999) may have been accurate when he suggested that power now resides at the centre of government, effective power continues to remain within cabinet (Lewis, 2013).

The Rise of Public Sector Managerialism

Although considerable research has been conducted into the exercise of political power in Canada, much of it has been from the institutional perspective. While such work has done a great deal to further our understanding of how power is distributed inside of executive structures, such analyses fall short of explaining what forces beyond institutional variables (Franks, 1995) and human agency (Aucoin, 1986; Munroe, 2011) can account for the increased concentration of power at the centre. Savoie (2010) attempted to account for the fluid and difficult to locate sources of power external to the political process itself. He argued that the emergence of court government has been influenced by factors such as attempts by government to control an increasingly ubiquitous media presence, the influence of think tanks and lobbyists, increased partisanship within the political party system, and the new pressures placed upon the state by globalization.

Of these explanations, the impact of globalization and international competitiveness on the menu of choices available to policy makers has emerged as a prominent interpretation of the streamlining of political power. Savoie (2010) claims that globalization means that politicians

today “have increasingly limited control” over the policy choices they make (p. 18). He argues that there exists today a “superclass” of wealthy elites who have an, “international perspective and exercise considerable influence if not direct power” (Savoie, 2010, p. 44). The independent flow of capital between markets has made it, “increasingly difficult for governments to control their own economies and to identify who actually wields power either political or economic” (Savoie, 2010, p. 44). For Skogstad (2003), “the economic and financial integration that results for the liberalization of markets in goods, services and capital makes it extremely difficult to insulate domestic economies” (p. 958). Globalization, thus, undermines state-centred political authority by requiring governments to engage in a race to the bottom with other jurisdictions to create the conditions for profitable capital accumulation. Governments have responded by putting in place political structures that could best accommodate a politically contentious process of economic liberalization as a means of adapting to changing global circumstances (Skogstad, 2003).

This process of economic liberalization was accompanied by the emergence of a complementary development of the New Public Management (NPM) theory of administration. The popularization of NPM began during the inflation crisis of the 1970s as governments sought to rein in costs by exporting managerial practices from the private sector to improve public sector efficiency. This corporatization of the public sector has led to an increasingly hierarchical structure in an attempt to improve the performance of government departments by empowering managers to monitor and enforce centrally driven directives (Mingus, 2007). The rise of the new managerialism emphasized a clear accountability model, a focus on results over process. This shift towards private sector management practices included seeking to reduce lower-level public sector salaries, increasing labour discipline, and resisting union demands for increased

employment security. Demand for reform is further driven by “global forces,” which place “relentless pressures on governments to manage their public households in ways that enable their economies to be competitive (Aucoin & Heintzman, 2000, p. 245).

The successful implementation of both the roll-back and roll-out components of neoliberalism have necessitated a state apparatus with the capacity to actualize the restructuring demanded by political reformers (Aucoin, 1996). This required the establishment of political control over the public sector through the imposition of a more rigid managerial structure that could establish accountability and compliance for each government department. For Aucoin (2003), “accountability is to the public sector what competition is to the market. Accountability is meant not merely to control the exercise of public authority and resources, it is also meant to promote and enhance performance” (p. 23). The neoliberal state apparatus must have a management structure in place with the authority to discourage path dependency and ensure reforms are implemented regardless of whether the employees actualizing them are ideologically or ethically aligned with them. To this end, it must also have the ability to continue to carry out the responsibilities of governing with fewer human and economic resources at its disposal. Some have argued that this process was in fact dialectical (Aucoin, 2012). Managers were, in one respect, freed from central controls over the management of resources to give them the freedom to carry out their responsibilities without restriction, while at the same time restrained where the government’s overall paradigmatic vision was concerned.

Some claimed, however, that this process did not undermine democracy, since under Canada’s parliamentary system the political class is responsible for the management of the public sector. Indeed, as Aucoin (1996) points out elsewhere, although the internal structure of both the political and administrative branches of government have become highly streamlined

towards the centre of government in recent decades, particularly to assert control over the budgetary and financial mandates of each department, the institutional form itself has not changed. What has occurred instead is a shift in the organizational power relations internal to the government itself, which has similar characteristics to Gramsci's notion of passive revolution from the centre of the state. In recent years, Aucoin (2012) noted that a new, more anti-democratic trend has developed, which he termed New Public Governance (NPG). This process has witnessed "a corrupt form of politicization," in which government "use and misuse, even abuse, the public service in the administration of public resources and the conduct of public business to better secure their partisan advantage over their competitors" (Aucoin, 2012, p. 180). While NPM is not the cause of this politicization, Aucoin argues that it is an intervening factor, since NPM reforms have made the public service more vulnerable to pressures from the centre of government (Aucoin, 2008).

Mingus (2007) argues that there is an inherent incompatibility between NPM and democracy. Whereas democracy preaches the promotion of social equity, the rule of law, and the promotion of egalitarianism, NPM values market-driven virtues such as efficiency, competition, ownership, and output. Under the principles of NPM, public servants are often confronted with contradictory choices that require them to act in a manner that might serve a functional purpose, but that is not in the interest of the public-at-large. Indeed, the core principles often "directly conflict with the essential mindset that government ought to exist to serve the needs of society or to serve the public interest" (Mingus 2007, p. 125). Since NPM principles would require ethical compromises and policies that are contradictory with the public interest, the hierarchical corporate model of administration was ideal to both enforce this model and overcome any possible democratic obstacles. As Evans (2008a) points out, "all revolutions, or paradigmatic

shifts, if you will, require capacity at the centre to lead and direct change” (p. 122). Over the last forty years, this has expressed itself as a change in the form of the state towards a more autocratic state form as a means of administering radical change and constraining opposition.

The Declining Influence of Parliament

This evolution in the form of the state was not restricted to the executive, however. There is a long-standing argument in the Westminster tradition that the role of parliament has been increasingly marginalized by the executive. In recent years, much of the focus has shifted to the executive itself as scholars have begun to take the decline of parliament for granted, preferring instead to focus on the evolving power dynamics at the centre of government, where, it is argued, actual power lies. While this may be the case, one of the central contentions of this project is that there remains much value in understanding the evolving nature of parliamentary procedure, since it remains the primary publicly visible forum for the exercise of political power. As such, the evolving behaviour of governments towards its parliamentary opposition and the form these changes take over time is vital to gain an understanding of how power is expressed.

Although much of the literature examining government power relations has emphasized the role of the executive (Bakvis 2000; Savoie 2010), there remains a considerable body of research examining changes to the role of the legislative function itself. Similar to the research done on the concentration of power in the executive, a general consensus exists among parliamentary observers that the influence of parliament has been in continual decline in recent years. In one of the most poignant critiques, MP Lee Morrison (2000), in his final speech to the House of Commons before retiring in 2001, summed up his view of parliament:

I will not miss the thrill of making well researched speeches in a virtually empty room. I will not miss working long hours on irrelevant ministerially guided committees. I will not miss the posturing. I will not miss the emasculated government members howling because they do not understand the difference between intelligent heckling and boorish

noise. Perhaps it is their subconscious recognition of their own political impotence that drives them to act like hyperactive children. I do not know what I will be doing for the next few years, but whatever it is I expect that I will be dealing with grown-ups. I am sure that it will be more useful than this past seven years that I have spent in this rubber stamp parliament. I shall not look back (Oct. 20).

Observations similar to the sentiments expressed by Morrison have given rise to a growing body of literature, which seeks to explain the reasons for parliament's increasingly diminished role.

Attention in recent years has focused on the government's use of mechanisms such as time allocation and omnibus legislation to restrict debate and pass bills through the assembly more expeditiously. For example, the Harper government's use of prorogation in 2008—mere weeks after a general election to evade a confidence motion in the House of Commons that would have all but surely brought defeat upon his government—spawned considerable debate in the mainstream as well as within the academy as to the role of parliament. Former Clerk of the house Robert Marleau (2014) contended:

Canadians are sleepwalking through dramatic social, economic and political changes surreptitiously being implemented by a government abusing omnibus bills and stifling public and parliamentary debate...Mr. Harper has not played within the rules. Having attained absolute power, he has absolutely abused that power to the maximum (Marleau as cited in Harris, 2014, p. 439).

Striking a similar tone, Peter Milliken, the longest serving Speaker in history of the House of Commons, argued that the reforms to parliament over the last several decades have already eroded its role to such an extent that it has become an increasingly irrelevant institution. For Milliken (2014), "Parliament can hardly be weakened any more than it already is" under the Harper government, which has attempted to "control every aspect of house business" (Milliken as cited in Harris, 2014, p. 430). Member of Parliament Brent Rathgeber resigned from the Conservative caucus in 2013 over what he described as an intolerable level of control "by unelected staffers about half my age" from the Prime Minister's Office (Rathgeber as cited in

Campion-Smith & MacCharles, 2013, Jun. 6). He argued that MPs must “take a stand” and declare “we are not going to read these talking points that are written by PMO staffers” (Rathgeber as cited in Campion-Smith & MacCharles, 2013, Jun. 6). Former federal Liberal leader Michael Ignatieff argued that parliamentary democracy has become a “hollowed out” forum, undermined by “the prime minister’s capacity to dictate house business, put together omnibus bills and ram them through, while imposing party discipline, has concentrated executive authority at the expense of the legislature” (Ignatieff as cited in Ibbitson, 2013, Feb. 2).

The explanations for the crises in parliamentary democracy are numerous. They range from the introduction of television to the legislature (Savoie 1999; Raney, Tregebov, & Inwood, 2013) the increased need for competitiveness in a period of globalized capitalism (Savoie 2010; Elgie & Stapleton 2006), a heightening of party discipline (Malloy 2004), increasing partisanship, the end of evening sittings, and an eroding sense of respect and collegiality among parliamentarians (Raney, Tregebov, & Inwood, 2013).

The Evolution of the Role of the Opposition at Queen’s Park

In order to properly understand the evolution of parliamentary democracy in Ontario, one must first come to terms with the legislative dynamic that existed during the Tory dynasty, which spanned four decades from 1943 to 1985. Former NDP leader Donald MacDonald (1998) claimed that during this period the legislature functioned as effectively as, “an appendage to the premier’s office, beholden to the government for its every need” (320). Additionally, parliamentary debate was almost exclusively concerned with government business. The government, for example, organized the sessional day to ensure that Oral Questions were never to be permitted before Orders of Day had been completed. As a consequence, the house often

adjourned for the day before the opposition was able to hold the executive to account through a routine question period (MacDonald, 1998).

The government's dominance of house procedure was particularly evident, MacDonald (1998) noted, in the 1950s during the premiership of "the patriarch," Leslie Frost (p.298).

MacDonald (1998) recalled,

It was as though there were two sets of rules—one for him and one for the rest of the House. If he wished to intervene, he simply rose and took over. This was accepted by his own members, including those in the cabinet, and was tolerated by the Speaker. Periodically, there were protests from opposition members, but even they lived with his breach of parliamentary procedures, partly because they were powerless to stop it, and partly out of gratitude that what they had to say was worthy of attention from the premier. (p. 300).

Although circumstances improved considerably under Premier John Robarts in the 1960s, the opposition remained largely subordinate through to the end of the 1970s (MacDonald, 1998).

There were several important reasons for the development of a legislative culture in which the government exerted almost ubiquitous control over parliament. First, during Progressive Conservative reign, Ontario served as one of the most characteristic examples of one-party dominant political systems in the western democracies (Leduc & White, 1974). Over the course of this period, the pre-eminence of the Big Blue Machine over the electoral cycle nurtured a parliamentary culture in which the roles between the government and the opposition became firmly entrenched. The government assumed almost complete control over the proceedings of the legislature, while the opposition became ossified in its role as a subordinate to the government.

In a survey of MPPs during the 1970s, Leduc and White (1974) show that the Liberals, in particular, had become decidedly deferential to the government, preferring to focus on constituency issues, and placing more emphasis on legislative initiatives that were consistent

with this objective, than holding the government to account. MacDonald (1998) noted that during the Frost era, the opposition often overlooked abuses of parliamentary procedure, “because they were powerless to stop it, and partly out of gratitude that what they had to say was worthy of attention from the premier” (300).

Secondly, Queen’s Park had long been characterized by a “tit for tat” cultural cycle that encouraged incoming governments to do “unto others as the others had done unto them” (MacDonald, 1998, p. 317). The memory of the slash and burn approach of the Liberal Hepburn government during the 1930s remained fresh with many in the Progressive Conservative caucus long after Hepburn had left the legislature, allowing the government to feel justified its paternalistic approach to parliamentary governance.

Third, opposition parties were not given sufficient staff or resources to effectively oppose the government. This was the case due in large part to the fact that the government exercised complete control over the funding, management and coordination of parliament. Until the 1970s, opposition leaders were not provided with resources to hire their own research or supporting staff. Most private members were not even provided space at Queen’s Park for an office. Lacking in sufficient resources to compete with the machinery of a modern government, the opposition parties were at a considerable disadvantage.

The recognition that a healthy parliamentary democracy demanded an effective opposition to hold it to account, led the Davis government in the early 1970s to announce the creation of a public commission to study ways to improve the role of members in the daily operation of the legislature. The Ontario Commission on the Legislature, which was chaired by Progressive Conservative party strategist and intellectual Dalton Camp, made a number of recommendations, the most significant of which was to take steps to allow for more influence for

MPPs. One of the commission's central findings was that a representative deficit existed in most constituencies. Among the steps the commission recommended was to provide MPPs with their own office and staff at the legislature as well as within their constituencies, thus making them full-time rather than part-time legislators. It also proposed that sufficient funds be provided to the opposition parties to provide a more empowered check on government. It also urged the government to increase the size of the legislature to reduce the number of constituents each MPP was responsible for. It also suggested that the government to allocate more staff for the house leaders, the Clerk's Office and the Legislative Library, all of which would work on behalf of MPPs.

Other recommendations of the panel included the introduction of television into the legislature, the appointment of independent agencies accountable to the legislature and the appointment of a parliamentary committee to study the need for further changes (Camp, 1974). The all-party committee would eventually agree to make changes to the *Standing Orders* to allow private members' bills to come to second reading unless blocked by 20 members standing in their places or by a petition of one-third of the members of the legislature. However, when the first private members' bill was brought for second reading under this new provision, Premier Bill Davis sent out a press release announcing that it would be allowed to proceed no further, as if to reinforce the notion that it was the executive, not parliament that held the *actual* political authority (Lyon, 1984).

By the end of the 1970s, a remarkable number of the reforms recommended by the Camp Commission had indeed been implemented by the Davis government. Although the reforms were not sufficient in and of themselves to completely modernize the legislature, they went a considerable distance towards strengthening the role of the opposition at Queen's Park (White,

1980). MacDonald (1998), who had been at the legislature since 1955, noted that the reforms made the legislature a more “independent institution, freer to fulfill its role in parliamentary government” by providing “a more meaningful role for the private member, and rescuing the legislature from total domination by the executive branch” (p. 321).

Despite the improvements to the “crushing” executive dominance of the Tory dynasty, recent years have witnessed the emergence of a new pattern of procedural abuses, as the executive has sought to assert its control over legislative proceedings (White, 1980, p. 357). This reassertion of executive control has taken on a different, and potentially more dangerous character than the legislature witnessed during the age of the Big Blue Machine. Whereas the configuration of power at Queen’s Park during the Tory era can largely be explained by the development of a cultural dynamic internal to the legislature, contemporary reforms have sought to achieve similar ends by undermining the integrity of the institutions of parliament themselves. Efforts to alter the rules of parliament to accommodate radical neoliberal reforms, it is argued, have eroded the very institutional mechanisms designed to keep the government responsible by establishing new conventions that weaken the ability of the legislative function to hold the executive to account.

While government during the Frost era could be in no way confused with an ideal model of accountability, the degree of power the government exercised over the management of parliamentary affairs, coupled with the submissiveness of the opposition, meant that the government did not have to make lasting changes to institutions themselves in order to carry out their objectives. Rather, they were able to control parliament *within* the parameters of the institutional framework of parliamentary democracy. In contrast, changes in recent years have sought to reform the formal structures of parliamentary institutions to insulate certain

controversial policies from legislative control. The result has been the development of a series of parliamentary rules and conventions that have left few procedural avenues remaining for the legislative authority to reasonably oppose a government's agenda.

The preponderance of the literature is in agreement that the last several decades have witnessed a weakening of legislative power in Ontario. Both White (2005) and Howlett, M., L. Bernier, & K. Brownsey (2005b) suggest that while the majority of the academic literature on the decline of parliament thesis in Canada focuses on the federal level, the conclusions drawn by it are equally applicable at the provincial level. Cameron, Mulhern and White (2003) argued in their extensive 2003 *Report on Democracy* that the Ontario Legislature has become, “an impotent and increasingly irrelevant institution” (p. 70). The authors note that “the clear consensus—among both political elites and the mass public—that the legislature is increasingly unable to carry out its role as the province’s central democratic institution” (Cameron, Mulhern & White, 2003, p. 23). They claim that there has been a significant depreciation in the legislature’s influence since the 1970s and 1980s. Furthermore, they argue that its “key role in democratic process is not performed as well as it was just a few years ago” (Cameron, Mulhern & White, 2003, p. 24).

Similarly, Raney, Tregobov and Inwood (2013) argue that the end of the 1980s acted as a watershed moment for the province’s legislature, after which the province entered “sustained period of retrenchment and a drawing down of the legislator’s benefits that continues today” (Raney, Tregobov & Inwood, 2013, p. 9). This occurred despite numerous positive developments that occurred during the 1980s under Premier David Peterson, which provided the prospect for improved legislative relations (Raney, Tregobov, & Inwood, 2013). The 1985 Liberal/NDP Accord, for example, provided the prospect for loosening the noose of party discipline through

inter-party collaboration. The authors also draw upon the amendments to the *Standing Orders* made by the Peterson government, which made the Speaker of the legislature electable by the assembly itself. However, by the early 1990s, such positive developments were largely undermined by the NDP and PC governments, which implemented a number of reforms to suffocate parliamentary debate and marginalize the role of the parliamentarian.

Numerous reasons have been provided for the decline of the legislature in Ontario. Cameron, Mulhern and White (2003) argue that the reduction in the number of seats by the Harris government from 130 to 103 MPPs has been in effect “a downsizing of democracy,” since members are forced to represent more constituents while at the same time attending to their parliamentary responsibilities (p. 70). They also argue that a heightening of party discipline in recent years has resulted in too much power being concentrated in the leaders’ offices (Raney, Tregbov & Inwood, 2013). Evans (2009) argued that the introduction of a competitive dynamic to the legislative assembly after the end of the 43 year Progressive Conservative dynasty altered the collegiality between the three parties that characterized the earlier period.

In a similar vein, Raney, Tregbov and Inwood (2013) argue that extensive turnover in the post-1985 period meant that newer members, unfamiliar with the Ontario Legislature’s “clubby style” introduced a more partisan approach to politics (p. 12). This more acrimonious mood was the consequence of a number of changing variables including the introduction of television into the legislature and the end of night sittings, which discouraged socialization across party lines. They contend that this change in the legislature’s general atmosphere has impacted the role of legislators in the following way:

The increasingly nasty mood in the legislature coincided with reassertions of executive dominance. Less moderation and more stridency meant governments felt more justified in pushing their agenda at the expense of more collegial relations. Individual MPPs were unwilling to object to this, as each had a chance of grasping the golden ring of a cabinet

post. The professionalization of politics increased the stakes and the rewards for success, and compromise became an increasingly dirty word among increasingly ideological partisans. Hence, the executive was driven to tighten the rules to enact its agenda, backed by a more disputatious winner-take-all set of relations within the legislature (Raney, Tregbov & Inwood, 2013, p. 13)

The intensification of partisanship did not only pervade relations internal to the legislature. Relations between house leaders became characterized by a lack of cooperation and hardline negotiations. The consequence of this new partisan atmosphere, then, was to ultimately “harden the lines between government and opposition and diminish the role of the legislature in the public policy process” (Raney, Tregbov & Inwood, 2013, p. 13).

Pond (2005) offers one of the most insightful critiques of the Ontario Legislature, establishing a link between the implementation of neoliberalism and the marginalization of parliament. The Progressive Conservatives, he argued, espoused a view of the state rooted in neoliberal assumptions, which posited that the primary role of government was to serve the interest of taxpayers, “suspending superseding attention to any of their other multiple identities traditionally considered to be worthy of representation in the legislature” (Pond, 2005, p. 171). In its effort to actualize its radical restructuring of state apparatus in Ontario, the Harris government, “effected a drastic transformation in the status of the provincial legislature” (Pond, 2005, p. 172).

Pond’s recognition of the relationship between these trends is admirable, but his analysis is limited by its exclusive focus on the Progressive Conservative government of the late 1990s and early 2000s. The chapters to follow will demonstrate that the many of parliamentary precedents utilized by the Tories had already been put to use by previous governments in their own efforts to deal with economic crises of the early 1980s and 1990s. The pattern that Pond identifies, then, is one that dates back as far as the Davis government and has continued under

the McGuinty/Wynne Liberals. Although the Conservatives were the most aggressive in their efforts to reform the Ontario legislature, the restructuring that occurred during their two terms in office only tells part of the story.

To this end, Pond's (2005) claim that the Harris era, "offers an instructive lesson in how the flexibility of the Westminster model can accommodate divergent interpretations of the role of the elected member," is also only partially true (p. 172). While the legislature was able to accommodate the Conservatives' anti-parliamentary ideology, it becomes clear when one examines the Ontario Legislature over a more extensive period that the Harris era has had long-term implications for the exercise of democracy at Queen's Park. An analysis of the McGuinty/Wynne era, for example, demonstrates that many of the precedents set by the Tories have become commonplace and deployed for largely unexceptional legislation.

Parliamentary Mechanisms

Franks (1987) argued that an effective opposition is central to the proper functioning of responsible government. While it is possible for a government to be legitimate without a credible opposition party, parliament under the modern system of tight party discipline is controlled by a small cabal of individuals surrounding the first minister. For Franks (1987), the opposition's "most important," and in many ways, only leverage against the opposition is its ability to block the passage of legislation through the obstruction of house proceedings (p. 41). Recent government efforts have been designed to further restrict debate and the opposition's ability to obstruct the government's agenda. While many of these reforms have occurred in compliance with the procedural rules of parliament, they are contrary to its intended spirit in that they seek to undermine the ability of the opposition act as an effective counterforce against the government.

The procedures of the Westminster parliamentary system are established upon an unwritten system of customs passed down through the centuries (Russell, 2010). As such, the procedures have largely developed on the basis of past precedent, making it possible for long obsolete parliamentary procedures to be resurrected on a regular basis in recent years as governments have sought to expedite the passage of their legislation through parliament. In most cases, the use of these provisions has been contrary to the spirit of these mechanisms, which were designed to allow the executive to pass legislation in emergency circumstances where consensus with the opposition was not possible, or in the event of a national emergency. The contemporary use of instruments such as closure for partisan political reasons and as a regularly occurring part of parliamentary business, however, is contrary to their intent.

Prior to the 1980s, Ontario's legislative calendar was largely established by collaboration among the various party house leaders who worked together to establish timetables for the passage of government legislation. The opposition would concede to ensure the passage of the government bills and motions on the promise that the government would allow it sufficient time to debate their merits in parliament. As such, more highly contentious bills were often made subject to more parliamentary scrutiny, while housekeeping bills and motions often received little scrutiny. Even during the two minority parliaments from 1975-1981, the house leaders were able to achieve consensus in most circumstances due in large part to Government House Leader Bob Welch's willingness to accommodate opposition requests (Lyon, 1984). In this era, the opposition possessed considerable leverage, as the passage of the government's entire agenda was dependent upon its willingness to allow its passage by standing down from debate. While the government retained the capacity to use mechanisms such as closure to advance their agenda in the event of a prolonged obstruction of proceedings by the opposition, governments were

hesitant to resort to such drastic measures, since they had not been used in recent memory. Thus, the while the opposition retained considerable authority to interfere with the proceedings of the house, like the government, it also used this power with great discretion, preferring instead to permit the elected government to pass its legislation in exchange for the right to give it adequate consideration through the appropriate parliamentary channels. The decline in parliament's role in recent decades has been the result of the erosion of this reciprocal relationship between the government and opposition. Rather than work with opposition parties, governments have sought instead to use these instruments to their advantage to suppress debate and further minimize the effectiveness of the opposition to protest their legislation. This process has evolved in the Canadian regime through the misuse of a number of different mechanisms that will be examined throughout the course of this project. What follows will provide an explanation and brief historical overview of each of these instruments.

Closure

Marleau and Montpetit (2000) define closure as “a procedural device used to bring debate on a question to a conclusion” by requiring that the question be put at the end of a session in which such a motion is adopted by a majority of parliament (p. 558). It was first introduced at Westminster in the United Kingdom in 1881 as a method of overcoming a parliamentary stalemate that appeared to have no other means of resolution. As such, its intent was not to give the government the power to impose its agenda on parliament at will, but rather to give it a means of ending a parliamentary deadlock where no other solution appeared plausible (Marleau & Montpetit, 2000). Closure's first use in Canada can be traced back to 1913 in the House of Commons when the government cited the Westminster precedent as a means of relieving a stalemate between itself and the opposition, which had blocked the passage of four separate bills.

As such, closure was established as a part of the House of Commons' *Standing Orders* that same year. It was used nine times between 1913 and 1932, and was then not used again for 24 years when it was applied in May and June 1956 during the TransCanada Pipeline debate (Marleau & Montpetit, 2000). Thus, while there is precedent for the use of closure in Canada, it had traditionally been applied sparsely at the federal level, and only during periods of considerable deadlock in parliament. This is also true of the Ontario Legislature, where closure was used only on the rarest of occasions prior to the period under consideration in this dissertation.

Time Allocation

The increased inability of governments to reach settlements on parliamentary timetables with opposition parties led to the advent of time allocation. A motion to allocate time in the legislature differs from closure in that it does not stipulate that a question must be immediately put, but instead establishes a fixed timetable for its passage, which is then subject to ratification. In substance, however, time allocation has the same effect as closure, since it empowers the government to end a debate (Marleau & Monpetit, 2000).

The use of closure during the pipeline debate and again during the flag debate of 1964 created the need for a more measured approach to the resolution of parliamentary stalemates. As a result, in 1969, the federal House of Commons adopted standing order 75C, which provided for the allocation of time through the adoption of such a motion by the house. While the Pearson government argued that the government would in all likelihood never resort to this provision except in the case of emergency, just a few short years later the Trudeau government would use it to thwart opposition resistance to its agenda (Pelletier, p. 21). The Trudeau Liberals passed time allocation motions on three occasions from 1969-1972, and 14 more times during their second majority mandate from 1974-1979. By the end of the 1980s, time allocation would become a

common method of business in the House of Commons with the Mulroney government using it 31 times during its second mandate from 1988-1993 (Pelletier, p. 24).

Time allocation was not formally a part of the Ontario *Standing Orders* until the 1990s. While it was used on a number of occasions during the 1980s citing precedent from the federal house, its delayed usage relative to the federal example, reflected the Ontario Legislature's more reciprocal dynamic during the 1970s under the Tory dynasty. While time allocation had its origins in finding a more conciliatory and measured approach to the resolution of deeply seated disputes, by the 1990s its usage would become routine in both Ontario and the federal House of Commons.

Omnibus Legislation

According to O'Brien and Bosc (2009a), omnibus bills are legislation designed to "amend, repeal or enact several Acts, and is characterized by the fact that it is made up of a number of related but separate initiatives" (p. 724). Their traditional intention was to allow for the packaging of several legislative initiatives under the heading of a single bill which contains a single unifying purpose to save parliament from superfluous debate on similar matters. In the history of the Ontario Legislature, omnibus legislation had traditionally been reserved for housekeeping measures, which possessed similar traits to allow the government to pass a number of smaller measures at once with time allocated for a single debate. Such bills traditionally passed in consultation with the opposition, and thus received little resistance.

While larger legislative initiatives similar in form to omnibus bills are found in the annals of the British and Australian parliamentary traditions, the treatment of omnibus legislation as single Acts of parliament are unique to Canada (Marleau & Montpetit, 2000). The first such instance of an omnibus bill can be traced to 1888, when the government packaged private bills to

bring together two separate railways into a single piece of legislation (Marleau & Montpetit, 2000). Over the next hundred years, omnibus bills would become a part of Canadian parliamentary tradition, but were usually the result of all-party agreements to proceed with complex initiatives as single pieces of legislation. In recent years, however, omnibus bills have been subject to continued abuse by governments, which have sought to have numerous pieces of often unrelated matters considered with the time allocated for a single bill. Perhaps the best illustration of this is the Harris government's omnibus *Savings and Restructuring Act*, introduced in 1995, in which it sought to implement various unrelated elements of its Common Sense Revolution with the scrutiny traditionally reserved for single bills and without public consultation. At the federal level, recent budget bills have averaged more than 500 pages and are seven times longer in the post-2008 period than the average of the budget implementation Acts from 1994 to 2005 (Massicotte, 2013).

Motions of Non-Confidence

The notion that the prime minister and cabinet must maintain the confidence of the legislative chamber is one of the essential features of responsible government in the Westminster system. Where a vote of non-confidence occurs, the Governor General or Lieutenant Governor has two options: first, where possible, he or she must seek to find a new governing alliance among the remaining political parties; second, where such an agreement is not possible, he or she must dissolve the parliament and hold an election (Franks, 1987). While it is possible for governments to fall through confidence votes while in a majority status, given the practice of party discipline, it is much more likely that they will be defeated on motions of non-confidence while holding only a minority of seats. The convention of confidence is not formally written into

the constitution, nor is it provided for by law, but is part of Canada's unwritten constitutional tradition (Marleau & Montpetit, 2000).

Despite its importance as a counterforce to the authority of the executive, non-confidence votes are reasonably rare. In the history of the federal House of Commons, for example, there have only been six successful non-confidence votes (Marleau & Montpetit, 2000). In Ontario, non-confidence motions have been exceedingly rare, largely on account of the province's historical tendency to elect majority governments. However, shortly after the 1985 election, the Liberals and NDP passed a motion of non-confidence in the Progressive Conservative government, establishing the Liberals as the new government. By tradition, all matters involving supply, any motion concerning budgetary measures, and any Speech from the Throne votes function as non-confidence votes in the Westminster tradition.

In recent years, the confidence convention has been used as a weapon by governments in minority parliaments to intimidate opposition parties leery of the political costs of triggering an election into support for their agenda. The Stephen Harper government, for example, routinely called the bluff of the opposition by attaching confidence motions to its signature legislation during the 39th and 40th minority parliaments. Similarly, in Ontario, the McGuinty and Wynne Liberal governments made use of the confidence convention to pass large omnibus bills that included numerous aspects of the government's agenda under the political cover of the non-confidence vote. While the government is within its rights to use confidence as a method of passing its legislation, the cavalier and repeated use of this accountability mechanism in order to intimidate opposition parties into supporting a government's agenda, runs contrary to the spirit of parliamentary supremacy.

Prorogation

Another tactic that has come into increased scrutiny in recent years is the practice of prorogation of parliament for partisan political purposes. Strictly defined, prorogation marks the formal end of a parliamentary session. During the intersessional period in which parliament stands prorogued the *Order Paper* is wiped clean of any orders of legislative business that have not otherwise been completed. Traditionally, prorogation has been used by governments to renew their agenda by marking its accomplishments with a prorogation speech before outlining the next steps in its agenda with a new parliamentary session and Speech from the Throne. The tradition of prorogation has a long history in the annals of British parliamentary history dating back to the earliest parliaments. The Tudors, for example, made frequent use of prorogation to further their own interests. Henry VII would often call parliament together only for a sufficient time to give rubber stamp approval to his spending plans, before proroguing again until such a time as it was necessary to legitimize new spending (Davison, 2009).

In the 19th and 20th centuries prorogation has become a routine motion of parliament as governments have begun to use them as methods of renewing the political agenda, often at the end of each year. Prime ministers are now vested with authority to determine when parliament will be prorogued at the approval of the Crown. While such approval is typically granted without commotion, the last decade in Canada has witnessed a number of circumstances that have raised questions about the abuse of this long-standing routine instrument. Most infamously, in 2008 Prime Minister Stephen Harper requested that the Governor General prorogued the House of Commons within weeks of a general election to avoid a vote of confidence by the opposition, which promised to defeat the government and form a working alliance. Harper's request for prorogation came under considerable public scrutiny as many constitutional experts argued that it represented a violation of the intent of prorogation, since it sought to avoid an expression of the

opposition's lack of confidence in the government. As a consequence, some argued it was incumbent upon Governor General Michaëlle Jean to reject Harper's request (Russell, 2011). There existed only one similar precedent in Canada's political history. In 1873, Prime Minister Macdonald requested prorogation of the House of Commons in order to put an end the investigation of a committee examining his government's alleged conflict of interest in the awarding of contracts for the Pacific Railway (MacDonald and Bowden, 2011). Ultimately, there existed no precedent for Jean to deny Harper's request for prorogation, and as such she granted it after a few hours of deliberation.

Jean's decision to grant prorogation in 2008 raised concern that the precedent she set would lead to further abuse of this historically routine procedural mechanism. In late 2009, the Harper government once again asked for a prorogation that would end the work of a parliamentary committee into allegations that the government knowingly misled the House of Commons over documents related to an investigation into the treatments of detainees in Afghanistan. In Ontario, Dalton McGuinty requested the prorogation of the legislature upon announcing his resignation. Doing so allowed the Liberals the time to both hold a leadership convention and open its next session with a new leader, but also to avoid one of its ministers from being found in contempt of parliament. While the use of prorogation has a long history of abuse by the executive, there is evidence that in recent years this trend has once again become a means by which governments have sought to circumvent legislative authority.

Delegated Legislation/Regulations

One issue that has received considerably less attention in the academic literature, but is an important part of the story of the decline of parliament, is the increased use in recent years of governance through delegated legislation. These statutory instruments "delegate to ministers,

departments, boards, or other authorities the power to make and apply subordinate legislation described only in general terms under the act” (O’Brien & Bosc, 2009b). Delegated legislative instruments include the use of orders in council, regulations, and other statutory instruments to allow ministers the authority to create rules that have the force of law under legislation passed by the assembly (O’Brien & Bosc, 2009b). Orders in council require the signature of the governor in council to take force. However, regulations can be made by a delegated authority without a requirement that such approval be granted. Given their similarities, the word *regulation* is often used as a universal term to capture all varieties of delegated legislation. Because the various delegated statutory instruments are often used interchangeably by the parliamentary actors observed for this project, I will adopt this practice of using regulation generically to refer to all delegated statutory instruments so as to avoid confusion among them.

There is a long-standing tradition of using delegated legislation in the Canadian tradition. In the early years of Confederation, delegated statutory instruments were used to overcome the technological limitations of the age by granting law making authority to the executive council, since it was difficult for parliament to convene at a moment’s notice. One of the most prominent examples of the use of delegated legislation in Canadian history occurred in 1914 when the House of Commons passed the *War Measures Act*, which empowered cabinet to make orders and regulations it deemed necessary for the security, defence, peace and welfare of Canada (O’Brien & Bosc, 2009b). Although ministers were given similar powers during the Second World War, an increasingly confident parliamentary branch demanded that the exercise of such power should be kept in check by requiring that orders in council having a legislative effect be tabled in the House of Commons and referred to a parliamentary committee for review (O’Brien & Bosc, 2009b).

It is only in modern times, however, that scrutiny over the use of delegated legislation has become increasingly commonplace (O'Brien and Bosc, 2009b). As the growth of government in the post-war era led to the increased use of these instruments, they have come into increased focus as subject to abuse by governments. Perhaps unsurprisingly, the tenuous balance between the legislative and executive functions that characterize parliamentary relations has played itself out in the realm of these delegated statutory instruments. Critics have argued that it allows the executive council to govern without being held directly accountable to the legislature. To this extent, it permits the executive to make decisions behind the cloak of the state without having to consult or debate decisions before giving them the force of the law. Conversely, others have maintained that delegated legislation permits the executive the flexibility to make difficult or controversial decisions without having to expose them to public and parliamentary scrutiny (Page, 2001). It also allows the executive council to implement its policies at a speed that is nearly impossible when subjected to the rigours of the parliamentary process.

Mallory (1953) argued that delegated legislation was necessary because “parliament has neither the technical skill nor the time to process the mass of detailed regulation” (p. 462). However, he warned that unless it was carefully monitored it risked establishing a regime of “bureaucratic tyranny” (Mallory, 1953, p. 462). While it would be impossible for the executive council to conduct the complex and far-reaching responsibilities of a modern government without access to these powers, if they are used too extensively they risk undermining the capacity of the legislative assembly to hold the government to account.

The mediation of the equilibrium that Mallory argues must be struck forms the essence of the story this dissertation will attempt to tell at Queen's Park. It will explore the evolution of delegated legislation from its more conventional uses in the 1970s to its emergence as an

increasingly significant tool for carrying out large-scale reforms during the neoliberal and consolidation era. The argument put forward will be that over the last two decades in Ontario, the balance between the executive and legislative functions has swung back towards the executive branch, which has increasingly made use of governance through regulation to insulate significant reforms from democratic control

Summary of Literature

A few general conclusions may be drawn about the literature examining the question of the centralization of power in the executive in Canada. First, there exists a consensus within the literature that the influence of parliament has declined by at least some extent while power has shifted ever-increasingly towards the centre of government. Second, while much worthwhile research has been done into the changing power dynamic internal to the political process, the field lacks a comprehensive enquiry that analyzes how this relation has changed in a particular case model over a significant period of time. Third, while some studies analyze the decline of parliament itself, there are few studies examining the relationship between this phenomenon and the trend towards the concentration of power in the hands of first ministers and his or her courtiers. While there exists a considerable body of literature investigating the concentration of power, studies in the field are almost exclusively focused on the shifting nature of power internal to the executive itself. Fourth, most of the significant studies on the rise of the centre in Canada are structured upon first person interviews with key stakeholders in government. Finally, these narrow methodological horizons have spawned a body of literature that is primarily focused on institutional variables to explain the decline of parliament and the rise of the centre. While the conventional literature has managed to explain *where* power exists and *who* holds it, it is limited

in its ability to explain *how* such power shifts have actually changed the existing political world, and *why* such changes have occurred.

One of the central claims put forward in this project is that in order to explain why power has increasingly moved towards the centre in recent years researchers must situate their analyses both in the institutional setting itself as well as the social and economic environment in which these changes have occurred. While much good work has been done to establish the role of NPM and neoliberalism to the changing dynamics of the public administration, there exists essentially no serious efforts to examine how these same trends have altered the structure of the political branch of government. While some scholars have speculated on the role of globalization (Savoie, 1999) and neoliberalism (Raney, Tregebov & Inwood 2013) in the increased prominence of the centre of the government, there remains no detailed attempt at examining this hypothesis. Given that the ideology of neoliberalism and the notion of the rise of the first minister emerged and have subsequently grown contemporaneously with each other, it seems natural to ask whether there might be a more direct relationship between these two trends than researchers have thus far understood.

CHAPTER THREE

AN ONTARIO CASE STUDY: METHODS AND PROCEDURES

This project is guided by two conceptual presuppositions, which act as an inspiration for its choice of method. First, it is argued that politics is always anchored in the structural dynamics and historical forces which surround it. Political affairs can never be understood as being only affected by changes internal to institutions themselves. While political phenomena generally reflect modern societal conditions, they invariably take the shape of the political institutions they must pass through. This view, most commonly associated with historical institutionalist perspective, holds that while political institutions can be neutral, their interconnection between societal structures and state institutions ultimately determine policy outcomes (Hall & Taylor 1996, p. 937). This complex interplay can explain why policies take different forms from one historical era to the next despite existing within the same institutional form. Esping-Anderson (1990), for example, contended that in the modern industrialized world, “Our personal life is structured by the welfare state and so is the entire political economy” (p. 141). A proper understanding of contemporary society, then, requires the observation of both the structural dynamics that shape culture and social life as well as the ways in which political institutions metabolize these social forces over a fixed period of time. One of the shortcomings of the contemporary political science literature has been its reluctance to conduct research that situates the political apparatus in the context of the social forces surrounding it. Although the NPM literature accepts this fundamental premise, and has done much to further our understanding of the relationship between public sector reform and changing social forces that compel it, no such conceptual frame has been articulated for the parliamentary branch of government.

Second, and as an extension of this first point, given that the last forty years in the western democracies have been characterized by an historical shift to a neoliberal regime of accumulation, it is argued that the influence of this development on the political branch of government is in need of further exploration. The transformation in the relations of production brought about by the political implementation of neoliberal reforms, it is argued, have necessitated the creation of a new state form with the capacity to accommodate the establishment of favourable conditions for capital accumulation, while at the same time preserving social order and legitimacy (Jessop, 1993). Few scholars, however, have sought to bridge the conceptual gap between political economists, who view the neoliberal state form as inherently anti-democratic and authoritarian, and the political science literature, which has claimed that parliament has been in continual decline contemporaneous with the emergence of the neoliberal state. The extent of the impact of this historical transition on political institutions must be better understood. This project's working hypothesis is that the trend towards the centralization of political power in the centre can be explained in part by the evolving social structures and policy demands of different economic eras. This is not to suggest that the political economy approach is superior to other explanations. Rather, it is merely to claim that there exists a significant gulf in our understanding of how these shifting historical forces relate to changes to the political branch of the state.

The Interpretive Approach

A comprehension of the subterranean shifts in power relations internal to the state presents significant challenge for researchers, since the social interactions that determine how power is distributed are often abstract in their nature and hidden from plain view. Research design is a crucial ingredient of any complex study of observable phenomena. The design functions as the binding agent that unites the various elements of a research project to one

another and serves as a means of giving it holistic coherence. For Maxwell (2007), a good research design is “one in which the components work harmoniously together, promotes efficient and successful functioning” (p. 2). A properly chosen design must begin by establishing a model that can best address the central questions that it seeks to answer. As such, one must choose a methodological approach that can articulate the complexities of power relations without imposing an overly rigid structure that could misrepresent or fail to adequately account for the many faces of power distribution.

This project will proceed from the qualitative interpretivist perspective, which allows the researcher to examine the world by concentrating on the meanings, beliefs, discourses, and relationships among and between social phenomena. The purpose of using this approach will be to take a panoramic view of history in the hopes of identifying a series of patterns that may tell a unified story about the decline of parliament and the rise of the executive in recent years (Skocpol, 1984). The interpretivist approach begins from the presupposition that meaning is often latent, lying just beneath the surface of social relationships. It allows the researcher to impose his or her translation of meaning on to the subject in order to unearth latent causes for human behaviour.

Whereas quantitative studies require strict adherence to a defined set of variables, a qualitative approach allows for broader interpretation of phenomena. This is the case because it allows the researcher to take account of contextual influences on events that a more rigid interpretation might fail to acknowledge, such as the symbolism of variables. Qualitative researchers “study things in their natural settings, attempting to make sense of, or interpret phenomena in terms of the meanings people bring to them” (Denzin & Lincoln, 2004, p. 2). The researcher, then, is given the freedom to choose and interpret the variables that comply most

closely with his or her theoretical framework. He or she must also exercise caution to avoid drawing misguided conclusions or leaving out relevant information that could paint an inaccurate portrait of reality (Patton, 2002).

Traditional behaviouralist models are ill-suited for the analysis of governmental power relations; while they might be able to study behaviour using models of rational action, their inherent separation of action from beliefs means that they fail to take into account the “intersubjective,” or the thoughts that condition practices (Bevir & Rhodes, 2006, p. 71). For example, a behaviouralist would be limited to explain why the NDP set in motion the neoliberal restructuring process in Ontario, since their actions defied what might have been considered a rational course of action for a social democratic political party. To fully understand the nature of social change, observable phenomena must be situated in the complex network of social relations in which they actually exist. In other words, the interpretivist approach allows the researcher to impute meaning upon the subject under consideration. This theoretical framework, then, functions as an instrument through which one may substantiate the legitimacy of his or her hypothesis.

Although the use of such theoretical lenses conditions the way the interpretive researcher looks at the study, it does not pre-determine the outcome. Such an approach does not pursue absolute truths, but seeks instead to establish plausible relationships between variables (Mahoney, 2007). Rather than pursue unconditional claims, the central challenge for my project will be to determine whether and to what extent a relationship exists between the neoliberal project and changes to the legislative process in Ontario. Thus, because conclusions in an interpretive analysis are drawn from the interpretation of the researcher, they are not verifiable or testable, and uncover a multitude of factors that contribute to outcomes. Indeed, it is often the

case that the researcher discovers that the interpretive framework he or she has chosen can only partially explain the social circumstances, and must therefore incorporate other models and explanations into the study.

The interpretive approach promotes a holistic understanding of social phenomena by rejecting grand deterministic narratives. Evidence that presents itself as contradictory to the interpretive researcher can alter perspectives. Indeed, unequivocal truths are rarely arrived at through interpretive analysis; instead they are much more likely to construct a narrative which shows that a confluence of factors have influenced outcomes. For interpretivist researchers, a theory “is often only one key observation away from being falsified” (Mahoney, 2007, p.132). As such, a falsified hypothesis or the presentation of evidence outside of this paradigmatic frame must be taken into account. The interpretive researcher, thus, operates on the presupposition that meaning does not constitute a mere evaluation of phenomena, but is rather “constitutive of political actions, governing institutions, and public policies” (Wagenaar, 2011, p. 4). In this quest for meaning, interpretive analysts engage in a search for signifiers that indicate how certain actions and behaviors generate particular political outcomes.

The Merits of an Archival Research Project

One of the shortcomings of the literature examining the centralization of political power in recent years has been its over-reliance upon the use of interviews with key political insiders as the primary unit of analysis. While elite interviews in and of themselves have considerable value as a way of accessing first-hand accounts of information that is often not made publicly available, they also have significant limitations. Lilleker (2003) argues that elite interviews are fraught with potential unreliability problems. First, interview subjects are prone to the exaggeration of their own roles or those of others in their accounts for circumstances. Second,

because politics is by its nature partisan, the researcher runs the risk eliciting responses that might be obscured by political affiliations or self-interest. This is further exacerbated in political interviews due to the sensitive and often highly contentious nature of certain information, meaning subjects may be unwilling to reveal the full extent of their knowledge. Third, there are considerable problems with the accessibility and availability of reliable sources when interviewing political elites. A lack of willing participants means that researchers are generally unable to select their subjects at random. They must be willing to accept whichever political figures indicate a willingness to participate leading to potential selection bias. Fourth, a common problem with elite and non-elite interviews alike is that individuals often remember events according to their own biased interpretation, generating a skewed picture of things as they actually occurred upon recollection (Lilleker, 2003). Fifth, although recent studies have argued that participant bias can be overcome by allowing them to speak for themselves by presenting the verbatim transcript as part of the research, “to make sure that the interest is not infused with anger, bias or prejudice,” there are few examples in the conventional Canadian literature where interview participants have allowed themselves to be named and to be quoted in context (Seidman, 2012, p. 120). The highly sensitive nature of the information provided by political elites often leads to the research being conducted anonymously. The literature that best conveys the verbatim accounts of those involved in the political process are works of journalism (Simpson, 2001; Martin, 2011), and as such are lacking in theoretical and methodological rigour.

Perhaps the most significant challenge is that elite interview subjects are generally unable to identify the complex processes that operate at a submerged level and condition behaviour. Interview subjects are likely to explain actions through the agency of individuals within political institutions without necessarily understanding how those actions fit with a

complex social network. This is not to say that data gathered through elite interviews have not made important contributions to the literature. Interviews with key political stakeholders in works such as Savoie (1999; 2010), Simpson (2001), Malloy (1996), and Bakvis (1991) have made crucial contributions to our understanding of how the political process in Canada functions. The argument presented in this project is that by relying primarily upon interviews, these studies are constrained by the ability of their subjects to convey how their experiences are related to the complex social structures surrounding them.

While interview-oriented analyses can tell us much about what is occurring, they are much more limited by the abstract nature of political power to describe *how* it is shifting or *why* it is the case. It is the view here that the best prospect for answering both of these questions is to conduct a detailed examination of the tangible information available on the public record to see whether any patterns might emerge. This means leaving the realm of the executive to focus on parliament, the forum where laws are debated and where these abstract relations are given their concrete form through legislation. Given the lack of any such comprehensive study of parliament's role in this process, there is considerable value in merely understanding the form these constraints have taken as well as how and when they were implemented. Additionally, given that parliament is a public forum, there exists a preponderance of accessible documentation that can aid our understanding of how this process has occurred. An examination of this information has the potential not only to reveal new insights about how power has shifted towards the centre of the executive branch, but also to reveal why such changes have occurred by analyzing the circumstances under which they were implemented. A comprehensive study of how this process has unfolded marks a crucial next step in our understanding of both how and why the exercise of political power has been transformed in recent years.

This project takes up this considerable challenge by undertaking an extensive archival investigation of primary sources that document the evolution of procedure at the Ontario Legislature over a 43 year period. The time period under consideration has been chosen in order to provide sufficient scope to establish whether any patterns emerge, and, if so, what they might tell us about the changes that have occurred to the parliamentary branch of government in Ontario. Mogalakwe (2009) has referred to this approach as the “archival records methodology,” which is characterized simply by, “the analysis of documents that contain information about the phenomenon we wish to study” (p. 221). Marx used this approach in his three volumes of *Capital*, which drew heavily upon the analysis of government documentation such as Hansard, English labour legislation, government revenue reports, as well as newspaper articles. Primary documents are, “naturally occurring objects with a concrete or semi-permanent exists, which tell us indirectly about the social world of the people who created them” (Mogalakwe, 2009, p. 222). In short, they provide a living history of events as they happened which has an “independent existence beyond the writer and beyond the context of its production” (Mogalakwe, 2009, p. 222).

Despite the benefits of the archival research approach to the study of political institutions, it does have limitations. Since events are recorded as they happen, it is just as likely that the actors under investigation are unable to understand the broader systemic implications of the changes happening around them given that interviews are conducted years after events have occurred. This is because these actors lack the benefit of hindsight that subjects might have upon recollection of events years after the fact once they have come to understand how these events fit into the larger context. Such criticisms, however, are not limited to archival studies. Most qualitative studies of social phenomena must take in to account that the subjects under

examination do not have a full understanding of the complexities of their circumstances. It is the responsibility of the researcher to overcome this challenge by way of an appropriate conceptual frame that can explain these phenomena within their respective historical contexts. Furthermore, this limitation is balanced by the considerable benefit of allowing the researcher to study reactions to events in real time through an archival investigation. Although elite interviews are beyond the scope of this project, future studies may incorporate this method as a means of supplementing and building upon the conclusions it draws.

Research Design

A central aspect of a successful interpretive study is to select units of analysis that provides a view of actors in their social settings, which can re-create their social reality (Nordqvist, Hall & Melin, 2008). Although the way that these units of analysis are utilized is ultimately at the discretion of the researcher, he or she must choose data that can capture the full scope of the issue being studied over a sufficient period of time to establish patterns and draw meaningful conclusions. Thus, well-chosen units of analysis in an interpretive exercise will have a dual focus; they will be sufficiently grounded so as to enable the researcher to examine the fine grain aspects of study, but will be broad enough so that he or she may test the hypotheses associated with his or her conceptual framework (Nordqvist, Hall & Melin, 2008). This project will address the question of both how and why governments have chosen to circumvent parliament by examining a series of central criterion:

- The use of time allocation and closure
- Omnibus legislation
- Reduced the number of sitting days during the parliamentary calendar
- The prorogation of parliament

- Changes to the legislature's *Standing Orders*
- The use of confidence motions to circumvent the legislature
- Clauses permitting governance through order in council and ministerial authority.
- Other examples of contempt for the parliamentary process

Although each procedure varies in the frequency of its usage over the four decades under consideration, each has played an important role in the restriction of legislative debate and the assertion of the authority of the executive. The approach taken in this study was to explore the various public records for the Ontario government from 1971-2014 in order to establish: a) which procedural tactics were utilized; b) the explanations for their usage, and; c) the political circumstances under which they occurred. To establish a clear picture of the Ontario Legislature's history during this period I undertook an intensive examination of a number of primary sources including Hansard records, government bills, legislative reports, standing committee transcripts, as well as regulations, and orders in council. Government documents accessed through the Archive of Ontario provided access to previously confidential cabinet records, government policy papers, sessional papers, and cabinet submissions for the period under consideration in this project. Secondary sources included a search of news articles relevant to the central issues that arose during the period under examination.

Given the time and financial limitations associated with this project and the availability of certain resources, it was necessary to prioritize sources on the basis of their relevance to the project. These sources were broken into two separate categories: a) principal sources; b) supporting sources. Principal sources were subject to an intensive investigation, which involved a full review of all of the information on the public record. In other words, over the 43-year period under examination in this project, most or all of the available records in this

category were subject to review at some stage in the process. These include Hansard records, government legislation, *Ontario's Legislative Reports*, as well as a comprehensive survey of the government documents at the Archive of Ontario. Supporting sources, meanwhile, enrich the evidence uncovered in the principal sources by offering additional context and information. This category includes regulations and orders in council through the *Ontario Gazette*, deputations to the Ontario Legislature's standing committees, newspaper articles describing events as they unfolded at Queen's Park during this period, publicly accessible government reports, and scholarly publications.

The research design selected for this project involved a four-step process. The first step was to consult supplementary sources such as academic articles, newspaper articles, and works of historical relevance to Queen's Park in order to acquire a sense of the province's political and cultural during the last four decades. While there are few comprehensive scholarly studies on the politics of the Ontario Legislature itself, the *Journals* of the Legislative Assembly provided an important starting point by providing a concise documentation of the key procedural events at Queen's Park. The *Legislative Journals* provided crucial direction to my research by serving as a reference guide chronicling the recent procedural history of the Ontario Legislative Assembly. Accessing the *Legislative Journals* and juxtaposing them with preliminary reading on Ontario's recent political history, facilitated the creation of a blueprint that would guide the remainder of my project. It would prove invaluable as a means of establishing the emerging features of a narrative that could explain how the policy and procedural variables evolved contemporaneously at an early stage in the research process.

While the *Legislative Journals* were crucial to the constitution of a preliminary sketch, they can only offer a narrow glimpse of the province's recent political history, since they

provide no context for why procedure has evolved as it has, the driving forces behind the use of certain procedural tactics, or the events that have caused circumstances to unfold as they have. Furthermore, given their focus on the procedure of the legislature itself, the *Legislative Journals* do not offer details about the particular characteristics of legislation. As such, it would be impossible, for example, to distinguish omnibus legislation from other varieties of bills. Thus, while the *Legislative Journals* offer important insights to the researcher by allowing him or her to quantify the evolution of procedure, they offer only a sketch of the story.

The second phase of the research project, then, was to infuse the story of the Ontario Legislature with life through an intensive examination of its Hansard records since 1971. Hansard provides the distinct advantage of providing a lived account of the province's political affairs as they unfolded in the legislative chamber over this period. For the interpretive researcher, there are considerable benefits to having access to a voluminous reservoir of verbatim accounts. On one hand, by providing a daily account of the affairs of the legislature, the researcher can acquire a sense of the tone of a debate, the issues that impelled political actors to choose one course of action over another, the distinctions between various party positions, and the seminal issues that emerge during the period under inspection. This helps to shed light on the degrees of relation between the policy environment and the continually evolving configuration of the legislature's rules and procedures. On the other hand, Hansard provided the most reliable method of cross-referencing the figures provided by the *Legislative Journals* and documenting the evolution of the phenomena under consideration in this project.

Selecting Hansard as the second major step after establishing a framework through the *Legislative Journals* was a conscious decision that was designed to provide shape to the remainder of my project. It was hoped that richness and comprehensiveness of Hansard as a

resource would result in the emergence of a number of patterns that could provide context for why procedure at Queen's Park evolved as it did. Thus, while much of my focus in reading Hansard was on the legislative and parliamentary reforms that would ultimately constitute the better part of my dissertation, I also read the substance of the debate in order to better understand the variables that influenced the reconfiguration of the parliamentary process in Ontario.

Given that the majority of the research for this project was conducted in 2014, Hansard documents were available from 1980 to 2014 on the legislative assembly's website. To my great fortune, the records from 1971 to 1980 were also available online through the Internet Archive by way of Robarts Library at the University of Toronto. Although these earlier records were much more crudely organized than those provided by the Ontario Legislature's website, it was nonetheless highly advantageous that I was able to access all of the records necessary for my study electronically. This allowed me the distinct advantage of being able to focus my study by targeting certain key words that would save me the time-consuming process of having to read the entire Hansard transcript for each day during the 43 period I had chosen for study.

One of the unique aspects of this study is that it is the only of which I am aware that conducts an intensive archival study of a Canadian parliament over the course of several decades. Indeed, such a study in the time before Hansard records were digitized might have taken years to complete in order to make it through the thousands of pages of debate. Despite being hopelessly inefficient, such a study would have also been limited by a lack of precision, since it would have been all but impossible to ensure that selected content was not missed in the research process. The availability of these records electronically, however, allows the researcher to use the Control + F search function, while vastly reducing the amount of time necessary to read a page, and greatly increasing his or her accuracy.

Beginning with the first day the legislature sat after the general election of 1971, then, I undertook the process of poring over the digitized records for each sessional day through the decades until the house recessed for the Christmas holiday at the end of 2014. Using the Control + F function on my computer, I searched a number of key terms for each day the assembly sat during this period: *time allocation, prorogation, Standing Orders, confidence motion, order in council, regulation, contempt of parliament, closure, filibuster, and omnibus*. In each case, where the search returned relevant results, I took detailed notes of the date, the speaker, the time, the issue to which the speaker made reference, the context in which the words were spoken and, where warranted, the quote itself. This process took approximately six months to complete and filled nearly eight workbooks with notes.

By the time this information had been collected, a clearer picture of the factors that influenced the evolution of the parliamentary process in Ontario began to come into focus. However, I also thought it necessary to supplement the information I had acquired through my initial investigation of Hansard by using the search engine provided by the Ontario Legislative Assembly's webpage to acquire additional quotations and context. In this case, I searched key words related to the concept of democracy that were more peripheral to the issue of procedure, but that might turn up further data to enrich the study. These words included: *anti-democratic, democracy, undemocratic, centralization of power, concentration of power, autocratic, authoritarian, repressive, heavy-handed, dictatorial, and suppressive*. The purpose in this section was to determine whether, why, and to what extent the opposition accused the government of displaying any of the above characteristics.

It may be asked why I did not simply use the search engine for my scan of Hansard in the first place, since I relied upon a search function for each individual day. There are a number of

reasons I decided to take a more comprehensive approach. First, the Ontario Legislative Assembly website only provides a search function dating back to 1980. As such, it would have been impossible to use this approach for the first nine years of my study. Second, in order to ensure that the results I compiled provided as accurate a depiction as possible, I felt most confident drawing conclusions by inspecting each sessional day individually to ensure that I did not miss anything that the search engine's algorithms may have failed to include in its results. Wouters and Gerbec (2003) claim that publicly available search engines are notoriously unreliable as a foundation for a research design. Although search engines have improved from their earliest days, they lack both stable results as well as transparency in the configuration of their search results. Furthermore, because search engines encourage only nominal engagement with the variables under consideration, the researcher must take the results at face value without having conducted the research him or herself (Wouters & Gerbec, 2003). Thus, while a modern search engine ought to be sufficiently reliable to use as a foundation for a research study, the more responsible researcher recognizes that there is no substitution for comprehensiveness. Finally, given the interpretivist design of this project, it was essential that I was able to take a broad canvass of the deep reservoir of statements on the public record in order to acquire a sense of the circumstances that conditioned the events under consideration. A search engine-based approach would have only provided the dates on which certain key words appeared. As such, even had the search engine proven to be perfectly reliable, my consideration of Hansard would have been limited to the dates on which these certain key words were uttered. Had I taken this approach instead, it is possible I might have missed important events that were not related to the terms I thought would be most relevant at the beginning of my project.

The third principal resource consulted for this project was legislation passed by the legislature during the 43 years under consideration. Although my thorough examination of Hansard brought a number of patterns into view, most of the specific details I had gathered were concerned with the rules of legislative assembly itself. As a consequence, I undertook the process of collecting and analyzing each government bill brought forward in the province from 1971 to 2014. The purpose of this search would be to establish how and to what extent governments had delegated legislative power to cabinet at the expense of the parliamentary process whether through order in council or regulation.

I took a similar approach as I had with Hansard, sorting through each bill by using the Control + F function. The key words in this instance included: *regulation, order in council, commission, board, delegate, power, authority and responsibility*. I made certain to include action words such as power and delegate, since examples of legislation I had previously examined indicated that these words often modified sentences in which transfers in authority occurred. As was the case with Hansard, a search for certain signifier words was only part of my methodological approach. Where possible, I also made certain to read the explanatory note at the beginning of each bill in order to ascertain its purpose, but also to identify anything that might have been relevant but not yielded through a word search. In instances where it appeared that a bill contained significant characteristics, or dealt with an issue that might have included a redistribution of power relations between the executive and legislative branches, I made a point to follow these leads. Reading the explanatory notes also had the considerable benefit of identifying bills of an omnibus nature. Finally, given that I had already taken extensive notes from Hansard, I identified legislation that had been subject to considerable debate in parliament. This was a crucially important step, since it allowed me to identify synergies between the

evolution of procedure at Queen's Park and the transformation of public policy during the period under observation.

Bills from 1971 to 1994 were accessed electronically through the Internet Archive, while legislation published in 1995 and beyond was available through the Ontario Legislative Assembly website. Ultimately, canvassing each government bill introduced in the province from 1971 onwards took approximately two months to complete. Once this process was finished, I had a comprehensive data set from which to discern patterns between the events and actions under observation. My central task at this stage was to begin the process of comparing and contrasting the information I had collected to determine whether relationships could be established and conclusions drawn. However, while the archival information provided in Hansard and government bills provided a vivid picture of events as they unfolded in the public view, the identification of these relationships required further exploration.

The next phase of my research, then, was to further build upon all of the information acquired from public venues with background materials available through the Archives of Ontario at York University. In its collections, the archives hold thousands of background documents, sessional papers, executive reports, cabinet submissions, policy papers, government press releases, internal government documents/memos, policy briefs, and previously classified internal cabinet documents. My objective would be to forage through these documents to find information that could explain or supplement that which had already been acquired. The process of actualizing this objective, however, would prove to be a considerable challenge. While the holdings at the Archives of Ontario are extensive, the information relevant to my project is organized as individual files in loosely catalogued boxes with sundry other documents. This had dual consequences. On one hand, it meant the process of collecting evidence would be rather

onerous, as it would require sifting through thousands of documents, most of which would be of no relevance to my project. On the other hand, however, it also held the distinct advantage of allowing me to search through these boxes for related information my initial document request to the archive may have neglected to include.

It was determined in the early stages of my archival investigation, that my document search should be as expansive as possible. However, there were also important pragmatic considerations that had to be taken into account. To begin, the Archives of Ontario's scheme of organization is such that it is more practical to order as many documents as possible at once. A query for a single document can take several days for staff to retrieve, since the staff must access the boxes at an off-site location. Given that the commute to York University is nearly two hours by transit from downtown Toronto during commuter hours, it is far more convenient for both the researcher and archivist to take a broad-based approach to document requests. This point is underscored by the scheme of organization of the Archives of Ontario's reference system. Documents are catalogued according to an assigned reference code, which is organized by the variety of the document rather than by date, title or author. As such, it is often the case that a query for a single document requires archival staff to retrieve the entire box in which it is located.

Before visiting, it is essential to first consult the Archives of Ontario search engine to establish which documents will be selected for viewing in the Reading Room at its central location on the York University campus. My search was conducted according to three separate criteria. First, I sought to find additional information about parliamentary reform in Ontario that public documentation may not have covered. Might it be the case, for example, that the government indicated its intention to use an instrument such as time allocation prior to its

application in the legislature? Words in this search area included: *time allocation, prorogation, omnibus legislation, confidence motion, Standing Orders, closure, Queen's Park, parliament, filibuster, legislature, democracy, anti-democratic, Camp Commission, Legislative Assembly, and parliamentary reform*. The purpose of my first search was to address as much subject matter as possible that might be related to the evolution of legislative governance at Queen's Park.

Although it turned out there was little material in the archives that explicitly dealt with parliamentary issues, the words contained in this search unearthed some interesting leads that bore fruit once I began digging through the boxes these terms returned. The second portion of my search sought to address the hypothesis of my study that the transition to neoliberalism has necessitated a new parliamentary apparatus able to accommodate major state restructuring. As such, I chose to search key terms that would highlight the province's adoption of neoliberal principles. These words included: *neoliberal, restraint, restructuring, globalization, austerity, cutbacks, red tape, public sector reform, efficiency, privatization, deregulation, free market, monetization, inflation, interest rates, self-regulation, free trade, and internationalization*. This search returned myriad background policy documents concerned with the government's transition to neoliberalism from the middle of the 1970s to the early 2000s.

The third phase of my search involved residual terms for key events and legislation already identified as being central to the province during my consultation of the first two principal sources. Key words included: *social contract, inflation restraint, red tape reduction commission, farm income stabilization, automobile insurance act, City of Toronto Act, savings and restructuring, amalgamation, Barrie-Vespra Annexation Act, red tape reduction, hospital restructuring commission, inflation restraint commission, wages and prices control board, Government Process Simplification Act, Fewer School Boards Act, Social Assistance Reform Act,*

Labour Relations and Employment Statute Law Amendment Act, Prevention of Unionization Act, Back to School Act, Municipality of Metropolitan Toronto Act, Fewer Municipal Politicians Act, Putting Students First Act, Green Energy and Green Economy Act, and Strengthening and Improving Government Act. This final search theme proved to be the most fruitful of the three, returning a significant number of government sessional papers and cabinet documents that provided an important backdrop for the conclusions drawn in this study. These government records offered invaluable insight into the decision making processes, considerations and confidential debates which lay at the bottom of many of its most high profile decisions during the period under study in this project.

Having completed my search, the next step was to send an email to the staff at the Archives of Ontario with the titles, box numbers, barcodes and reference numbers of those documents I intended to consult during my visit to the Reading Room. In all, my search results yielded a total of 85 boxes. The chart below lists the barcode of each of the boxes I investigated during my search of the materials (See Figure 3.1).

Table 3.1: Archives of Ontario – Boxes Accessed (Barcodes)

B316171	B338764	B351181	B353140
B353700	B364875	B364937	B368283
B372672	B372673	B372676	B372698
B372713	B394450	B394468	B394511
B395584	B395587	B397548	B398568
B398969	B399598	B722519	B140124
B403230	B261956	B701091	B272852
B364386	B351179	B372676	B399545
B379451	B399545	B379451	B372698

B399598	B395587	B394511	B395583
B394450	B353700	B395584	B722519
B398563	B364937	B372713	B353140
B398969	B395589	B372676	B368283
B338764	B235041	B394468	B372672
B364867	B351181	B316171	B810343
B253908	B220780	B221107	B737458
B442043	B403230	B814622	B418057
B803357	B810320	B261965	B820033
B366157	B135728	B448434	B858068
B728998	B421107	B80913	B448437
B438522	B810320	B820033	B810320
B448437			

Rather than search only for the request documents, my approach was to conduct an in depth investigation of the documents in every box. The documents in each box, then, were scrutinized for their suitability to the seminal issues already identified by my consultation of the previously mentioned principal sources. Although the Reading Room does not permit researchers to make their own copies of archival materials, cameras are permitted so long as their flashes are turned off. Where possible, I took several hundred photos of original documents along with their reference numbers, barcode numbers, and document titles.

While the boxes yielded numerous varieties of records, sessional papers were the most common document-type identified. These documents provided crucial background information

to many of the bills referenced in this project. The table below plots each of the sessional papers accessed and consulted through this process (See Figure 3.2).

Table 3.2: Archival Sessional Papers Accessed

Ref. Code	Title	No.	Date
RG-49-19	Minister of Energy Report Concerning the Restructuring Public Utilities.	162	Feb. 11/75
RG-49-19	Interest Rate Discussion Paper	145	June 19/80
RG-49-19	Act to Establish the Waste Management Act	93	June 1/81
RG-49-19	Expropriations Act	82	May 21/81
RG-49-19	Education Amendment Act	55	Apr. 8/82
RG-49-19	Metro Toronto School Board Act	120	May 28/82
RG-49-19	Municipal Amendment Act	159	June 17/82
RG-49-19	Inflation Restraint Act	209	Sept. 21/82
RG-49-19	Ministry of Colleges, Training, and University Amendment Act	334	Dec. 21/82
RG-49-19	Barrie-Vespra Amendment Act	244	Dec. 5/83
RG-49-19	Municipality of Toronto Amendment Act	235	Dec. 2/83
RG-49-19	Expropriations Amendment Act	95	June 17/83
RG-49-19	Expropriations Act. Sault Ste. Marie Conservation Act	204	Nov. 1/83
RG-49-19	Act Respecting Independent Health Facilities	268	June 2/88
RG-49-19	Workers Compensation Act	289	June 20/88
RG-49-19	Act to Amend the Power Corporation Act	301	June 27/88
RG-49-19	Transfers of Water Act	318	June 29/88
RG-49-19	Amend Certain Acts Respecting Insurance	171	Oct. 23/89
RG-49-19	Act to Amend Public Lands Act	324	Apr. 10/90
RG-49-19	Capital Investment Plan	44	May 17/93
RG-49-19	Government Expenditure Program Amendment Act	74	June 14/93
RG-49-19	Social Contract Act	72	June 14/93
RG-49-19	Budget Amendment Act	50	June 1/93
RG-49-19	Budget Measures Act	273	Mar. 22/94
RG-49-19	Municipal Conflict of Interest Amendment Act	275	May 18/94
RG-49-19	Savings and Restructuring Act	38	Nov. 29/95
RG-49-19	Education Accountability Act	316	June 13/97
RG-49-19	City of Toronto Act	309	Dec. 17/97
RG-49-19	Red Tape Reduction Act	341	Feb. 3/97
RG-49-19	Services Improvement Act	553	Aug. 21/97

RG-49-19	Water and Sewage Transfer Act	322	Jan. 20/97
RG-49-19	Education Quality Control Act	578	Sept. 22/97
RG-49-19	Red Tape Reduction Act	29	May 27/98
RG-49-19	Red Tape Reduction Act	23	Nov. 4/99
RG-49-19	Fewer Municipal Politicians Act	37	Dec. 6/99

The sessional papers on bills such as the *Inflation Restraint Act* and the *Metropolitan Toronto Act* offered a more comprehensive glimpse of the reasons and explanations for introducing this legislation than the other principal sources consulted for this project. Other documents, such as the records from the Premier's Council on Economic Issues, policy papers, internal government communications, government reports, and cabinet memos and communications provided a crucial insiders' view of the logic behind the evolution of public policy in Ontario. For example, policy papers published in the middle of the 1980s demonstrate that, although the Peterson Liberals governed largely from the centre, it was soliciting advice from experts recommending that Ontario dismantle labour protections to best prepare itself for the realities of global competition. Similarly, internal government communications during the final years of the Rae government reveal the extent of its frantic efforts to reduce the deficit before the end of its mandate.

The information acquired from the archives deeply enriched my understanding of both how and why neoliberalism was introduced, as well as the pace at which it was implemented in Ontario. While the *Legislative Journals*, Hansard, and government bills provided the substance for my project, the information in the archives gave it texture by providing a sense of the environment and culture at Queen's Park during this period. Furthermore, the articulation of the policy context found in the archives proved crucial when attempting to establish the existence of relationships between parliamentary procedure and policy. This was particularly true of the planning processes internal to the bureaucracy and cabinet that conditioned the positions taken

by the government as well as the legislation it eventually introduced in the legislature. To summarize, while many of the archival documents accessed offer only sparse information that is lacking in context, they function as a living expression of the ideas, principles, and intentions of policy makers during their respective tenures in office.

Despite its many benefits, the archival search was limited in several respects. First, certain documents retrieved from the archive were missing important details such as the speaker/author, the date, or the reference number. In some cases, the documents provided so little context that it was impossible to include them as sources despite their relevance to my dissertation. One example is an American policy expert for the Premier's Council on Economic Issues in the early 1980s, who draws a link between an increase in democracy and a decline in economic prosperity, but whose name is not provided in the records. Thus, while the comments of this speaker are crucial to the relationships drawn in this dissertation, the conclusions he or she draws are impossible to attribute.

A second drawback is that while the archived documents provided a treasure trove of information on the policy planning stages and internal government policy dialogue, there is little information available on the evolution of parliamentary procedure during the period under consideration. This factor meant that it was impossible to establish causal relationships between changes to the configuration of parliamentary procedure and the implementation of policy in Ontario. As a consequence, this project stops short of establishing causality, focusing instead on the relationships between observable phenomena. The lack of information on the parliamentary process also meant that, given the focus of this study, much of the material consulted did not merit inclusion in this dissertation. While some of the material accessed provided important context for the policy milieu that lurked behind government decisions, much of it was too

fragmented and lacked sufficient detail to include in a study that concerns itself primarily with the executive's relationship to parliament. As a result, despite the important backdrop the archival information provided for this dissertation, few sources are included relative to other sources such as Hansard, the *Legislative Reports*, government legislation, and news articles.

Third, a number of the documents in the archive are restricted in accordance with the Ontario *Freedom of Information and Protection of Privacy Act*. Pursuant to s. 21 of the Act, any information which contains personal information, invades the personal privacy of any individual, or that reveals the substance of discussions among the executive council, will be unavailable for public consumption for a period of up to 100 years (Bill 34, 1987). Researchers interested in accessing restricted documents may make a request to the Chief Privacy Officer through the Ministry of Government and Consumer Services to have certain restricted documents released. I made a lengthy request to the Privacy Officer for sealed records of relevance to my project. Ultimately, the Privacy Officer withheld 311 of the cabinet records requested as well as three pages that may have compromised the privacy of an individual. The following chart details those restricted documents that were released for the purposes of my project (See Figure 3.3).

Table 3.3: Restricted Archival Documents Accessed

Ref. Code	Title	Barcode	Date
RG 8-5	Austerity Program for Ontario	B253908	1980
RG 1-395	Restructuring of Ontario Government	B140124	1979
RG7-1	Ontario Management Board of Cabinet	B220780	1980
RG 7-1	Ontario Government Premier's Advisory Council on Economic Future	B221107	1981
RG 10-402	Policy and Programs: Government of Ontario. First Come, Last Served	B737458	1989-90
RG 74-77	Premier's Office. 2001 General	B810343	2001-03

74-77	Premier's Office: The Road Ahead. Policy Papers	B810343	2003
RG 14-185	Ontario Government Economic Renewal Agenda	B442043	1991
RG 12-54	Discussion Paper. Re: Government Need	B403230	1985
RG 45-2	Government of Ontario Cabinet Minutes	B814622	1998
RG 207	Red Tape: Final Report	B418057	1997
RG 5-34	Committee on Government Productivity	B399545	1970-71
F4180-22	Wage Restraint	B247952	1983-84
RG 9-2	Red Tape Review Commission	B803357	1995
F 4432-5	Red Tape Review Commission	B814622	1996-97
RG 47-124	Management Board of Cabinet Correspondence	B810320	1995-98
re1-511	Deregulation (Cutting Red Tape)	B261965	1978-79
RGX	Inflation Restraint Board	N/A	1983
RG 4-154	Impact of Inflation on Social Service Programs	N/A	1994
F 1289-3	Inflation Restraint Board	B351179	1983
RG 14-139	Disentanglement Files	B701091	1992-93
RG 14-204	What is Disentanglement?	B820033	1993
RG 47-124	Cabinet Submissions	B810320	1974-78
RG 16-14	Cabinet Submissions	B364386	1977-79
RG 6-32-6	Cabinet Submissions (Misc.,)	Box 19	1984-87
RG 33-4	Cabinet Submissions	B366157	1990
RG 31-29	Legislature: Cabinet Submissions and Policy Submissions	B135728	1985
RG 6-142	Policy and Priorities Board of Cabinet: Submissions	B448434	1996
RG 7-31	Cabinet/Policy and Priorities Submissions	B858068	1998
RG 7-277	Social Contract: Productivity Savings Committee	B728998	1991-95
RG 10-386	Hospital Restructuring Commission	B421107	1994

F 4432-44	Health Services Restructuring Commission	B421107	1998-2000
RG 4-37	Municipal Act: Powers of the Minister or Commission for the Implementation of a Restructuring Proposal	B80913	N/A
RG 16-351	Who Does What?	B448437	1997
F 4519-3	Municipal Restructuring: Transition Board Suggestions	B438522	N/A
N/A	John R. Baird's Files Related to City of Ottawa Restructuring	B438522	2003
RG 6-32-6	Briefs to Justice Committee on Restraint Program in Compensation in Public Sector and Monitoring Inflation	Box #2	N/A

The final limitation of the archival search is that most of the records of the current Liberal government have not yet been released to the Archives of Ontario. As a consequence, those documents from late 2003 to 2014 are not available for investigation. This means that nearly one-quarter of the total period under examination must proceed without access to the internal government records that added so much substance to my understanding of events in Ontario prior to the McGuinty era. While this is far from ideal, it is supplemented somewhat by the fact that my own lived experience provides invaluable context for this study, while other gaps in comprehension have been supplemented by a more thorough consultation of secondary sources during this period. Furthermore, given the recency of these records, it was not anticipated at the outset of this project that documents produced in the last twenty years would be made available. The fact that I was able to access nearly everything of relevance from the Harris and Rae years was a pleasant surprise that had important implications for the conclusions arrived at in this study.

Once all four phases of my principal search were complete, it was necessary to weigh all of the evidence to determine the extent to which the evolution of parliamentary procedure is

related to policy change in Ontario. These sources are utilized throughout the body chapters of this dissertation in an attempt to bring the public debate to life and to explore the political dialogue surrounding key events as they occurred. As such, this project has quoted from Hansard and from the legislation extensively in hopes of giving historical context to the patterns established through the interpretive process. For example, arguably the most controversial piece of legislation passed during the Davis era, the 1982 *Inflation Restraint Act* was also the first use of time allocation in the modern history of the legislature. *Legislative Reports* and Hansard are used to determine to what extent, if any, the use of time allocation was the result of the policy implications of the bill. Evidence is drawn from the archival records emphasizing the government's rationale for implementing such an austerity policy in a comparatively rapid fashion. Quotes are then used from Hansard in an effort to paint a picture of the Act's precedent-setting progression through the house, as well as how it fits into the patterns established later in the dissertation. Ultimately, it is explained how this seminal piece of legislation played a central role in facilitating both the transition to neoliberalism in Ontario and the descent of parliamentary debate in Ontario's Legislative Assembly.

This dissertation also includes a number of supplementary sources. These are the sources that helped to inform my dissertation, and were relied upon as a significant resource on some issues, but were not examined with the same level of scrutiny as the principal sources. This is not to suggest that these sources were vetted with any less care than the principal sources; the sources that were consulted from this group were thoroughly reviewed, and efforts were made to include as broad a variety as possible. However, given time constraints it was not possible devote the same degree of comprehensiveness and devotion as I did to the principal sources I consulted. Rather than attempting to canvass all of the material available from a source, then, the process in

this category was to identify those sources that could support those issues already identified as being noteworthy by my initial research.

The supplementary sources consulted for this project can be differentiated into six separate categories. First, newspaper articles played an important role by providing additional information where principal sources proved to be insufficient on their own merits. Every major event in the period under consideration was subjected to a newspaper search for information that may not have been addressed by the principal sources. While the *Toronto Star* and the *Globe and Mail* are the most extensively used sources, several other papers are referenced throughout the body chapters of this dissertation as well. Quotes are used extensively in circumstances where events may have taken place outside of the legislature, and where further context helped to enrich the explanation of how events unfolded. For example, the drama surrounding the Liberal/NDP Accord in 1985 is best captured by quotes and contributions from news articles, since key events largely unfolded before the legislature reconvened after the election.

Secondly, I also engaged with several academic books and articles that addressed specific events or developments in Ontario's recent history. While much of the academic material reviewed for this project is dealt with in considerable detail in the previous chapter, the specialized nature of these sources made them useful as a means of supporting underdeveloped concepts and to assist in analyzing events as they unfolded. Third, this project also draws upon a number of non-peer reviewed sources that add value to the project by augmenting the evolution of public policy in Ontario. For example, Bob Rae's biography, *From Protest to Power*, provides a unique insight into the former premier's thinking as his party shifted course to a policy of restraint in the middle of its mandate. Meanwhile, studies of political history such as John Ibbitson's *Promised Land: Inside the Mike Harris Revolution* and Thomas Walkom's *Rae Days:*

The Rise and Follies of the NDP do a commendable job of establishing a narrative for key events, and were consulted both for quotes from political actors, as well as to confirm that important details from the documentary records were recorded with accuracy.

Fourth, this project also made use of the transcripts from the Ontario Legislature's standing committees as an accessory to Hansard. Since electronic records of committee hearings are only available on the legislature's website from 1990 to 2014, I was only able to consult materials for the latter half of the period reviewed in this study. Having already spent several months working through the Hansard records, it seemed superfluous to subject the committee transcripts to the same level of scrutiny. Instead, I took a targeted approach, scanning the committee transcripts for information related to key legislation, events and actors established by my principal sources. To take one example, chapter eight draws upon an exchange between Liberal Finance Minister Dwight Duncan and NDP MPP Gilles Bisson in which Duncan tacitly admits that the government's decision to cancel the Etobicoke and Mississauga gas plants were motivated by political considerations.

Fifth, I investigated the *Ontario Gazette* for references to orders in council and regulations passed by the government. The *Gazette*, which is available from 2000 to 2014 on the Government of Ontario's official webpage, is supported by a search engine, which enabled me to concentrate my search to the legislation I had established as being relevant to my dissertation. However, *Gazette* records published prior to 2000 are available as hard copies only, rendering the research process much more tedious given the voluminous nature of the weekly publication. Using the indexes, I began exploring *Gazette* editions from 1971 to 2000, which were available on microfiche in the Reading Room at the Archive of Ontario. Similar to my approach with *Gazette* editions published after 2000, I sought out references to legislation that had been

established as central to the patterns proposed by my research to this stage. These references proved to be an important resource, establishing the responses of governments to the powers provided to them through legislation. While the *Gazette* would have optimally been a principal source, given the encyclopedic nature of the weekly journal and the lack of electronic resources prior to 2000, it would have been impractical to devote the attention that was paid to my principal sources to this resource. Nevertheless, I have made every effort to ensure that those bills under consideration in this project were consulted during this stage of the research process. Future studies may wish to build upon the conclusions arrived at in this project by engaging in a more comprehensive analysis of the *Gazette*.

Finally, my project also consulted the numerous reports published by the government, or on its behalf, throughout the period addressed in this project. These include reports by independent officers of the Legislative Assembly, such as the ombudsman, the auditor-general, and the privacy commissioner. Examples include the work of the Ontario Commission on the Legislative Assembly, led by Dalton Camp, and the 2012 Commission on the Reform of Ontario's Public Services headed by former TD Bank chief economist Don Drummond.

Benefits of the Case Model

The question may be asked why this study has been conducted as a case model rather than a comparative approach, since a comparative study holds the obvious advantage of allowing the researcher to test his or her hypotheses across several jurisdictions. However, given the absence of a detailed archival study on the evolution of parliamentary procedure, it was determined that a study which could capture the evolution of these changes comprehensively in one jurisdiction would make the most profound contribution to the literature. A case method research approach allows the researcher to subject a single object to an intensive degree of

scrutiny that has the potential to reveal insights that can only be understood through a detailed investigation. While a comparative examination of several jurisdictions would be of considerable value, given that there is a lack of detailed analyses of parliamentary procedure, it was determined that the most important contribution this project could make to the literature would be to provide a comprehensive overview of a single case over a considerable period of time. It is hoped that this study might provide the foundation for a future comparative study that can test the conclusions it has arrived at.

In its rudimentary stages, sketches of this project considered a comparative analysis of two separate jurisdictions to determine if the patterns identified in one area held in another. Given time limitations for the project, the proposed idea would have undertaken an examination of two parliamentary bodies, but would have been subject to one of the following limitations: an exploration of two jurisdictions, but over a shorter time period, or a study of a similar time period, but that did not engage the archival material with the same degree of comprehensiveness as a case study could allow for. A study that did not begin in the early 1970s risked missing essential details about the evolution both of the neoliberal revolution as well as the centralization of political power in the executive, which the literature agrees can be traced back to this period. Given that the literature was calling out for a thorough study of the evolution of parliamentary governance in recent decades, it was determined that the most significant contribution this dissertation could make to the discipline would be to offer a detailed analysis of a single case to account for the evolution of these changes to the political apparatus over a period of several decades to better understand both how and why these two trends emerged contemporaneously.

Ontario as a Case

Seawright and Gerring (2008) claim that a well-chosen case model ought to satisfy two criteria: first, the case chosen for study should provide a representative sample of the subject matter in consideration. Secondly, it should provide a “useful variation on the dimensions of theoretical interest” (p. 295). An ideal case model, then, should align as closely as possible to the general population the researcher is attempting to establish findings about. As an extension of this, the research sample should also provide a reasonably diverse set of variables to ensure that it accurately reflects the phenomena under consideration. Ontario satisfies these conditions both as a representative sample in the Canadian political science and policy traditions, but also as a characteristic case for whether neoliberalism has played a role in the decline of parliament. Two factors in particular, Ontario’s diverse economic complexion and its unique political culture make it an ideal representative sample for a study of parliament.

Ontario’s Economy

With 13.6 million people as of 2014, Ontario is Canada’s most populous province. Its Gross Domestic Product (GDP), at \$674 billion in 2012 was nearly twice as large as Quebec, the next most populous Canadian province, and comprises more than one-third of the country’s total GDP (Statistics Canada 2016a; 2015c). Its economic base includes sizeable mining, forestry, manufacturing, service, transportation, technology, financial, and knowledge-based sectors. This broad economic portfolio means that Ontario’s politics have not developed around a single industry, but have evolved in a diverse and balanced economic climate. Whereas less diverse economies are more prone to political favoritism for one sector or another, Ontario’s broad profile has meant that its policy decisions cannot be explained by fealty to a single industry. This is an important point, since jurisdictions in which one industry predominates have the potential

to produce policy solutions that deviate considerably from the norm elsewhere given that resources may be distributed unevenly in favour of the dominant sector.

Furthermore, Ontario's economic complexity is complimented by a high level of integration with the wider North American economy due to the export-oriented nature of its economy. This embeddedness within the broader economy means that both its economic and policy patterns have a higher probability of following the dominant trends of the era, including the shift to neoliberalism. The same inflationary pressures that led to the shift from Keynesianism during the early 1970s, for example, had an impact on Ontario's economy that was consistent with its influence throughout the continent. Given its large manufacturing sector, Ontario was particularly vulnerable to the mix of a downturn in the industrial sector and a spike in global energy prices in the 1970s and early 1980s. Despite an unemployment rate that remained below the Canadian average throughout this period, Ontario's jobless rate rose to 9.9 percent in 1982 and 10.4 percent in 1983 at the height of the North American inflation crisis (Statistics Canada, 2016b).

Ontario's economic diversity has helped it to manage the decline in the North American manufacturing sector. However, while the Ontario government has invested heavily in the knowledge economy in its large urban centres since the middle of the 1980s, many smaller, communities that traditionally relied upon the manufacturing sector as the nucleus of their economies, have suffered significant population loss and economic decline. Furthermore, the decline of industry has deprived the provincial treasury of the middle class tax base upon which it fueled the Keynesian expansion of the 1950s and 60s, resulting in significant fiscal challenges. In short, Ontario's intimate interconnectedness with the North American economy and the trends that have affected it, make it an ideal case to study. Although Ontario's major neoliberal

restructuring did not occur until the 1990s, the fiscal and economic pressures that impelled it to do so occurred contemporaneously with the broader trends in the North American policy climate.

Ontario's Political Culture

Ontario's political culture has its roots in its early settlement patterns. In the aftermath of the American Revolution, some 7,000 United Empire Loyalist settlers emigrated from the United States to Upper Canada, and forged a settlement stretching from the Niagara Peninsula to the Upper St. Lawrence River. It was to their good fortune that the land in what is presently Southern Ontario was among the most arable in the entirety of British North America, a geography mostly covered by the rugged terrain of the Canadian Shield. Within a few decades, this society exploded from these humble beginnings to a robust agrarian community of more than half a million people. While most of the population growth during this period was attributable to a surge in immigration from Britain, Loyalist political culture proved to be enduring. The mythology of a politically persecuted populace, which had survived expulsion from elsewhere to forge a new beginning in a cold, barren land against the odds, occupied an important place in the sense of the self for the early 19th century Upper Canadian (Noel, 1997). This manifested itself in the development of a Toryism, which was borne in large part out of the Loyalist spirit of endurance in the face of American Republicanism. This Toryism revealed itself in Upper Canada through the development of a system of political patronage in which the elite professionals and wealthy landowners supported parties that would promote their interests and could both ensure political stability as well as strong economic management (Noel, 1997). The pursuit of strong economic management would become a central characteristic in the evolution of Ontario's political identity (Noel, 1997).

As Ontario's population grew, so too did its demands for influence within the colonial empire. This was reflected in Lord Durham's report, which sought to address the problem of "two nations warring within the bosom of a single state," by amalgamating Anglophone Upper Canada with Francophone Lower Canada, while at the same time encouraging immigration from Britain as a means of assimilating French Canadians. The passage of the *British North America Act* in 1867 forged a political union between the disparate British colonies that populated the land north of an increasingly imperialistic United States of America. Ontario would emerge as both the political and economic nerve centre of the new Dominion as its population exploded to more than 1.6 million by 1871 (Statistics Canada, 2015d). Prime Minister John. A. Macdonald's plan to provide common purpose to the geographically and culturally dissimilar regions of Canada led him to pursue both a rail link from the Atlantic to the Pacific Oceans and a national tariff wall as a means of giving the new country a sense of common purpose and unity. While Macdonald's national policy was designed to forge a unified nation out of a diverse people, it also had the effect of privileging the interests of Ontario's burgeoning industrial sector, providing a closed national market and a publicly subsidized mode of transportation to ensure that it could realize the sale of the commodities it produced in a fast and cost-effective manner. Indeed, it is not a stretch to suggest that it was Macdonald's national policy that cemented Ontario's status as the economic and political heartland of the new country.

With but a few major exceptions, over the course of the next century and a half, Ontarians would largely shun the populist movements that took firm root elsewhere in North America, preferring instead stable governments that were closely aligned with the bourgeois class, and would pursue policies to maintain the province's privileged role as the economic benefactor of Confederation. Governments in the early years of Confederation demonstrated

remarkable stability; the Liberals, for instance, governed uninterruptedly from 1871 to 1905, mostly under the stewardship of Premier Sir Oliver Mowat. Indeed, had it not been for the Minnie M corruption scandal that cast aspersions on the government of Premier Sir George William Ross, one can only speculate as to how long the Liberals may have been able to hold on to power (Tennyson, 1963). Mowat established a reputation as a defender of the decentralized view of Confederation by fiercely championing Ontario's provincial jurisdiction through a series of legal battles with Macdonald's federal Progressive Conservatives, which ultimately wound up being heard at the Judicial Committee of the Privy Council in England. While Mowat's legacy has been defined by his legal victories leading to a more decentralized interpretation of the constitution, his longevity in office may best be explained by his efforts to manage the modernization of the province during this period of transition from a largely agrarian to an industrially based economy (Noel, 1997).

The period from 1905 until 1919 saw the Conservatives in office, first under the stewardship of Sir James Whitney and later under Sir William Hearst. However, the first significant rupture in Ontario's political history would occur during the general election of 1919 when United Farmers of Ontario (UFO), despite not putting forward a leader during the campaign, won a shocking electoral victory and forged a majority coalition government with the Independent Labour Party. Although the First World War had reached its end, Ontario was ravaged by a period of political and economic instability as the province's farms and industries went through the highly disruptive process of converting back to peacetime forms of production, and finding work for soldiers returning from the western front (Tennyson, 1963, p. 121).

The UFO-Labour coalition government ultimately collapsed in the election of 1923, as the Conservatives under George Howard Ferguson swept to a resounding majority government.

However, the surprise election of the UFO Party to office foreshadowed a propensity in Ontario's political culture to undertake dramatic shifts towards radical governments during periods of economic instability, before returning to stable, managerial-styled governments upon a return to prosperity. These ruptures from the political stability that characterized the majority of Ontario's history, would reveal themselves during each significant economic crisis of 20th century in Ontario after the First World War. The Conservatives under George Howard Ferguson and later George Stewart Henry would remain in office from their election victory in 1923 until 1934 when they were defeated by Mitch Hepburn, a firebrand populist from rural Ontario who promised to end tax privileges for well-connected business interests, to harness public spending on political entitlements, fire thousands of public servants, and to cancel Hydro contracts with Quebec. Much like the UFO in 1919, Ontarians set in motion a rupture from the Toryism that dominated the province for the majority of the 20th century, as they grappled with the economic hardship of the Great Depression (Noel, 1997).

Shortly after Hepburn resigned as premier as economic prosperity returned during the 1940s, the Progressive Conservatives reclaimed office under George Drew. They would govern Ontario for the next 43 years consecutively, earning the moniker the Big Blue Machine. The next rupture would not occur until 1985, when another political crisis brought about by economic transition would result in the end of the Tory dominance of the post-war era. Morton (1997) has argued that the durability of governments in Ontario's history can be explained by the fact that the province has been relatively easy to govern throughout its history. As Canada's industrial hub, Ontario benefited greatly from the national trade partnership, since it was assured of cheap commodities as well as resale markets for the goods it produced in both the east and the west. As its most populous and economically powerful province, Ontario's interest often dovetailed with

the federal government's agenda. It was usually willing to make concessions to other provinces by paying into equalization and taking less per capital than other provinces, for example, on the quid pro quo that the federal government would reciprocate by pursuing policies that maintained its status as the country's industrial engine. Whether this was through the pursuit of the 1956 TransCanada pipeline or its 1980 national energy program the federal government, with few exceptions, sided with its largest, most populous province on matters of economic importance, even when this conflicted with the interests of other provinces (Ibbitson, 2001).

The nature of Ontario's relationship to the federal government and to the rest of the country has changed profoundly over the last several decades. As the post-war upswing ended, a confluence of high energy and commodity prices, rising inflation, a glut in global manufacturing as well as an eventual end to Ontario's monopoly over Canadian markets, would result in the loss of its privileged status as its industrial core was slowly hollowed out. This new era of economic instability in Ontario meant that even old political certainties became unglued. In 1985, the 43 year Progressive Conservative dynasty came to an end when the Liberals and NDP formed a temporary alliance to defeat the Frank Miller government on the Speech from the Throne. The end of the Big Blue Machine's reign in office would usher in a new period in Ontario politics that would be characterized by the emergence of a new competitive dynamic in which all three of the major political parties held the prospect of becoming the government. During a ten year period between 1985 and 1995, each of the Liberals, NDP, and Progressive Conservatives would win majority governments. Just as Ontarians had demonstrated during the 1919 and 1934 elections, during periods of economic instability, they have shown a tendency to take significant departures from the political stability that has characterized most of its history. The election of Mike Harris, who ran on populist principles that appealed to disenfranchised

citizens like the UFO Party and Hepburn had, was another such departure. Harris's promise to undertake the radical restructuring of the public sector set in motion a period of instability in the province's history as the government sought to implement the terms of its Common Sense Revolution with unprecedented speed. It is the transition from this period of stability under the Big Blue Machine to the instability brought about by the post-war downturn and the neoliberal restructuring of the state that this dissertation hopes to better understand by reviewing how this process was undertaken at Queen's Park.

Why Ontario?

There are a variety of reasons that Ontario was ideally situated as the subject for this case study. The first reason is highly practical and somewhat personal. As an Ontario Legislative Intern nearly a decade ago, I developed a deep interest in the procedural mechanisms of Queen's Park. In particular, I was fascinated by the nostalgia with which many long-time observers of Queen's Park recalled the "good old days," when the legislature was governed by a spirit of reciprocity and intellectual dialogue between the various parties, before its descent into a hyper-partisan forum of political theatre (or so the story went). It occurred to me that although it was probable a "golden age" of parliament had never actually existed in Ontario, I was nonetheless curious as to what could account for an evident decline in house decorum over the years. As a student of public policy, I had also taken an interest in the tactics used to embed the essential features of neoliberalism in the fabric of the state apparatus. Upon reflection about the two trends, it occurred to me that there was generally agreement in both the political science and public policy disciplines that the beginning of both the centralization of power in the state executive and the implementation of neoliberalism could be traced back to approximately the

same period in history. This being the case, could it be that the development of these two contemporaneous trends were related, or was their twinned emergence be simply coincidental?

Perhaps self-indulgently, then, this project provided me with the opportunity to explore these questions in a setting with which I was already intimately familiar at Queen's Park. Additionally, given my location at Ryerson University, proximity to Queen's Park proved another considerable advantage. Not only was the subject of my study located in town in the event that I needed to access resources through the Library of the Legislative Assembly of Ontario, but so too were the Archives of Ontario. Furthermore, Ontario offered the distinct advantage that a significant quantity of its records are digitized and available through either the Ontario Legislative Assembly website or through the Internet Archive provided by the University of Toronto. While parliaments are increasingly posting their legislative archives online, most do not offer digital records as far back as Ontario. This ease of accessibility was an important consideration when choosing a case model for analysis, since the volume of information processing that was necessary to build a strong research project required the use of technological research tools. While location was an important consideration, the extensive access of the Ontario records on digitized formats was by far the most important.

Ontario serves as a fitting representative sample for a variety of different reasons. First, since all three major political parties in the province have held office during the period under consideration, the explanation that the descent of parliament could be reduced to the beliefs of a certain party was not relevant in the Ontario case. Indeed, it was the New Democrats, the party that was traditionally most deeply opposed the exercise of executive authority that made drastic and unprecedented amendments to parliamentary procedure in its final years in office. The fact that all three parties have held power and that each has taken a role in the legislature's decline

allows the researcher to rule out the likelihood of political partisanship, and focus instead on systemic and institutional variables.

Second, Ontario has had a balance of both minority and majority governments during the period being considered in this study. Over the last four decades, approximately a quarter of those years have witnessed a minority government at Queen's Park: 1975-1981, 1985-1987, and 2011-2014. The researcher is thus able to explore whether and to what extent parliamentary procedure has differed in majority parliaments in comparison to minorities, to determine whether the trends identified can be explained by changes to the configuration of the institutions themselves.

Third, the province's high level of integration with the rest of North America and its economic diversity make it an ideal case to examine the evolution of neoliberalism. Its diverse economic profile means that it has not been insulated from some of these trends as they have unfolded throughout the western economies, as other, single-resource-dominant economies might have been. Its decline from economic heartland to equalization recipient in the period under examination has largely mirrored the trends in the North American economy more generally, allowing it to serve as a representative sample as it has adjusted from Canadian economic juggernaut to laggard.

Finally, Ontario's political trajectory in recent decades may be characterized as having three distinct periods. This introduces an interesting variable into the study, since it allows for the juxtaposition of behavior over distinct periods of political development to determine what if any impact this change in atmosphere had on the political dynamic of the legislature. The first, from 1971-1985 was characterized by single-party dominance and the continuation of Ontario's Progressive Conservative dynasty. While a turn towards neoliberal policies and the reformation

of the public service increasingly became a part of the public dialogue in the later years of this era, it was largely defined by a continuation of the Red Tory ‘managerial-style’ politics of the previous 30 years. The Progressive Conservative approach to governance sought a mix of market-based and Keynesian solutions to maintain economic growth and preserve Ontario’s privileged position in the federation (Noel, 2001). The second period, from 1985-1992 can be described as what Courchene and Telmer (1998) have called “Ontario’s Quiet Revolution” (p. 70). This period was characterized by the end of Tory rule followed by both Liberal and NDP governments, which increased public spending on social programs. Whereas the Tory approach had been to balance Keynesianism with an imperative towards economic growth, the Peterson Liberal government and the first year and a half of the Rae NDP government witnessed the restoration of public spending in areas that had been previously underserved. The third period, which can be characterized as the neoliberal era of Ontario’s political trajectory, began with a frantic shift towards deficit reduction and the implementation of neoliberal restructuring under the Rae government after its change of course at the beginning of 1992. This thorough embrace of neoliberalism was further enhanced by the election of the radical Mike Harris Progressive Conservatives in 1995, and has persisted to the present. The Common Sense Revolution (CSR) sought to fundamentally reshape Ontario’s policy landscape through a series of neoliberal reforms that were designed to scale back public spending on social services, cut income and corporate taxes, and downsize the public service. Despite making reinvestments in certain government sectors the Progressive Conservatives had neglected, the Dalton McGuinty Liberal government elected in 2003 largely consolidated and maintained the neoliberal policy trajectory of the CSR (Albo & Evans, 2009). The emergence of a sharp and fundamental shift towards neoliberalism in conjunction with a more tumultuous political configuration at Queen’s Park,

provides the researcher with a clear point of demarcation to symbolize the beginning of a new era of politics in Ontario.

Timeline of Study

There are a number of explanations as to why this project will examine a 43 year period from 1971-2014 as its timeframe. One important reason is that 1971 marks the beginning of a new mandate for Premier Bill Davis and his Progressive Conservative government, which had just been elected to a majority government. Davis, who had been elected premier earlier that year at a Progressive Conservative leadership convention, had had little time to accomplish much of substance before calling a general election. November, then, symbolized a fresh mandate and the beginning of a new legislature led by a Bill Davis majority government. Given that the year 1971 marked a clear point of distinction in Ontario's political history, it was a natural choice as a starting point for this study. Second, a period covering 43 years in which all three major parties in the province spent time in office, offers a considerable sample from which to trace the evolution of the dynamics of the Ontario Legislature. Crucially, however, the early 1970s also marked the beginning of the period most scholars attribute to both the increased centralization of power in the political executive as well as the rise of neoliberal ideology to address the limitations of Keynesianism. In this respect, 1971 serves as an ideal place to start, since it allows for a full overview of the both trends.

The chapters to follow are organized in chronological order and are grouped in accordance with the five major government mandates that have served in office since 1971.

- Chapter Four: The Davis Government 1971-1985
- Chapter Five: The Peterson Government: 1985-1990
- Chapter Six: The Rae Government 1990-1995

- Chapter Seven: The Harris/Eves Government 1995-2003
- Chapter Eight: The McGuinty/Wynne Government 2003-2014.
- Chapter Nine: Summary/Findings

CHAPTER FOUR

“THE REALITIES OF MARCH 19th”; THE DAVIS YEARS 1971-1984

Coping with Systemic Transition

When Bill Davis was elected as the leader of the Progressive Conservative Party of Ontario in February 1971, he inherited the helm of a political machine that had governed the province since 1943. During the previous 28 years of their reign, the Tories oversaw the tremendous prosperity that accompanied the post-war upswing in the capitalist economy and the subsequent expansion of the welfare state. Throughout the 1960s, Ontario's population grew 20.8 percent and its GDP increased 122 percent (Hoy, 1985). During the upswing, the government was awash in revenues, and was able to govern according to a Keynesian approach to public policy, in which its investments to build up the social architecture of the province were financed by extraordinary increases in population and wage growth. Davis himself, as Minister of Education under Premier John Robarts, oversaw an historic expansion to the province's education system, during which time his ministry's spending grew 454 percent (Hoy, 1985).

The beginning of the long downturn in the capitalist economy in the early 1970s, however, meant that Davis came to office at almost precisely the moment that the Keynesian regime of accumulation had reached its limits. As the average rate of inflation began to scale steadily upwards throughout the decade, the rate of investment also began to decline, depriving the government of the revenues necessary to continue to expand the welfare state without incurring significant debt. By 1977, the provincial debt-to-GDP ratio had nearly doubled from the time Davis took office in 1971. At the peak of the inflation crisis in 1981, Ontario's consumer price index had swelled to an annual increase of 12.1 percent from the previous year (Statistics Canada, 2015c).

The story of the Bill Davis era in Ontario, then, is one of a government attempting to find policy solutions to cope with the tremendous challenge of governing through the transition from a Keynesian to a neoliberal regime of accumulation. As is the case with most periods of systemic transition, shifts rarely occur in a single revolutionary moment, but rather more gradually through a series of incremental changes. This is the case because, as Kuhn (trans., 2012) argued in his seminal work *The Structure of Scientific Revolutions*, the transition to new paradigms are often fiercely resisted by those whose practices, habits and ideologies are steeped in the normative behaviour of traditional methods. Davis, noted for his political savvy and caution, would prove to be no exception to this rule. Unwilling to commit fully to cutbacks to social programs, the Davis government increased annual spending each year it was in office, and resorted to deficit financing in order to maintain the framework of the welfare state established by earlier Tory governments during the post-war upswing. Davis era policies would attempt to balance social spending with a devotion to the logic of neoliberalism by adopting a policy of restraint in the public sector. This deference to the accumulation function would reveal itself most clearly in the government's pursuit of cost-cutting strategies in order to harness the rate of inflation in the province through myriad policy initiatives that sought to maximize efficiencies, suppress average wage growth in both the public and private sectors, and control prices. While the Davis government's approach to the onset of the long downturn did not result in a complete abandonment of Keynesian policies, it would mark the first undertaking in the province's transition towards the adoption of neoliberal fiscal policy.

The turn towards the logic of fiscal restraint began early in Davis's first mandate as premier. In his 1972 budget speech, Treasurer Darcy McKeough boasted that the government's budget "fully slashes the growth in provincial spending and reorders our priorities to meet urgent

social needs” (Mar. 28). McKeough (1972) appealed for a new fiscal discipline to address the urgent and exceptional circumstances of the inflation crisis. As the budget speech explained: “The rigorous restraint on spending will make room for expansion of private sector activity and curb inflationary forces as the economy moves back to full performance” (Mar. 28). So doing, he contended, stayed, “within the limits of moderation and will help to bring about renewed prosperity and a better life for all Ontario citizens” (McKeough 1972, Mar. 28).

Davis-era economic policy may be broken up into two distinct eras. The first, which spanned from 1971-1981, was characterized by a more concerted and politically cautious approach to the application of neoliberalism. During this era, the Davis Tories passed several back-to-work bills, ratified the federal wage and price controls legislation, and announced a freeze on public sector hiring. However, it also passed legislation mandating rent controls, allowed teachers the right to strike, and passed an occupational health and safety bill that won the plaudits of many unions. During this period, Davis made a concerted effort to broaden the party’s political tent. The government’s restraint agenda was also held in check by two successive minority parliaments from 1975-1981 with a significant NDP presence. Large-scale and politically unpopular changes, then, would have been nearly impossible for the government to achieve without opposition support in the legislature.

The second era, which coincided with the Conservatives’ return to a majority government in the legislature from 1981-1984, was characterized by a marked shift to the right, as the government became more aggressive with supply-side intervention to address the crisis.

Strengthening the Centre: Reforms to the Cabinet Structure of Ontario

In one of its first acts after winning a majority government during the 1971 election, the Davis government took steps to centralize the management structure of the executive council

through a series of sweeping changes to the departmental complexion of the Ontario government. The reforms followed the recommendations set out by the Committee on Government Productivity (COGP), which was chaired by prominent businessman John Cronyn, and comprised of several other top executives and public servants from around the province. Their mandate was to improve the efficiency of government by finding ways to streamline the functions of the state apparatus. The commission recommended a variety of reforms to the management structure of the government that would mimic a corporate structure with a more pronounced hierarchy of other ministries.

In early 1972, the government introduced Bill 14, establishing the Policy, Planning and Priorities Committee (PPPC) of cabinet, which was charged with the responsibility of establishing the general strategic approaches of the government. While the PPPC would remain responsible to the executive council at large, and ultimately, the Premier's Office, it would retain considerable power to establish the general short and long-run priorities of the government. Bill 13 established the Management Board of Cabinet. The Management Board, which was to be comprised of cabinet ministers and parliamentary secretaries, was charged with the oversight and management of all fiscal planning and spending in the province as well as the approval of labour contracts with the Ontario Public Service. The Management Board would also be delegated the authority to approve or deny spending in all government departments, thus establishing its place as the vanguard of the government's commitment to improve financial accountability and efficiency.

The third element of the COGP reform agenda involved wholesale changes to the departmental structure of government. Bill 27, *An Act to Provide for the Reorganization of the Government of Ontario*, mandated the creation of several new ministries. It eliminated several

ministers without portfolio from cabinet and replaced them with legislative assistants, who would not formally serve in cabinet, but would carry out many of the administrative duties of a cabinet minister. This responsibility included the authority to respond to the opposition in the minister's place during Question Period. The effect of this new arrangement was to extend the responsibility for managing government to a larger number of members without granting them the power of belonging to the formal structure of cabinet itself. The COGP reforms sought to expand the administrative tent, but reduce the number of cabinet ministers with influence over consequential policy decisions, thereby increasing the concentration of power at the centre of government.

To this end, Bill 27 also created several new ministries, including the Ministry of Revenue, Ministry of the Environment, as well as a new “super” Ministry of the Treasury of Ontario and Economics and Intergovernmental Affairs. The reallocated departmental structure of cabinet would make the Treasury the most important and powerful ministry. Additionally, the inclusion of responsibility for the intergovernmental affairs position of cabinet allowed the Treasurer the capacity to act as a delegate alongside the premier at important interprovincial and international conferences. This primary commitment to finance and economics would be a hallmark of the Davis government over the next decade as it attempted to grapple with the challenges of inflationary pressures.

The effects of the reforms recommended by the COGP were two-fold; first, by centralizing the cabinet structure, the government managed to streamline central government planning within a smaller, more concentrated cabinet structure. Davis sought to provide his government with a more coherent general purpose by appropriating the approaches of the private sector. The executive council would now be characterized by a more vertical organizational

structure as cabinet committees came to serve as the guardians of the government's overall agenda. Secondly, the establishment of the Management Board of Cabinet and the creation of the powerful Treasury and Economics Ministry ensured that fiscal planning and government spending would be controlled by a reasonably small number of cabinet ministers in collaboration with the premier's office. This reflected a renewed emphasis upon fiscal management and financial efficiency, as well as an embrace of the principles of the new public management which emphasized budgeting, financial management, organization methods, auditing, and evaluation as primary objectives (Barzelay, 2001). By centralizing cabinet authority in the Treasury, the government sought to control the expenses in each of its ministries as a means of increasing the financial accountability of the government more generally. In the years to follow, this new cabinet structure functioned as the vehicle through which the government would mandate and exercise administrative control over its restraint agenda.

As rising interest rates began to function as a drag on Ontario's economy by the middle of the 1970s, the government sought to supplement a diminished revenue base by introducing a number of modest restraint measures. Perhaps the most significant was a commitment made in 1976 to reduce staffing levels in the public sector through attrition and hiring restrictions. To underscore the growing importance of the centre of the executive during the Davis era, the responsibility to oversee its restraint agenda was tasked to the Management Board of Cabinet. The Management Board established a Manpower Control System, which gave it full authority over budget allocations for salaries and benefits throughout the entire government.

Although early attempts at restraint in the Davis-era did not ultimately result in significant structural changes to the public service when compared with those that were to come in the 1990s, the cabinet management structure put in place during the 1970s established the

administrative architecture that ultimately helped to facilitate more radical reforms. The practice of overcoming the challenge of path dependency within the public service by streamlining managerial authority through the centre of the political executive became a common tactic in the government's restraint agenda throughout the 1970s and early 1980s.

Governing Through the Executive Authority in the Davis Era

One of the trademarks of Bill Davis's tenure as premier was to insulate controversial decisions from the legislation process through regulation. This was a trend Davis displayed from the beginning of his premiership. Shortly after taking office, Davis announced that his government planned to cancel the nearly 30-year-old plan to build the Spadina Expressway in Toronto. Although a significant portion of the road had already been built, the extension of Spadina Avenue was deeply unpopular among local residents who lived near the corridor from North York to just south of Bloor Street, where the new high-speed expressway was to be built. Given the deep political divisions between residents in the downtown who did not want a noisy highway built in their neighbourhoods, and commuters from the suburbs who were exhausted by traffic congestion on narrow downtown streets, Davis sought the political shelter of governing through the executive authority to mandate its cancellation.

On June 3, 1971, Bill Davis rose in the legislature to announce that his cabinet would cancel the Spadina Expressway by way of its regulatory powers. In what became known colloquially at the legislature as his people versus cars speech, Davis (1971) maintained that the city, "does not belong to the automobile," and any infrastructure to accommodate the use of cars in the downtown core must, "neither depreciate nor destroy their community life" (Jun. 3). Whether his concern for urban Torontonians was legitimate or mere conjecture is open to interpretation. However, this decision foreshadowed a tendency in the Davis government's

political strategy to centralize the decision making process when confronted by issues that were of a highly contentious political nature, and to act swiftly once a decision had been made as a means of minimizing the political damage to the party brand.

Davis's cancellation of the Spadina Expressway was also significant in that it resulted in the overturning of a decision by the Ontario Municipal Board (OMB), an independent administrative and adjudicatory body of the Ontario government, to allow the new road. In his decision to rescind the board's ruling, Davis invoked Section 94(a) of the *Ontario Municipal Board Amendment Act, 1965*, which permits the cabinet to "confirm, vary or rescind the whole or any part of such order or decision," of the OMB (Peacock, 1971, Jun. 22). Davis's decision constituted the first time in modern Ontario history that a government had arbitrarily overruled a decision of the OMB without recourse to further appeal (Peacock, 1971). While Section 94(a) was included in the legislation to allow cabinet the authority to change a ruling or order a new hearing, previous governments had avoided making such decisions at risk of undermining the legitimacy of the board as an independent, impartial, and apolitical arm of the government. For the Davis government, however, establishing such precedents were a small repercussion for the political gain to be had by cancelling the Spadina extension through Toronto.

Several years later, the Davis government once again resorted to governance through its executive authority to ratify the terms and conditions of the federal *Anti-Inflation Act*. The terms of the federal bill gave powers to an Ottawa-appointed board anti-inflation board to establish controls over labour costs and the prices of commodities in the province of Ontario (Panitch, 1976). In late 1975, confronted by a minority in the legislature, and an opposition that objected to the adoption of the *Anti-Inflation Act*, Davis used the privileges of the executive to unilaterally

adopt the bill's provisions without so much as consulting the legislative assembly or holding public hearings.

Widespread public dissent over the anti-inflation legislation led to an eventual Supreme Court challenge in the spring of 1976. The Court ruled that the Ontario government's ratification of the legislation through an order in council was unconstitutional in that it violated the principle of the supremacy of legislature. In its decision, the Court wrote: "There is no principle in Canada that the Crown may legislate by proclamation or order in Council to bind citizens when it so acts without the support of a statute of the legislature" (Anti-Inflation Act, 1976). They ruled that the federal legislation did not in itself grant the provinces the power to enact the bill through regulation, but rather functioned principally as an, "agreement to have certain legislative enactments become operative as provincial law" (Anti-Inflation Act, 1976). In light of this, the Court claimed that "Ontario as the provincial executive had no authority to impose by mere agreement legal obligations upon persons in the Province" (Anti-Inflation Act, 1976). The government was subsequently forced to rush a bill before the assembly the week after the ruling to formally implement the terms of the anti-inflation legislation. Bill 127 (1976) passed in just two days on the eve of summer recess with the support of the Liberals. However, the Supreme Court had ruled in no uncertain terms that the government's use of its executive authority to circumvent the minority legislature was both unconstitutional and contrary to the spirit of representative democracy. Despite the strong language used by the Court, it would not be the last time the Davis government would resort to the use of the executive authority to expedite anti-inflation legislation through the assembly.

The Establishment of Cabinet Appointed Boards and Commissions

One manner in which the Davis government established more executive control over policy making was through the establishment of commissions that were accountable to and appointed by the executive council. These commissions operated in the manner of what Jeremy Bentham (1830) called corrupt obsequiousness. This is an approach to government in which the authority of the state is held together by delegating duties within the state apparatus to those who are, by the nature of their positions, reliant and accountable to those in power. Furthermore, they served to carry out the central policy objectives of the government, while functioning as a political shell for the government by providing the appearance of an independent, impartial body.

One of the most controversial examples of this was Bill 131, *The Farm Income Stabilization Act*, passed in 1976. This bill established the Farm Income Stabilization Commission of Ontario, which was charged with responsibility of combating inflation through the regulation of food prices (Bill 131, 1976). The commission was to be comprised of, “not fewer than five men,” all of whom were to be, “appointed and paid for by the government” (Bill 131, 1976). Perhaps most significantly, under Section 5(1) of the Act, all decisions of the commission were subject to the approval of the Lieutenant Governor-in-Council (Bill 131, 1976). This ensured that while the commission would be formally vested with the power to make decisions on the government’s behalf, it remained subject to cabinet veto. In this respect, it functioned essentially as an appendage of the executive council, rather than as a body with independent powers.

In essence, then, Bill 131 provided the government with the authority to establish, amend, and repeal programs governing baseline food prices in Ontario without having to consult the legislature for debate or approval. This trend towards centralization was an important element of the government’s strategy to battle inflation during the 1970s and 1980s. The *Farm Income*

Stabilization Act allowed the government to both design the architecture under which a program of price restraint would occur, but also to retain the power to govern according to its own discretion where necessary.

In another example of its use of arm's length corporations accountable to cabinet, the government passed Bill 90, *An Act to Establish the Ontario Waste Management Corporation*. This bill delegated authority to a new corporation, "to establish, operate and maintain facilities for the transmission, reception, collection, and disposal of waste" (Bill 90, 1981). Despite extending such power, the bill contained a provision empowering cabinet to, "formulate policies to be followed by the Corporation in carrying out its objects" (Bill 90, 1981). Not only did this give cabinet the power to direct the actions of the Waste Management Corporation, it also allowed it to use its status as a corporation to receive exemption from the *Environmental Assessment Act*, Section 43 of the *Ontario Water Resources Act*, and Section 33(a) of the *Environmental Protection Act* when proposing a new site for waste management. Furthermore, the bill permitted the government to override municipal by-laws through regulation. In the words of MPP Brian Charlton (1981), the government gave the corporation, "the ability to ignore totally what some municipalities may have spent decades putting together -- not only ignore it, but perhaps even destroy it" (Jun. 23).

Shortly after the bill received Royal Assent, cabinet used the authority granted to it in the bill to override local concerns about the safety of the establishment of a hazardous waste treatment facility in the township of South Cayuga by passing an order in council to bestow upon the new Waste Management Corporation full authority to override municipal council. The order also allowed the hazardous waste sites full exemption from the terms of the *Environmental*

Assessment Act by determining *a priori* that the site had been deemed safe for use (Winfield, 2016).

The government employed a similar tactic when it passed Bill 158, *An Act to Establish the Ontario Energy Corporation* in 1974. This legislation established a corporation without share capital to, “invest or otherwise participate in energy projects,” throughout the province (Bill 158, 1974). The bill was a response to rising energy prices in the early 1970s, which contributed to higher average inflation rates. The new corporation was to be empowered to invest in energy resources on behalf of the government as a means of securing Ontario’s energy supply and combating rising global fuel prices. The bill established a share structure split up into two million common shares and twenty million special shares that the cabinet-appointed board could make use of at its own behest (Bill 158, 1974).

It was through the Ontario Energy Corporation that the premier’s inner circle made the controversial decision in to acquire a 25 percent share in Suncor Incorporated for a sum of \$650 million. On October 13, 1981, the first day the legislature convened after its summer recess, Bill Davis delivered a short statement announcing the government’s purchase of a one-quarter share in Suncor. The decision surprised not only the opposition, but also members of the Progressive Conservative caucus, who had not been apprised of the decision before the premier made the announcement in the legislature (Hoy, 1985). Davis (1981) contended that the decision was taken in commensuration with the federal National Energy Policy in pursuit of the “Canadianization” of the petroleum industry, and fulfilled, “a policy commitment announced by the Minister of Energy a year ago for greater Ontario participation in the Canadian petroleum industry” (Oct. 13). It was his hope and expectation that the federal government and other provinces would also

purchase a stake to bring the ownership of Suncor by Canadian governments to a number in excess of 51 percent.

The government was able to use the Ontario Energy Corporation to insulate it from having to validate the contentious share purchase in the legislature. It was also able to use the corporation to conceal documentation that provided details of the terms of the deal. Liberal leader Stuart Smith referred to the government's refusal to issue the documents surrounding the deal as, "without parallel in Canadian history" (Smith, 1981, Nov. 19). In a later debate, Smith argued:

We in the opposition believe that if democracy is to have some meaning, then when the most major purchase is made by the government of Ontario... we think we are entitled to the same information the government had at its disposal when it made the decision. We can conceive of no reason whatever why, in the democratic process, the opposition should be denied that kind of information (Smith, 1981, Nov. 30).

Despite pleas from the opposition, however, the government stood steadfast in its decision to use the arms-length nature of the corporation to withhold documents related to the deal from the public.

Bill 179, the *Inflation Restraint Act* was arguably the most controversial bill passed during the Davis era. Its intent was to grapple with the economic downturn of the early 1980s by freezing public sector wages to a maximum of five percent increases for the ensuing year and setting fixed prices for goods and services provided by the government. In keeping with its propensity to establish cabinet-appointed bodies to carry out its objectives, the government created the Inflation Restraint Board to carry out its objectives. Under Section 29 of the bill, the board was empowered to make recommendations to arbitrarily roll back or disallow price increases and to set public sector salaries for the upcoming year (Bill 179, 1982). The *Inflation Restraint Act* also granted cabinet the authority to overrule any decision of the board to ensure

that its decisions were consistent with the restraint objectives of the government. In effect, then, the bill granted the government the authority to set public sector wages and to control prices without having to pass highly contentious policy through the often chaotic and muddled process of democratic deliberation.

NDP MPP Jim Foulds (1982) called the bill an attack “on democracy itself,” which, “established a czar with rights and privileges that Louis XVI would have envied” (Sep. 23).

Finance Minister Frank Miller (1982) encapsulated the government’s position, citing a quote from economist Alfred Kahn:

The problem in our economy is that we have these persistent, well-organized pressures by each individual and group to preserve his or her absolute position regardless of what happens to the country as a whole. What this does is create, on the part of everyone in society, the expectation that no matter what happens to the aggregate, each of us is individually entitled to CPI plus three percent. What we have got is those constant forces to increase expenditures, to increase nominal incomes and to expand government programs. It is clearly something that has to do with a lack of social discipline (Sep. 23).

The problem for Miller was that competing social interests in society had a tendency to interfere with taking the necessary steps to curb inflation. This lack of social discipline could only be achieved by vesting those individuals with an appropriate understanding of how to fix the problem with the authority to make decisions free from external constraints. Miller (1982) claimed that he believed, “a democracy can discipline itself,” but would first require that the opposition support his government’s legislation to undermine the bargaining rights of labour and to centralize authority over the governance of the economy in the hands of cabinet (Sep. 23).

While the Davis government was willing to work with union leaders, opposition members, and social activists to achieve certain goals, broader issues of economic governance were to be sheltered from the public forum in order to give the government a free hand to establish fiscal stability.

Centralizing Local Politics at Queen's Park

There is a common misconception in Canadian politics that municipalities are one of the three levels of government. While this may be true in practice, from a constitutional perspective only federal, provincial and aboriginal are recognized as formal orders of government. Under Section 92(8) of the constitution, the provinces are granted the authority over municipal institutions. As a consequence, municipalities are not formally self-governing entities, but rather are creatures of the provinces, subordinate to their laws and regulations. While use of the province's authority to override decisions of municipal councils had been common practice in Ontario since Confederation, the Davis era marked a significant heightening of the province's use of this constitutional power.

From the early 1970s onwards, the government began to design policies to discipline wayward municipal councils that strayed from its objective to cut costs and reduce inefficiencies. In one such example, through Bill 154, the *Property Tax Stabilization Grant Act*, the Tories established a new funding program to take pressure off of municipalities plagued by rising interest rates by offering grants to those cities in need of extra revenue. While the program was created with the intent of stabilizing municipal finances, it also contained provisions to promote fiscal restraint as a condition for provincial support. Under the legislation, municipalities that were able to keep their spending growth under eight percent were eligible for funding support from the province up to six percent of its overall municipal levies. Municipalities unable to maintain spending growth under eight percent were only eligible for a four percent grant, while those cities with spending growth that exceeded 12 percent in the previous fiscal year were offered only two percent of their total levies. The intent of this provision was to control spending at the municipal level by attaching punitive measures to a much needed funding grant for those

municipalities that failed to enact a policy of restraint. Although Queen's Park did not legally compel austerity policies, it used its position as lender of last resort to coerce compliance with its restraint agenda (Bill 154, 1972).

The province also used its jurisdictional authority over education to impose restrictive laws upon locally administered and managed school boards. Bill 127, the *Act to Amend the Municipality of Metropolitan Toronto Act*, allowed the government to reorganize the financing and negotiating schemes of the Toronto school board system at the expense of local autonomy. The legislation mandated compulsory joint bargaining between teachers and the city's six district school boards under the umbrella of a single, region-wide negotiating unit. The purpose of this new directive was as MPP Jim Bradley (1983) put it, "an attempt to centralize control of education," in the province (Feb. 23). He continued that his party's "vehement opposition" to the bill stemmed from, "our view that this bill represents an assault on local autonomy in teacher-board negotiations in Ontario and in certain aspects of the financing of education at the local level in Metropolitan Toronto" (Bradley, 1983, Feb. 23). The benefit of requiring compulsory joint, regional bargaining from the province's perspective was to centralize negotiations so as to exert more influence over the terms and conditions of collective agreements. A further inclusion to the bill required that teachers and the new regional bargaining unit negotiate a fixed cap on the number of teachers that may belong to a board at any given time, and that each board not exceed this number (Bill 127, 1982).

Additionally, as a means of incentivizing what Education Minister Bette Stephenson (1982) called "prudent educational spending," the bill included provisions that required by law that any board running a deficit have the costs charged to that local board rather than absorbed by the regional board (Jun. 23). The regional Metro Toronto board was vested with the authority to

render increases in transfers to the local boards, however, such increases were contingent upon the cause of the deficit being attributable to costs set out in Section 133 of the bill (Bill 127, 1982). In short, through what NDP leader Bob Rae called its “two-tiered monstrosity,” the province was able to wrest control over the financial operations of Toronto’s school boards by centralizing power in a provincially controlled regional body, while allowing the local boards to retain authority over day-to-day operations. The clear intent of this legislation was to harness costs by placing the collective bargaining process in a board accountable to Queen’s Park, designating caps on the hiring of new teachers, and establishing more budgetary accountability for school boards.

Another piece of legislation, passed during the same session as the *Metro Toronto Act*, Bill 46, *An Amendment to the Education Act*, continued the trend of centralizing the power to govern teacher salaries and the fiscal management of the province’s school boards at Queen’s Park. Specifically, an amendment to Section 150(1), which stipulated that a board may “determine the number and kind of schools to be established and maintained, and the attendance area for each school,” was amended to include a new provision which required boards to, “close schools in accordance with policies established by the board from guidelines issued by the minister” (Bill 46, 1982).

Bill 46 also included a clause, “prohibiting or regulating and controlling any program or activity of a board that is or may be in competition with any business or occupation in the private sector allows the ministry to restrict the activity of any board that it deems to pose a competitive challenge to an interest in the private sector.” (Bill 46, 1982) As opposition MPP Marion Bryden pointed out, this amendment to the bill was “so ambiguous that one cannot really tell whether it would rule out a school board offering special education because there could be a private school

in the area that also offers special education” (Bryden, 1982, Jun. 23). Indeed, the ambiguity of such a clause could, “rule out all day care activities in an area where there were private day care activities,” or, “all academic programs if there were private schools in the area, because it would be competing with a private operation” (Bryden, 1982, Jun. 23).

The Davis government adopted a similar approach in its relations with Ontario’s self-governing post-secondary institutions. An advisory report from the Ontario Council on University Affairs provided in the government’s sessional papers on the bill, lamented the problem of growing deficits at Ontario’s universities. It argued that some institutions were at risk of financial insolvency if the government did not intervene to take action to force Ontario’s higher education institutions to become accountable to the Ministry’s deficit targets (Ontario Council on University Affairs, 1982). While the tradition of self-governance should be respected, the report maintained: “It cannot be successfully argued that institutional autonomy must be absolute, particularly when the major portion of the operating cost comes from the public purse” (Ontario Council on University Affairs, 1982, p.2).

In response to the Ontario Council on University Affairs’ report, in the fall of 1982 the government introduced Bill 213, *An Act to Amend the Ministry of Colleges and Universities*, which sought to use its control over the state administrative apparatus to dispense severe disciplinary measures to post-secondary institutions that ran deficits. The bill stipulated that, “no university incur a deficit in its operating fund in excess of two percent of its revenue for the year” (Bill 213, 1982). For universities that failed to meet this standard, the bill provided for the appointment of an arbitrator to “investigate and report upon the financial situation of the universities” (Bill 213, 1982). Cabinet was also authorized to appoint a university supervisor accountable to the minister with the power to control of the finances of the university, and to

make the necessary changes to restore it to surplus conditions (Bill 213, 1982). During this term, “no act of the governing body is valid unless approved by university supervisor” (Bill 213, 1982). This provision marked a monumental step for the Davis government, in that it undermined the tradition of the autonomous academic institution by threatening the complete transfer of its sovereignty to a financial czar who was authorized to enforce a policy of austerity upon the institution. It is important to note that although Bill 213 was re-introduced in the third, and once again in the fourth sessions, both times under the name Bill 42, at no time did it ever proceed beyond second reading in the legislature. However, the bill was intended mostly as a mechanism to indirectly incite universities to adopt the government’s policy of fiscal restraint, and in this respect it had its intended effect, coercing universities into adopting their own restraint policies.

Undermining Public Sector Bargaining Rights

The *Inflation Restraint Act* was not only the most controversial bill passed by the Davis era Tories, but it was also the most dramatic and sweeping use of state authority to undermine collective bargaining in post-war Ontario. As a part of its efforts to harness inflation during the recession of the early 1980s, the government took the unprecedented step of imposing a freeze on public sector salaries by mandating that pay increases be limited to no more than five percent for members of the Ontario Public Service (OPS) during the period from October 1, 1982 to September 30, 1983. It also extended their contracts for the duration of that period without allowing for collective bargaining. Additionally, the Act restricted scheduled merit increases in existing contracts for employees earning more than \$35,000. To this end, Subsection 12(2), gave the Inflation Restraint Board the authority to decide whether or not to pay the employees the difference between the collectively bargained pay increases of \$1,000 (Bill 179, 1982).

NDP leader Bob Rae (1982) argued the purpose of the bill was,

Quite simply to break contracts in the public sector, to take away from employees in the public sector something they have bargained for, something their collective agreements have provided for, something the government of this province in all solemnity agreed to, in some cases just a few short months ago (Nov. 30).

In addition to its responsibilities to control prices, the Inflation Restraint Board established by the bill was also given authority to determine wage increases during this period so long as they did not exceed the five percent ceiling. The powers granted to the board vested it with authority to accept or reject public hearings on its decisions at its own discretion: “the board is not required to hold any hearing before making any order, decision or determination that it is authorized to make” (Bill 179, 1982).

The government contended that such measures were necessary to bring public spending in line with the private sector in Ontario, which had shed 82,000 jobs over the previous year and was producing far fewer revenues. As Treasurer Frank Miller (1982) put it, “We cannot permit unconstrained growth in the public sector when the private sector is undergoing its most serious crisis since the end of the Second World War” (Sep. 23). Attempting to justify the decision, MPP Bette Stephenson (1982) suggested that the bill would provide, “a time for us to catch our breath, to reflect upon the future as well as on the past and the present and to move towards combating inflation, which has been a virulent attack on our spiritual and physical wellbeing over the past decade” (Oct. 5). She continued her defence by lamenting: “There is no doubt at all that there are those in our society who will continue to disagree with the program; they will still want to take out more than they are willing to contribute” (Stephenson, 1982, Oct. 5). However, as NDP MPP Odoardo Di Santo (1982) pointed out, the estimated savings by the government was only \$420 million, which constitutes only “a minimal percentage of the provincial budget and an even lower percentage of the gross provincial product” (Oct. 5).

Predictably, the opposition parties in the legislature took considerable issue with the authority granted to an unelected, unaccountable board to make arbitrary decisions about public sector wages for the tenure of the bill. Rae (1982) argued that the name of the board ought to be changed to the “expropriation board,” since, “it has everything to do with expropriation of wages in the public sector” (Nov. 30). He maintained the bill gave the board “extraordinary, unusual, emergency, peremptory and dictatorial powers” (Rae, 1982, Nov. 30). In a speech to the Legislative Assembly on November 30th, 1982, Rae laid out his stance on the bill in the clearest possible terms:

Basic rights and assumptions of due process, rights to a hearing, rights to a rational and arbitrated decision, all of which have become an essential part of the fabric of public law in Ontario, have all been wiped out a single stroke of the pen. Those rights have been replaced by a regime of unilateral power, enforced wages and working conditions, and one-man rule. There is no other way to describe it.

NDP MPP Jim Foulds (1982) argued that although the bill contained, “draconian, arbitrary measures” for the wages sector, the same could not be said of government fees and charges, which were subject to maximum increases of five percent, but were ultimately left to the discretion of cabinet (Sep. 23). The contradiction inherent in this provision, as Foulds recognized, is that while the government imposed mandatory restrictions on wage expenses, it did not impose the same restrictions on its own behaviour. This, he argued, revealed that the true intent of the bill was to undermine the efforts of labour through the imposition of restrictions on wage increases and the right to strike. Bill 179 was, “a piece of class legislation that makes ordinary people suffer under oppressive laws but lets the privileged, well-to-do corporations accumulate wealth almost at will” (Foulds, 1982, Sep. 23).

By-Passing the house: The Use of Legislative Procedure to Suppress Dissent

The decline of the role of the legislature in Ontario can arguably be traced to the aftermath of the 1975 election, when the Bill Davis-led Progressive Conservatives were reduced to a minority government. The Tories, plagued by several accusations of influence-peddling throughout their previous mandate, fell from 78 to 51 members in the 125 seat assembly. Governing the first minority legislature in nearly 30 years, the Davis government could no longer rely upon internal party discipline to implement its agenda. Instead, it would have to find support from either the official opposition NDP, or the third party Liberals in order to move its agenda through the legislature. This would prove particularly challenging given the that government's Speech from the Throne boasted that Ontario would continue to lead the way in "restraining its own expenditures and reducing the growth of its civil service," promising these measures would be "continued in reinforcement of the national programme" of fiscal restraint (McGibbon, 1975, Oct. 28). This renewed commitment to fiscal discipline pitted the government's ideology in direct contrast with that of the opposition parties, which remained committed to the essential principles of Keynesian economics.

From the beginning of 1975 minority parliament, the government and opposition house leaders organized the proceedings of the house out of the view of the public. The government would often make concessions to the opposition, such as allowing government additional time to debate a particularly controversial piece of legislation or permitting opposition private members bills to proceed to second reading debate, in exchange for the promise that they would not unduly obstruct the government's program. Generally speaking, then, the parliamentary calendar was established well ahead of time at house leaders' meetings and was adhered to by the caucuses of each party. Although the government often proposed legislation to which the opposition was deeply opposed, the tradition at Queen's Park had been to respect that the

government had the right to impose its agenda without undue obstruction from the opposition members of the house. So deeply engrained was this culture of reciprocity at Queen's Park, that there existed no provision for time allocation in the *Standing Orders* until the 1990s, and while a provision for closure did exist, by the 1970s no active member could remember a time in which it had been used to end debate on a bill. This also meant, however, that the opposition parties, which were within their rights under the *Standing Orders* to obstruct bills *ad infinitum*, had also proven willing to stand down to allow legislation to pass even when they were deeply opposed.

There were arguably two reasons for the existence of this culture of reciprocity at Queen's Park. The first, is that while significant differences existed between the major parties, the embrace of Keynesian orthodoxy by the Progressive Conservatives meant that the ideological differences between the government and opposition were never so wide that they could not be bridged. The post-war period was a time of prosperity in which the government was able to constantly expand the welfare state because of growing revenues. While differences existed on how these revenues should be allocated, the parties were more or less ideologically aligned on the majority of the issues. As prosperity gave way to scarcity, these ideological differences began to sharpen, creating much deeper divisions between the major parties. Second, since the general election of 1945, the Progressive Conservatives had won successive majority governments. The result was the emergence of a culture at Queen's Park in which the parties became ossified in their roles: the Progressive Conservatives as the natural governing party, while the Liberals and NDP/CCP became accustomed to their role as the permanent opposition. The lack of a competitive electoral environment at Queen's Park enabled the government to establish a culture in which it could distribute the spoils of power in exchange for an agreement from the opposition that it would not unduly block its agenda.

It was this consensus that began to erode as the difficult policy choices of an inflation crisis coincided with the first minority government in Ontario in 30 years. Given that both the Liberals and NDP were at least in principle opposed to the central tenets of the government's austerity agenda, it was inevitable that these two contradictory interests would soon reach a stalemate. This was further complicated by the fact that the imposition of fiscal discipline was politically unpopular, incentivizing the government to seek to move all such controversial restraint bills through the assembly as quickly as possible. The contradictory relationship between the need to address the economic crisis confronting the province and its need to establish the confidence of an opposition that was averse to the measures it deemed necessary to harness inflation placed the Davis government in a difficult situation: if it were to pursue its agenda, it would have to decide whether to use the procedural mechanisms at its disposal to move legislation through the assembly in a timely fashion, or whether to allow the opposition parties to delay and amend key anti-inflation bills.

An example that would foreshadow the conflicts to come occurred during Davis's first majority, in late summer 1974 when the house was recalled from recess to legislate striking TTC employees back to work. On the first day of deliberations, the government attempted to produce a second *Order Paper* for the sessional day—*Order Paper 77a* to replace *Order Paper 77*—as a means of circumventing the requirement for unanimous consent to proceed to second reading unless notice is provided. While the house leaders had agreed beforehand not to obstruct the process of the bill to second reading, the government, anxious to see transit services in Toronto operating again, elected to take no chances that a rogue member might obstruct or delay passage of the bill until the following sessional day. The maneuver was condemned by Liberal MPP Vern Singer (1974) as “an arrant abuse” of the privileges of the legislature by a government that was

behaving, “too cute by half” (Aug. 30). Although there were no explicit rules prohibiting the production of a second *Order Paper* for a sessional day, the opposition argued that it contravened the spirit of the legislature as well as the long-established precedent to seek unanimous consent where previous notice had not been provided.

Stephen Lewis (1974) warned that this type of procedural tactic, “poisons the atmosphere of the legislature totally unnecessarily” (Aug. 30). The Speaker ruled that while he did not, “know where the government gets off producing two *Order Papers* for the same sitting of the same day,” he had little choice but to rule the tactic as being in order since there was no rule explicitly preventing it (Reuter, 1974, Aug. 30). In his book, *The Happy Warrior*, former NDP leader Donald MacDonald speculated that the Clerk, Roderick Lewis, who he claims was often obsequious to the government, may have been involved in the plot. He recounted a story in which Singer was allegedly told by a smiling Lewis in the legislative dining room just hours before the second order paper appeared that “the situation was in hand” to proceed with the passing the bill in one day. “In this cute fashion,” MacDonald (1998) wrote, “the rules were circumvented, and the clerk was an accomplice in the government strategy” (p. 321).

Regardless of how it came about, the matter was ultimately settled when the house leaders convened and agreed to allow the bill to pass to second reading unanimously using the original *Order Paper*; but a precedent had been set. Although the use of the second *Order Paper* on a piece of emergency legislation was a relatively minor issue in the grand narrative of its parliamentary agenda, it warned of an approach to legislative governance that the Tories would turn to again on various occasions when contentious matters came before the house.

Through the successive minority parliaments from 1975-1981, house business was primarily organized through negotiations between Government House Leader Bob Welch and the

opposition house leaders. Functioning in a minority parliament did not prove without its challenges for the Davis government, however. When confronted with highly controversial legislation, it again resorted to the use of procedural tactics to evade opposition efforts to hinder their agenda. Such a situation would present itself in 1976 when the government attempted to pass the highly controversial *Farm Stabilization Act*, without allowing opposition amendments. The bill, which the Ontario Federation of Agriculture dubbed “a hollow carrot,” empowered a cabinet-appointed commission to regulate food prices (Smith, 1976, Jun. 15). Liberal Stuart Smith took issue with the Tories’ heavy-handed approach to the bill, reminding them that in a minority legislature, the government must establish a majority of votes. The Progressive Conservatives, he said, “are only 51 members. They are no more than that. There are 74 of us here in the two opposition parties and we deserve to be consulted. We deserve to have a say” (Smith, 1976, Jun. 15). In response to the government’s unwillingness to accommodate their demands for changes to the bill, the opposition NDP and Liberals collaborated to pass a number of amendments to the bill.

The following day, Government House Leader Bob Welch (1976) pronounced that the government considered its defeat on the opposition amendments, “a clear matter of confidence,” in its ability to govern (Jun. 16). As a result, Bill Davis introduced Motion Number Four, which resolved that the “government continues to enjoy the confidence of the house” (Welch, 1976, Jun. 16). Speaking on Davis’s behalf, Welch (1976) told the assembly that the government “didn’t take the decision lightly,” but reminded members that, “in the British parliamentary system, the executive branch must enjoy the confidence of the people’s representatives in order to continue” (Jun. 16). To this end, given that, “any limitation of the rights of the executive by

the legislature does indeed constitute a matter of confidence,” the government was left with little choice but to seek the confidence of the assembly (Welch, 1976, Jun. 16).

NDP MPP Michael Cassidy (1976) argued that if the government was concerned with the consent of the people it “should have gone to the Lieutenant Governor” to dissolve the legislature and plunge the province into a general election (Jun. 16). When the vote on Davis’s motion was held, the assembly upheld its confidence in the government with Liberal support by a vote of 78 to 35. *The Farm Income Stabilization Act* was ultimately re-introduced and passed as Bill 131 later in 1976. The house leaders negotiated a series of amendments to the bill in exchange for a promise from the opposition that it would not obstruct its passage. While the bill ultimately passed without issue in the winter, the government had used the bludgeon of confidence to intimidate the opposition, who were fearful of angering voters with an early election, into accepting the general terms of its agenda.

The Tories found themselves in a similar situation the following April during their attempt to pass Bill 28, *The Residential Premises Rent Review Amendment Act*. The central debate between the government and the opposition revolved around what became known as “the two percent solution” (Hoy, 1985, p. 141). The government argued that the existing six percent cap on rent increases was too low a number for building owners already struggling with rising interest rates. Instead, they suggested the ceiling be raised to eight percent to stimulate investment. Predictably, the opposition argued that an increase in the rent ceiling was not acceptable, since doing so would simply transfer the burden of rising inflation from property owners to those least able to afford increased costs. As was the case with Bill 96, Davis refused to change his position on the two percent increase stating that, “it is essential that this bill pass,” and again threatened that passing amendments to it would be considered “a serious lack of

confidence in the economic and social program of the government” (Davis as cited in McLeod, 1977, A1).

Despite these warnings, the opposition collaborated to make several amendments to the bill during the Committee of the Whole. Liberal MPP Hugh Edgihoffer (1977) brought forward an amendment to replace the eight percent cap in the bill, “by the lesser of eight percent or the rate of increase for compensation allowed under the basic protection factor and national productivity factor, as outlined in Part Four of The Anti-Inflation Act Guidelines Canada” (Apr. 29). Davis called the amendment, which would tie rent increases to the federal anti-inflation rules, “irresponsible,” and further stated that “it really is ridiculous” that the third party Liberals would support the general agenda of the government, only to “do this to us tonight” (Davis as cited in McLeod, 1977, A1). The next morning Davis contended that he left with “no other options” than to ask the Lieutenant Governor to dissolve the legislature for a general election to be held June 9. Davis had again attempted to use the confidence motion as a method of intimidating the opposition into conformity with its agenda (Davis as cited in McLeod, 1977, A1). However, the premier, seeking an opportunity to win a majority mandate, would use the opposition’s intransigence to justify calling a general election. While Davis’s second minority mandate from 1977-1981 never again had to resort to the formal use of confidence as a tactic to pass legislation, his decision to follow through on his threat stood as a warning to the opposition parties: future disputes were best resolved between the house leaders instead of by tempting fate through a general election.

Bringing Down the Hammer of Closure: The Realities of March 19th

Despite the relative harmony that characterized the 31st Parliament, the tenor of the debate shifted markedly after the Progressive Conservatives won their long sought-after majority

in the general election of 1981. When dust settled on the evening of March 19, 1981, the Progressive Conservatives had gained 12 seats for a total of 70 in the 125 seat legislature. Two factors, it is argued, would result in a general erosion of decorum in the legislature, and the government's eventual turn towards the most consistent and severe restrictions of debate in the assembly's history. First, a degree of hubris appeared to set in within the government after winning its majority. It took less care to consult the opposition before introducing legislation, and as a consequence, efforts at collegiality with the opposition parties slowed considerably. This was perhaps best illustrated by Bill Davis's (1981) answer to a question from the NDP by making reference to the realities of March 19th, reminding the opposition that as a consequence of his party winning a majority of seats, "the reality is that things have changed" (Apr. 23). The premier continued,

I am not going to give an undertaking to the leader of the New Democratic Party on the contents of proposed legislation. Traditionally they are made apparent when legislation is introduced, and that is when members will find out what is in it (Davis, 1981, Apr. 23).

Years later, Liberal MPP Jim Bradley would recount the impact of Davis's dismissal of the NDP question. He explained,

the government came back in here, having been a fairly conciliatory government from 1975 to 1981, and the Premier of the day referred to "the realities of March 19," and you could see it start to deteriorate from there, because they were back in the driver's seat, not having to be accountable (Bradley, 1993, Jul. 13).

Secondly, a recession set into much of the western economy in the late 1970s, and by the early 1980s Ontario's economy had also slipped into a cyclical decline. As taxation revenues began to fall in commensuration with rising unemployment, the government escalated its restraint and inflation control agenda by targeting public sector employees. The aggressive approach the government took towards restraining public sector wages and the reaction from the opposition to obstruct such efforts that ensued, meant that the government would either have to

deal with an obstructionist opposition that would delay the implementation of its key anti-inflation legislation; or it could act preemptively, applying the rarely used parliamentary mechanisms available to it to end debate, and usher its crisis management agenda through the legislature. In choosing the latter course, it would permanently alter the complexion of parliamentary procedure at Queen's Park.

One such example involved the use of closure. The issue in question was the government's acquisition of a 25 percent stake in Suncor Incorporated, and its subsequent refusal to produce documents related to the purchase in the assembly. The opposition, which had been calling for the release of the compendium detailing the purchase of the Suncor shares since shortly after Davis announced it in the legislature, used a routine motion for interim supply to filibuster in protest of the government's refusal to produce the documents in question. They stalled the proceedings of the legislature by speaking against the motion for interim supply, running the clock through to the evening adjournment. Under the existing *Standing Orders*, the debate on the matter would, by rule, have to resume the following evening when the Orders of the Day were called. Theoretically, then, the opposition could continue to filibuster until an agreement with the government could be reached.

Given the opposition's steadfast refusal to end its filibuster until the government released the compendium, Davis decided to invoke closure in the legislature to put an end to the stalemate on the grounds that the deadline for the government to write cheques had passed, and it needed approval of the legislature in order to pay wages and attend to other financial obligations. Liberal Leader Stuart Smith (1981) observed that, "the abuse of the democratic process we have seen in this house in the last month or so is without parallel in Canadian history" (Nov. 19). He continued his critique:

We tell them we want the information. At that point the minister comes in with crocodile tears and tells us, much as it hurts him to do this, he is thinking of the poor civil servants who have to buy groceries and whose cheques will be delayed if he does not bring in closure... So the minister cried his crocodile tears, and those very salty tears ended up causing moisture to fall on the first closure order in 100 years in the legislature of Ontario (Smith, 1981, Nov. 19).

During the night session of November 3, 1981, Bob Welch (1981) invoked standing order 36 without notice and closed debate when he motioned that, "this question be now put." Welch (1981) argued that where the compendium was concerned, "It is clear from the record that the house has considerable information at its disposal on this transaction. Moreover, it is clear there are legitimate reasons why it is not appropriate to provide the kind of information being sought" (Nov. 3). Furthermore, he explained, "The business of government must proceed in an orderly manner. While dissent is the spice of democracy, decisions have to be taken at some time" (Welch, 1981, Nov. 3). The opposition derided the decision as "a black day for this legislature," contending that using such a severe parliamentary procedure to conceal documents from the legislature was exemplary of, "the high-handed arrogance, the contempt for the people and for democracy," that had come to characterize the Davis Tories (Smith, 1981, Nov. 3).

The Emergence of Time Allocation as a Procedural Norm

While the utilization of closure on the interim supply motion in 1981 was the first time in decades a government had resorted to such an extreme measure to pass its agenda through the legislature, it would not be the last. The next time the Davis Tories attempted to restrict debate, they would resort to the use of time allocation. Time allocation was not formally provided for in the Ontario *Standing Orders*, but had precedent in the British parliamentary tradition dating back to the late 19th century. Its purpose was to restrict debate at different stages of the legislative proceedings at given intervals stipulated by the motion. In essence, then, time allocation served to end debate on a bill with notice, while avoiding the use of closure. Often

referred to colloquially as the “guillotine motion”, time allocation was an instrument that had been scarcely used in the Canadian parliamentary tradition prior to the 1970s.

It was significant that the Progressive Conservatives chose to use time allocation for the first time in the province's modern history on its most controversial bill, the *Inflation Restraint Act*. The Davis government appeared to realize after its experience the previous year on the interim supply motion that the passage of such highly controversial legislation would be no fait accompli unless measures were taken from the outset to restrict debate. When the third party New Democrats began to obstruct the passage of Bill 179 in the legislature with its leader, Bob Rae, declaring that he would accept nothing short of a full withdrawal of the legislation as a compromise, the Davis Tories took preemptive action by bringing down the hammer of the guillotine motion (Duffy, 1983). The purpose of the motion was to ensure that debate was brought to a timely conclusion at all stages of the legislative process. It read as follows:

notwithstanding any order of the house, the consideration of Bill 179, the Inflation Restraint Act, 1982, by the Committee of the Whole House, be concluded not later than 10:15 p.m. on the first sessional day following the passage of this motion unless such a date be a Friday, in which case the conclusion of the consideration will be not later than 10:15 p.m. on the following Monday, at which time the Chairman will put all questions necessary to dispose of every section of the bill not yet passed, and the schedule, and to report the bill, such questions to be decided without amendment or debate; should a division be called for, the bell to be limited to 10 minutes;

And, that, any debate on the question for the adoption of the report be held on the next sessional day and be concluded not later than 10:15 p.m. on that day, unless it be a Friday when again it will be on the following Monday, at which time Mr. Speaker will interrupt the proceedings and put the question for the adoption of the report without amendment or further debate and if a division is called for, the bell to be limited to 10 minutes;

And, further, that, the bill be called for third reading debate on the third sessional day following the passage of this motion and be completed not later than 10:15 p.m. on that day unless it be a Friday, when again it will be called on the following Monday, at which time Mr. Speaker will interrupt the proceedings and put the question without further debate and if a division is called for, the bell to be limited to 10 minutes;

And, finally, that, in the case of any division in any way relating to any proceeding on this bill prior to the bill being read the third time, the bell be limited to 10 minutes (Wells, 1982, Dec. 8).

Rae raised a point of order that the time allocation was out of order because provisions for its usage were not explicitly included in the *Standing Orders*. Rae explained, “There is no right on the part of the majority to bring in a motion for time allocation that falls outside the *Standing Orders* of this assembly” (Rae, 1982, Dec. 8). Wells, however, countered that while there was no formal provision in the *Standing Orders* for time allocation, there was ample precedent in the British parliamentary tradition its use. To this end, he claimed the use of the guillotine motion under the existing circumstances “sets out a democratic way to lay out procedures for the passage of this bill. It does not attempt to change the orders” (Wells, 1982, Dec. 8). The Speaker ultimately ruled that the motion was in order on the basis that it did not need to be included in the *Standing Orders* to be consistent with proper procedure:

I submit to the members that, to deal with the argument put forward by the member for York South (Rae) that this is not closure and that there is provision for closure as such, I do not know why the government has not chosen to go that route, but it has chosen this route. All I can say is that the motion has been made properly. There has been proper notice. It has been printed. It was properly moved and put before this house. I find, therefore, that there is nothing out of order and that the motion, which is a regular substantive motion, is in order (Turner, 1982, Dec. 8).

Despite losing on his point of order, Rae continued to make the case that the procedure violated the spirit of democracy. He argued that the government’s use of time allocation, “for reasons of sheer administrative convenience,” had the effect of, “eliminating the ability of the opposition to do its job” (Rae, 1982, Dec. 8). He continued, contending that the time allocation motion under such circumstances was in fact more undemocratic than the use of closure:

This is a government which introduces a motion that has absolutely no precedent in this legislature; it cuts off Committee of the Whole discussion, it cuts off report-stage discussion and it cuts off third reading discussion. This is a government which says it is not introducing closure. It is correct; it is introducing closure not just once but three

times. So it is not a closure motion; it is a triple closure motion that is what it is (Rae, 1982, Dec. 8).

For its part, the government contended that it was important to get the bill passed and move on with other business. Wells pointed out that Bill 179 had already received 138 hours of consideration when taking into account both debate in the legislature and in committee. He contended that this was more than enough time to debate legislation, and said, “we acknowledge that there’s an impasse here...but at some time the house must come to some means of deciding how this can be brought to a conclusion” (Wells 1982, Dec. 8). Furthermore, the motion represented, “a sensible way of allocating time when it becomes obvious that a political impasse has been reached” (Wells 1982, Dec. 8). The time allocation motion ultimately passed and Bill 179 received Royal Assent without amendment shortly before the legislature adjourned for winter recess.

The government attempted to use time allocation again just a few months later on another controversial piece of legislation, Bill 127, *The Metropolitan Toronto School Boards Act*. The New Democrats, who were fiercely opposed to the bill since it undermined the collective bargaining rights of Toronto teachers, vowed to block its passage. In response, on February 16, 1983, the government brought forward another time allocation motion—the second in a matter of three months—to bring the debate to a resolution in order that it could proceed with its plan to prorogue the legislature shortly thereafter. Premier Davis defended the decision on the grounds that the government had already debated the issue for 96 hours, and saw little chance at a resolution given the NDP’s opposition to the bill:

We are not expecting the leader of the third party to change his mind. If he reads Hansard, if he reads the transcript of the committee hearings, he will not find any new arguments being presented. No new facts have come to light that we are not all aware of. We have agreed to disagree on this legislation. We think it is important in terms of our

responsibilities as a government to see this brought to a conclusion (Davis, 1983, Feb. 15).

In contrast, NDP MPP Eli Martel (1983) argued in contrast that the government was “playing around” by maintaining that adequate debate had been held. He reminded members that while there had been considerable time spent in committee on the bill, it had only been subject to ten hours of clause by clause consideration in the legislature, which is, “certainly not a lengthy time in which to pass legislation which the premier should be worried about because there is so much controversy around it” (Feb. 15).

The day after the time allocation motion was introduced, however, Sean Conway noted that the way the motion was worded left room for the opposition to continue with its obstruction of the bill’s passage. The first paragraph of Bette Stephenson’s motion read as follows:

That, notwithstanding any order of the house, the consideration of Bill 127, An Act to amend the Municipality of Metropolitan Toronto Act, by the Committee of the Whole House, be concluded at 5:45 p.m. on Thursday, February 17, at which time the Chairman will put all questions necessary to dispose of every section of the bill not yet passed, and to report the bill, such questions to be decided without amendment or debate; should a division be called for, the bell to be limited to 10 minutes (Stephenson, 1983, Feb. 15).

While the motion stipulated that the vote “be concluded at 5:45 p.m.” on February 17, it did not include a provision instructing the Speaker to end the debate on the time allocation motion to begin the Committee of the Whole as the motion set out for. As a consequence, the opposition determined that so long as it managed to keep debate on the time allocation motion going through to end of the sessional day on February 16, the Speaker would have no choice but to begin the Orders of the Day on the 17th with a resumption of the debate on time allocation, thus making it impossible to begin the Committee of the Whole House.

According to procedure, if the government is unable to maintain the timeline set out for it in its time allocation motion, then the entire resolution before the legislature is considered to be

voided. Having recognized this crucial mistake by the government, the opposition proceeded to hold debate throughout the afternoon of February 16 in order to delay the vote on the time allocation motion to the following day. Sean Conway rose in the legislature to speak for nearly two hours to run out the clock on the debate. Unable to extend the session further into night sitting without the unanimous consent of the legislature, since notice had not been provided, Wells was forced to “reluctantly move the adjournment of the house” (Wells, 1983, Feb. 16).

The following day, the government conceded defeat to the opposition, calling the Committee of the Whole on the promise that it would not invoke closure at 5:45 p.m. as the original time allocation motion called for. Liberal MPP Bob Nixon (1983) said, “Actually, I am delighted that the government house leader is calling the second order, because we can now proceed with the discussion of the bill in committee stage without the restriction that the government had tried to apply to it” (Feb. 17). He continued, referring to the government’s promise to allow for a full debate at Committee of the Whole House: “There is some indication that maybe the government house leader, being kind of a slippery and fast operator, is going to do a double-shuffle at 5:45. I do not believe for a moment that he will do that to restrict the debate on the government” (Nixon, 1983, Feb. 17). Fellow Liberal, Jim Bradley, called the defeat on the motion, “a major victory,” in which the government “was out-foxed by the opposition” in its attempt to, “bulldoze through the house its legislation through a time allocation motion” (Bradley, 1983, Feb. 23). As a result of the opposition obstructionist tactics, Bill 127 made its way through the legislature using the normal procedures. However, on February 23, the government invoked Section 36 of the *Standing Orders* to enact closure on the debate and bring about a vote on third reading.

The government would use time allocation one final time before Davis left office at the end of 1984. Bill 142, *The Barrie-Vespra Annexation Act*, was a controversial bill in the Simcoe Region of Ontario that involved the province using its constitutional authority to annex the small farming town of Vespra to the City of Barrie. The government established July 1, 1984 as the operative date for the bill, but when the opposition made it clear that it would delay proceedings unless the government held further public consultations, Davis made the decision to time allocate the bill rather than delay the start of summer recess indefinitely. New Democrat MPP Michael Breaugh (1984) called the decision “one of the greatest disservices to parliamentary democracy that I have ever seen” (Jun. 25). Bob Nixon (1984) argued that such a decision “to allocate time for the completion of the Barrie-Vespra bill was unnecessary since we are not labouring under any time pressure” (Jun. 25). He explained that,

we all know if it were to carry even after July 1, which is still some days in the future, the retroactive aspect would apply. We hope the bill will not carry, but even if the government, with its overwhelming majority, eventually had its way, there would still not be any significant inconvenience in the application of the measures in the bill (Nixon, 1984, Jun. 25).

Tom Wells (1984) reminded the opposition that the bill was first brought forward in December 1983, was sent for 38 and a half hours of committee hearings, “during which time changes were made, and all those communities and people affected were given the opportunity to come in and meet with a committee of this legislature” (Jun. 25). He maintained that the government would be willing to operate according to normal house procedure if the opposition were to end its obstruction of proceedings, “but they will not do that” (Wells, 1984, Jun. 25). As a consequence, he told the legislature, “We have reached the time when, after full and frank debate, we can move ahead” (Wells, 1984, Jun. 25). The time allocation motion was eventually

passed with support from the Tory majority and received Royal Assent before the assembly adjourned for the summer.

Liberal Sean Conway proved to be most prescient on the day after the government's introduction of the time allocation motion: "I am deeply concerned that in the course of this difficult passage we are going to write very bad new rules into our practice here in this assembly" (Conway as cited in "Ontario Tories use tactics of Ottawa for wage restraint," 1982). The government's use of the guillotine as a means of passing Bill 179 would stand as a precedent-setting development for the Ontario Legislature. From this moment forward, governments belonging to all three parties would become gradually, but ever-increasingly more aggressive in their use of this procedural tactics to usher legislation through the assembly. Indeed, by the 1990s the use of time allocation would become commonplace, with motions often being introduced contemporaneously with legislation in anticipation of obstruction from the opposition and formal recognition in the *Standing Orders*.

Conclusion

Ultimately, the Davis era's sustained impact on governance in the province of Ontario was felt most profoundly through the legislative precedents it set in its attempts to bring inflation under control. Not only did his government take the first important steps towards the abandonment of Keynesianism, but in its attempts to minimize widespread political opposition, it established new customary practices in the parliamentary tradition that would contribute to an increasingly impoverished role for the legislature. The argument put forward in this chapter is that there exists a clear relationship between the economic circumstances in the province during the 1970s and early 1980s and the trend towards the centralization of power in the executive under Davis. The trend that emerges is that the government resorted to these mechanisms most

often when confronted with either intense or widespread political opposition. The benefit in circumventing the democratic process for the government was to ensure that it was able to shield its agenda from political interference, and to minimize the exposure to debate such matters would receive. The most path-breaking and common examples of the Davis government's abuses of the democratic process, however, were related to its attempts to deal with the problem of inflation.

Although the Tory dynasty would end shortly after Bill Davis's 1984 surprise Thanksgiving weekend retirement announcement, the legacy left by the Davis government established a number of legislative precedents that would permanently alter the relationship between the legislative and executive functions in Ontario. In the years to follow, time allocation and closure became the conventional means through which the government advanced its agenda through the assembly. Furthermore, governments became increasingly more emboldened in their use of these tactics to implement extreme measures as means of dealing with the next economic crisis that would confront the province less than a decade after Davis left office.

CHAPTER FIVE

A MACHIAVELLIAN MOMENT: ONTARIO IN TRANSITION: THE PETERSON YEARS

1985-1990

Historian J.G.A. Pocock (2009) has described the instance at which a society must come to terms with the notion that its political institutions and traditions are undergoing a systemic transition as a Machiavellian moment. With the benefit of hindsight it is possible to argue that the dramatic turn of events in Ontario over the period from 1985 to 1995 was intrinsically connected to the reorganization of economic and social capital that was already well underway in the western world. While the stench of decline had been lingering since the late 1960s when a crisis of overproduction began to act as a drag on the average rate of profit in the west, it was only when inflation rates soared to unprecedented levels in the early 1980s that the province began to take meaningful action to restrain public spending. Ontario's political consciousness was impacted more severely than most by its downturn in economic fortunes, and its loss of privileged status within Canada. Ontario's fading exceptionalism articulated itself through a profound shift in political loyalties that shattered the stable, one-party rule that had characterized its post-war political complexion. The symptoms that foretold the end of the Tory dynasty, then, began to emerge more than a decade earlier when Ontario's economy slipped into recession during the crisis of galloping inflation, which undermined the pragmatic Keynesianism upon which the Big Blue Machine had built its brand.

If Ontario can be said to have undergone a Machiavellian moment, one must look to the stunning turn of events that occurred in the spring of 1985, when the 43 year reign of the Progressive Conservatives came to an end. By 1985, with the province's economic preeminence in doubt, Ontarians on the whole responded by rejecting the Conservative austerity approach,

opting instead to transfer power to those parties that promised the maintenance and revival of its Keynesian architecture. In this respect, the 1985 Liberal/NDP Accord was a watershed moment for the province of Ontario in more ways than one; not only did it mark the end of the Progressive Conservatives' four decade reign in office, but in many ways it also signified the end of the old Ontario. The political turmoil that was to follow was rooted in the reality that the province's long reign as Canada's economic heartland had come to its end, only to be replaced by a period of uncertainty and transition.

Courchene and Telmer (1998, p. 70) have referred to the period following the end of the Tory dynasty as Ontario's "Quiet Revolution," due to the interventionist strategies pursued by the Peterson government during its five years in power. The Liberals had the good fortune of governing within a political climate that was ideally suited to both its agenda and the youthful, progressive image of its leader David Peterson. During its first mandate, the government was able to use the Accord with the NDP as a political shell for its most controversial decisions. When the government was confronted with significant opposition from the right it could rely upon the justification that the New Democrats had bound them to the straightjacket of a contract they were morally bound to uphold. Conversely, the Liberals could also take full credit for social reforms with a generally popular expansionist agenda, since it was they who controlled the keys to the public treasury. This was evidenced by the substantial majority government the Liberals won in the election of 1987 while running on the record of a blueprint that had been written by the New Democrats.

The Peterson government also benefited from improving economic conditions in contrast to the final years of the Davis government's reign. During the mid-to-late 1980s, both the rate of inflation and the rate of investment returned to more sustainable levels. The Bank of Canada

lending rate, for example, which peaked at 17.93 percent in 1981, had declined to a much more moderate 9.21 percent in 1986 and 8.4 percent in 1987 (Statistics Canada, 2015b).

Correspondingly, the unemployment rate, which reached as high as 12 percent in 1983, had declined to 9.6 percent by 1986 and to 7.5 percent in 1989 (Statistics Canada, 2016b). Rather than proceed with caution as Ontario governments had traditionally done, the Peterson Liberals, temporarily freed from the constraints of declining government revenues, were able to expand the welfare state and invest in social initiatives that had been neglected by the Tories. Taxes from non-corporate or business sources more than doubled in just five years between 1985 and 1990 despite a population increase of only 10.77 percent, as the Liberals made significant investments in education, health care, energy, and the cultivation of a knowledge-based economy among other initiatives (Statistics Canada 2011a; 2015a).

While social spending sharply increased under the Liberals, they continued to espouse the rhetoric of “fiscal responsibility,” on the grounds that, “the people of Ontario wish to leave their children with the flexibility they will need to meet the challenges of tomorrow” (Alexander, 1987, Apr. 28). An examination of the Government of Ontario archives during the Peterson years reveals that much of the planning for the neoliberal restructuring that was to occur during the 1990s, actually began in earnest under the Liberals. The Ontario government, in preparation for the implementation of NAFTA, and the corresponding uncertainties of the province’s plunge into the global marketplace, sought advice as to how to best adjust to the new economy.

In a 1987 paper on economic restructuring commissioned by the Ministry of Labour, consultant Kevin Weiermaier recommended that in order to compete with lower-cost regions in the global marketplace, Ontario would have to bring its labour costs under control. In order to do this, Weiermair (1987) recommended that the government, “embark upon anti-union measures,”

ranging from the implementation of centralized collective bargaining as a means of reducing “wage drift,” to legislation abolishing the closed shop, union hiring halls, picketing, and making certification more difficult to access (p. 32). While the Peterson Liberals governed as pragmatic centrists during their tenure in office, cabinet records reveal that the government recognized the precarious nature of the economic circumstances during the 1980s, and were at least willing to listen to advice about how to begin the process of economic restructuring if economic crisis were to occur. Although it is impossible to know how the Liberals might have responded to the deep recession that set upon Ontario in the early 1990s because of David Peterson’s election call only two and a half years into his majority mandate, there is evidence to suggest that behind the veil of the state the Liberals were preparing to change course towards a policy of fiscal restraint if economic conditions deteriorated.

However, because the Liberals did not serve out their full majority mandate before losing the 1990 election, its response to the recessionary economics that set in shortly thereafter must remain a matter of speculation. Ultimately, its legacy is that of pragmatic leadership under favourable economic circumstances. The economic buoyancy of the late 1980s put the Liberals in the luxurious position of allowing political expediency to trump ideology. This was accompanied by a political implementation strategy that complimented the general public’s acceptance of its expansionary policy agenda. The popularity of the government’s interventionist agenda meant that it had less incentive to resort to undemocratic procedural mechanisms as the Davis Tories had done. Indeed, during its first mandate, the government was able to rely upon the dual realities of the Accord with the New Democrats, as well as a Progressive Conservative Party that was still coming to terms with its new role in opposition. Even during its second mandate when it no longer had the political cover of the Accord to shelter it from public criticism, much

of the Liberal agenda was sufficiently popular that there was no political imperative to expedite it through the legislature. Part of this, it may be argued, was due to the beleaguered state of the Progressive Conservatives during this period. Largely an ineffective official opposition during the first Peterson mandate, and reduced to third party status and only 16 seats in the 1987 Liberal landslide, the voice of conservatism was excluded to an unprecedented degree at Queen's Park during the late 1980s.

The confluence of strong economic conditions, a popular government, politically popular expansionary policies, a severely weakened Conservative party, and a government committed to restoring democracy to the legislative chamber, meant that there was little incentive for the Peterson Liberals to pursue an aggressive legislative strategy. In the broader trajectory of Ontario's history, the Peterson era can be best described as what Gramsci called an interregnum period in the marginalization of the legislature in Ontario. With a few notable exceptions, Peterson's tenure in office witnessed a reduction the governance through cabinet order or through cabinet-appointed bodies that had become a crucial part of the Tories' parliamentary strategy.

Indeed, the Peterson years marked a "golden age" for the influence of the opposition at Queen's Park. Beginning in 1985 with the Liberal/NDP Accord and ending with a series of obstructionist tactics that resulted in a number of significant victories for the official opposition New Democrats, the Peterson era saw an unprecedented expression of assertiveness from the opposition. While the government did continue the trend of passing time allocation motions, and implemented more restrictive *Standing Orders* governing parliamentary debate, they did so in large part to break the deadlock brought about by the uncooperative behavior of the New Democrats. Much of this may have had to do with the introduction of a new competitive

dynamic at Queen's Park, but it may also be attributable to the sharpening of ideological divisions between the parties as the symptoms of the long downturn began to reveal themselves throughout the western economy.

Although the Peterson years were ultimately defined by the establishment of more restrictive *Standing Orders*, a more fractured and partisan legislature, and the continuation of a number of procedural trends passed down by the Tories curtailing parliamentary debate, it was also a period of momentous change in Ontario. After 43 years, the reign of the Big Blue Machine had reached its end, but gone with it was the stability and predictability that had characterized post-war Ontario. This era marked an interregnum in both the implementation of both neoliberalism and the use of proactive efforts by the government to insulate key elements of its agenda from parliamentary control. The Peterson era's true legacy, however, may be the emergence of a new hyper-partisan political environment that poisoned the atmosphere at Queen's Park and set in motion a further tightening of parliamentary procedure shortly after the Liberals went down to defeat in 1990.

The Liberal-NDP Accord: The End of the Big Blue Machine

Although the roots of the emergence of a more assertive opposition at Queen's Park are to be found in the heavy-handed tactics employed by the Davis government during its final years in office, it was not until the spring of 1985 that the opposition was granted an opportunity to exert its political influence. The series of events that unfolded were not only the most significant expression of power by an opposition in the legislature's modern history, but also marked a watershed moment in Ontario's political trajectory. In April of that year, just a few short months after winning the Progressive Conservative leadership, and without having ever served a day as premier in the legislature, Frank Miller called an election in hopes of winning his own majority

mandate to govern the province. When the returns were tallied on May 2, the Progressive Conservatives clung to power with a slim minority government in which they held 52 seats, the Liberals 48, and the NDP 25. The province had recent experience with minority parliaments—many of the returning members served in the Davis minorities of 1975-1981—however the cloud of rancor that hung over the legislature during Davis’s final majority mandate emboldened the third party NDP to seek to utilize the balance of power it now held in the legislature. Rather than accept the reality of another Tory government as the NDP had done in 1975 and 1977, the NDP under leader Bob Rae began discussions with both the Progressive Conservatives and the Liberals in order to negotiate a pact that would see the new government promise to implement several of their most important policy initiatives in exchange for their support.

The NDP engaged in several weeks of intense bargaining with both parties in search of a working arrangement on the terms it set after caucus deliberations. After meetings with the Tories broke down, the NDP set its sights firmly on a deal with Liberals to topple the Tory dynasty. The resulting agreement between the two parties set a timetable for the Liberals to pass laws implementing full funding for separate schools, extending rent protections, implementing employment equity legislation, and ending extra billing by doctors (Cruikshank, 1985). In exchange, the NDP agreed not to move or vote for a non-confidence motion for a period of two years.

Shortly after the Accord was announced, Frank Miller reached out to the NDP with the faint hope of reaching a deal to stop it. Miller, a long-time cabinet minister under Davis, expressed a contemptuous attitude towards the New Democrats, refusing to commit to holding another election for a substantial period, or to agree to a timetable for the implementation of their policy proposals. He contended that giving the opposition such significant power would be the

“death knell” for the practice of parliamentary democracy in the province. He asked rhetorically, “can you have peace at any price? Or do you have to recognize that the system is more important” (Miller as cited in Speirs, 1985, p. A8). There was undoubtedly a logical consistency in Miller’s stance on parliamentary procedure. For him, parliamentary democracy was a system where decision making powers were controlled by an independent executive body, which had a duty to consult, but was not beholden to the legislative function. For the Tories, executive rule had long been taken for granted as a self-evident truth that was bestowed upon it by winning a plurality of the province’s seats. The Liberal/NDP Accord, however, shattered this long-held assumption in Ontario about the preeminence of the executive. Instead, it reaffirmed a fundamental tenet of parliamentary supremacy: the executive is responsible to the legislative function, and must receive its approval as a condition to continue governing.

Miller, however, clung to his view that the executive held a divine right to govern by virtue of its plurality of seats in the legislature. His initial response to news of the accord was to publicly contemplate asking Lieutenant Governor John Black Aird to dissolve parliament and call another election (Christie, 1985). There were two problems with this course of action, however. First, according to parliamentary custom, it is the Crown’s responsibility to first seek a working alliance among the opposition parties. Given that an election had just been held and that there was a clear governing alternative constituting a majority of seats in the legislature, it is unlikely that the Lieutenant Governor would have granted him another just a few months after the last one. Second, significant segments of the Tory caucus were calling for Miller to simply accept defeat and resign after the Speech from the Throne, to allow the party to serve its penance before challenging the fragile alliance in two years’ time. Many Tories were of the view that the

Liberal/NDP Accord was certain to result in a calamity of such legendary proportions that the public would welcome the Tories back with a new leader at the helm.

The final days in the life of the Big Blue Machine were characterized by a marked shift to the left as Frank Miller was admittedly “clinging to hope” that his party could remain in power (Miller as cited in Harrington & Walker, 1985, p. A16). In its Speech from the Throne the Miller Tories promised to implement a number of long-sought after NDP policy demands. They committed to:

eliminate barriers and assist all individuals, particularly women, young people, visible minorities, native people and the disabled, who seek employment and who pursue excellence; to protect our environment and enhance our diverse regional economies; to maintain and expand our investment in essential social services; to introduce and amend laws which serve our community values; and to encourage co-operation and trust by improving the openness and accountability of all our public institutions (Aird, 1985, Jun. 4).

Premier-in-waiting David Peterson called the decision “deathbed repentance” from a government that had indicated during the election it would take a hard shift to the right (Peterson as cited in Harrington & Walker, 1985, p. A16). Meanwhile, Bob Rae quipped, “It almost makes you wish you could defeat governments all the time if this is what kind of legislation it produces” (Rae as cited in Walker, 1985, May 30, p. A19).

Despite Miller’s efforts to reach out, the NDP kept its pact with the Liberals. On the day of the confidence motion, Miller gave an acerbic final speech as premier that reinforced his view of executive entitlement. He argued that the accord was an affront to democracy, and accused David Peterson and Bob Rae of “prostituting themselves for power” (Miller, 1985, Jun. 18) in an effort to, “highjack of the parliamentary process” (Miller as cited in Cruickshank, 1985, Jun. 19, p. A1). He continued, suggesting that the NDP was, “throwing out 700 years of parliamentary tradition without consulting the legislature for two reasons: One man (Peterson) who wants to be

premier so badly he'll give in; and another (Rae) so afraid of an election he'll make compromises" (Miller as cited in Walker, 1985, May 25, p. A1). Miller (1985) added that the confidence motion amounted to a coup d'état:

I would like the Bobbsey Twins in Queen's Park to come clean. If they are determined to govern as a coalition, which does have lots of historic precedent, they should have the intestinal fortitude and fess up. If they are really as united as they pretend to be, they should legitimize their relationship and face us in the legislatures the coalition party they really are. This province and its people deserve better than a puppet Liberal Premier with the NDP pulling the strings (Jun. 18).

He concluded with a warning to the NDP that the "opportunistic" Liberals would seek to call an election to remove the, "socialist monkey off their back" (Miller, 1985, Jun. 18).

For their part, the opposition parties reminded the premier of the "realities of May 2nd," which was a play on former Premier Bill Davis's comment in the legislature of the "realities of March 19th" (Nixon, 1985, Jun. 18). The new reality, they claimed, was that in a minority parliament, the opposition controlled the majority of the seats and were well within their rights to defeat the existing government and replace it with the majority will of the assembly (Nixon, 1985). Liberal MPP Bob Nixon (1985) chastised the premier for failing to understand the parliamentary process, and claimed that his government had engaged in, "an embarrassing series of changing positions, attempting day by day to find a formula to remove the risk of the final defeat of conservatism in this house after 42 years" (Jun. 18). He continued, implicating the entire Tory cabinet of complicity in the act of denial; Conservative ministers, he said, "rose in their places day by day as the Tory political corpse twisted in the wind, there was something unnatural, something shocking. It was like looking at a corpse that winks" (Nixon, 1985, Jun. 18).

The historic Liberal-NDP Accord had shaken the foundations of politics in Ontario by using the principle of majority rule to replace a government that had demonstrated a propensity

to centralize authority in the executive with increased fervor during its last mandate. The new Liberal regime promised to govern according to the principle of collaboration between the executive and legislative branches of government. The use of the opposition's majority in the house to leverage a change in government was structured upon what Peterson called "a high level of trust" between the Liberals and the NDP, and held promise for a more decentralized and collegial atmosphere in the legislature with a great role in policy making for opposition parties (Christie, 1985, May 25, p. A1).

No one at the time could estimate the shock to the central nervous system of Ontario's political culture that dislodging the Big Blue Machine after four decades would have on political dynamics. Despite an uneventful first term aided in large part by the accord, in Peterson's second term parliament was beset by an adversarial and partisan tone that was unprecedented in the annals of Ontario's modern history. The marriage between the NDP and the Liberals, it would turn out, was less an expression of a renewed attitude of collegiality, than it was a union of convenience to rid the province of 42 years of Tory rule, and have a hand in power for themselves. The end of the Progressive Conservative dynasty, then, was more than the replacement of one party in power with another; it symbolized the end of the stability of the old Ontario, and ushered in an uncertain and competitive dynamic that would permanently reshape the politics of Queen's Park.

Accountability Renewed: The Liberal Promise of a More Transparent Government

David Peterson laid out his legislative platform on July 2, 1985, in his first speech as premier amidst a flurry of optimism that the new government, having experienced the alienation of serving in opposition for more than four decades, was serious about taking steps to democratize the legislative process. He promised to make reforms that would see the government

be more, “open, compassionate and competent” than it had been under the Tories (Peterson, 1985, Jul. 2). The public, he contended, “can only achieve the changes they want and need if they are allowed to put their hands on the levers of power and shift gears when necessary” (Peterson 1985, Jul. 2). Accordingly, the new government pledged to, “a welcome mat at the front doors” of the legislature and undertake significant reforms to open the decision making process to the public (Peterson, 1985, Jul. 2). Among these reforms, Peterson promised to televise legislative proceedings, to pass freedom-to-information legislation, and to strengthen the role of backbench members and committees through the establishment of a committee to review parliamentary procedures and appointments (Peterson, 1985, Jul. 2).

Beyond legislative reform, Peterson also set out to change the centralized cabinet model put in place by Premier Davis in the early 1970s. While he followed Davis’s approach by establishing the Treasurer and the Attorney General in the most senior cabinet positions, his government employed a more decentralized cabinet structure that permitted ministers greater flexibility to initiate policy. While the ultimate decision making power remained with the Premier’s Office, ministers were given considerable liberty to govern their ministries according to their own designations (Gagnon & Rath, 1992, p. 27). Peterson encouraged a bottom-up cabinet model, in which ministers worked out their decisions collectively, allowing him to adjudicate policy disputes where necessary. He explained:

I ran a multiple-access system. I was always worried about getting one point of view or a particular bias. I wanted to hear all sides of the argument because I wanted to make sure I knew as much as I could from people. My theory was, when you’re making a tough decision, you get the eight smartest people, the most knowledgeable on the issue, in the room and fight about it, and if anything, at least exhaust all possibilities...my office was like an A&P on a Friday night, as opposed to the solemn, decorous place it used to be (Peterson as cited in Gagnon & Rath, 1992, p. 28).

For all of its democratic merits, this flexible cabinet structure rendered the government less adaptable to changing circumstances. This led to a series of scandals in Peterson's second mandate that might have been prevented with more a more centrally coordinated management structure (Gagnon & Rath, 1992).

Despite the mounting scandals that plagued the Peterson government in its final years, its efforts to increase transparency were not in vain. They led to the establishment of an independent officer of the legislature, who was given a mandate to oversee the maintenance of ethical standards in government. This new parliamentary watchdog, the first of its kind in Canada, was an important development for government transparency in the province. One of David Peterson's legacies will undoubtedly be the political courage he demonstrated in taking steps to democratize the legislative process by implementing various reforms that have become an important part of the day-to-day operations of Queen's Park. The installation of television cameras and freedom-to-information legislation, for example, did much to improve the access citizens had to parts of the political process that were previously inaccessible to most Ontario citizens. However, he will also be remembered as a premier whose final years were plagued by scandal brought about to a very large degree by his willingness to run an open government. Having learned from Peterson's stunning 1990 electoral defeat, future premiers would be hesitant to follow his example of transparency and inclusivity.

The Peterson Government's Use of Regulatory Power

One area where the Peterson government made good on its promise to democratize politics in Ontario was in its use of the executive authority as a method of circumventing parliament. The Liberals departed from the Davis government's long-standing practice of controlling the policy implementation process by granting considerable powers to cabinet-

appointed boards that were unaccountable to the legislature. Although the Peterson government employed this tactic on a few notable occasions, they were far less reliant upon it as a key aspect in their tactical toolbox for their seminal legislative initiatives than their predecessors. The Peterson Liberals also minimized the practice of writing provisions into their legislation that granted cabinet sweeping powers to enact policy through regulation. As governments had done throughout Ontario's history, the Liberals continued to grant these powers to cabinet, but they applied them far less extensively and on fewer matters that would have traditionally required the ratification of legislature than the Progressive Conservatives.

Arguably the most controversial policy field in which government made use of its executive authority was with regards to the so-called "anti-free trade bills" the government introduced to address concerns over the federal government's entrance into the continental free trade agreement with the United States. In order to address some of the province's perceived vulnerabilities to free trade, the Peterson government passed legislation that granted cabinet considerable power to lease, sell, and reallocate some of Ontario's most important resources without parliamentary approval. Although the government's legislation purported to safeguard the sovereignty of these resources, the provisions contained in these bills raised significant concerns that the government was using the free trade issue to grant cabinet the authority to privatize them without seeking legislative approval.

Through one of these pieces of legislation, Bill 175, *An Act Respecting Transfers of Water*, the government empowered the Minister of Natural Resources to restrict the sale or transfer of Ontario's water to any other jurisdiction, including the United States. However, Section 4(1) of the bill also permitted the minister to "approve a transfer of water out of a provincial drainage basin subject to such conditions and subject to the payment to the Crown of

such amount as the minister considers appropriate” (Bill 175, 1988). In other words, although the bill ostensibly protected Ontario’s water resources, in actual fact it gave the minister the power to sell or lease them at his or her discretion. This significant power was given directly to the minister to decide through order in council rather than through legislation in the assembly. NDP MPP Bud Wildman (1988) argued that instead of restricting water transfers to the United States, “What the minister's legislation did was set up a toll-gate. The main purpose of the legislation was to get revenue into the provincial Treasury for the transfer of water to the United States” (Nov. 11).

The second of the anti-free trade bills, the *Power Corporation Amendment Act*, was designed to protect Ontario’s hydro properties, but also granted the minister sweeping powers to authorize the Ontario Power Corporation to sell publicly owned resources to the United States. Introduced in 1988, Bill 168 allowed the minister to permit the sale of hydro capacity, “only if that supply is surplus to the reasonably foreseeable power requirements of Ontario customers and other customers in Canada” (Bill 168, 1988). The Board was charged with the responsibility of ensuring, “the requirements for power of Ontario customers and other customers in Canada are met before meeting the requirements for power of customers outside Canada” (Bill 168, 1988). However, the capacity granted to the minister to determine whether to sell resources to the United States as a means of boosting the provincial treasury, removed decisions regarding an important common resource from the public dialogue (Power Corporation Act, 1988). Bill 168 was eventually withdrawn from the *Order Paper* later in November 1988 as the government began to back away from its opposition to the free trade deal. Its primary components regarding the sale of electricity were not reintroduced the following session (Rae, 1988).

The government also made use of regulation in the implementation of its highly controversial no-fault auto insurance scheme. One of the first bills introduced in the government's mandate, Bill 2, established an Automobile Insurance Board to provide oversight for car insurance rates throughout the province. While the bill granted significant powers to the board to carry out its responsibilities, it contained a provision which allowed the executive council to make regulations through order in council where necessary. The bill left it to cabinet to determine regulations as to whether rates should be based on demographic information such as age, or marital status. The concern for the opposition was that with too much left to regulation it allowed the policies surrounding these issues to "be changed any time at the whim of a minister or of cabinet," without having recourse to the house (Swart, 1987, Dec. 3).

The following session, the government introduced the main piece of legislation in its auto insurance plan. Bill 68 eliminated the right for drivers to sue for less serious injuries, and replaced these rights with a system of "no fault" insurance. It provided for the appointment of a commissioner appointed by cabinet who would be responsible for the enforcement of the new insurance law. The commissioner would both be accountable to and would report to the executive council. His or her role, then, was to monitor the new system in its initial stages and to report its findings back to cabinet. The opposition's primary concern with the architecture of the bill was that much like Bill 2 from the previous session, it provided too much regulatory power to the executive to make future changes to the spirit of the legislation without the approval of the house.

Although the government promised to enact legislation protecting certain classes of consumers from discrimination, Progressive Conservative MPP Bob Runciman (1990) testified that his party was "not satisfied with doing this through regulation...the regulations are easily

changeable through order in council. We feel this is an important enough issue that a ban on this sort of thing should be very clearly spelled out in the legislation” (May 16). The government, for its part, argued that the inclusion in the bill of significant authority for the commissioner was necessary to make such significant changes to the insurance system in order that the government could adapt to changing circumstances. Liberal Rick Ferraro (1990) explained, “There is no question that any time you have new legislation—and indeed this is a substantive change, as indicated on many occasions, in how the people of Ontario, the 6.2 million drivers, get their auto insurance—there will be an adjustment process” (May 16). He continued, “By putting it in regulatory form, it may, in our view, be beneficial from the standpoint of an adjustment being required to deal with that particular aspect of cherry-picking in a more definitive way, although we are quite satisfied that it has enough teeth in it now, that we have the flexibility to change those regulations quickly” (Ferraro, 1990, May 16). The NDP argued that regulatory discretion was left in place to allow the government to make adjustments to the rates charged to persons belonging to certain risk exposure classes in the event that private sector profits came in below expectations.

Despite these examples, the case cannot reasonably be made that the Peterson government’s use of delegated authority extended beyond the norms of what might be considered acceptable to conduct the affairs of a modern state. While the government’s use of regulatory power was at times controversial, this was more reflective of the opposition’s tendency to predict a “worst case scenario” than an actual abuse of power. Many of the concerns raised by the opposition about the authority granted to cabinet to privatize Ontario’s natural resources in order to sell them to the United States, for example, proved to be unfounded. Although this desire to use regulation to circumvent the legislature would indeed become a

crucial instrument in the implementation of policy in the years to follow in Ontario, the Peterson years largely marked a departure from this pattern.

Parliamentary Procedure under Peterson

The Peterson government opened its second session in office with an attempt to provide for a more conciliatory approach to daily proceedings of the legislature. On April 28, 1986, Government House Leader Sean Conway announced a series of reforms to the *Standing Orders*. While most of the reforms were minor, they made important changes to the organization of the sessional day in the house. Among the changes Conway announced, evening sittings were done away with in favour of a more consistent daily schedule and Friday sittings were abolished. These changes were designed to give members of all three parties the opportunity to spend more time in their constituencies. The reforms also provided for a ten minutes of members statements per day. This gave backbench members, who were to be recognized by the Speaker on a rotating basis, a daily opportunity to make statements in the house on issues of importance to them (Conway, 1986). The revisions to the *Standing Orders* were significant not only because they made important changes to the orders of business at Queen's Park, but also because they were an example of increasingly rare all-party collaboration towards a common end. The new *Standing Orders* were the result of long deliberations between the three house leaders, and were approved with unanimous support in the assembly. They also fulfilled a promise the Liberals made upon taking office in 1985 to increase the role of the backbencher in the house.

The Return of Time Allocation as a Tactic

This spirit of collegiality was to be short-lived, however. In June of 1986, the Conservatives attempted to obstruct Bill 94, legislation to ban doctors from the practice of extra-billing, by refusing to stand down from debate on the issue during the Orders of the Day. The

legislation was particularly controversial within the medical community as doctors argued that requiring them to cease the practice of extra-billing would result in longer wait times and poorer standards of care. The Tories, who championed the view of the Ontario Medical Association, were particularly dismayed that the government introduced the bill under the shadow of Christmas on December 19 when no work at the legislature would occur, and the story would receive only a day or two of coverage in the press before the holiday (Grossman, 1986). Once the bill reached committee, the Conservatives argued that it required clause-by-clause consideration and several months of consultations with concerned members of the community. Becoming increasingly impatient with the stall tactics of the official opposition and sensitive to the political damage this issue had the potential to cause its party, the Liberals made the decision to invoke closure in committee, bringing the bill back to the house for further debate. Progressive Conservative Leader Larry Grossman (1986) criticized the government for its “impatience” with the clause-by-clause review of the bill in committee, and argued that when the political heat turned up, they simply “jumped it back into the house” (Jun. 19).

When the Tories refused to allow the bill to pass to third reading without further public consultation, the government made the decision to resort to time allocation to expedite its passage. Grossman (1986) argued that the government, “was fed up with the heat it was taking out there, which was a lot worse than he thought,” and decided to use “closure” to bring the debate to an end (Jun. 19). “Crisis, insults and closure; that is the main theme of this government,” he said, claiming that the premier was providing a clear example of the difference, “between real leadership and real dictatorship” (Grossman, 1986, Jun. 19). To this end, Conservative MPP Phil Gillies (1986) derided the premier for his “pigheaded attitude” and his

refusal to, “consider the very constructive options put forward by the leader of my party that could have averted the necessity for this motion” (Jun. 19).

Perhaps the most surprising response was that of the leader of the NDP Bob Rae who had long been critical of time allocation. In 1982, Rae made a statement in reference to the Davis government’s use of time allocation on the *Inflation Restraint Act*:

Once we enter into the world of time allocation, we are giving an extraordinary degree of power to the executive...a gun is being put to our heads by the government and we have absolutely no intention of putting up with that kind of pressure or knuckling under simply because there is that kind of pressure coming from the government (Rae, 1982, Dec. 9).

Given that the Liberals had only a minority of votes in the legislature, Rae was lodged in the difficult position of having to either support the time allocation motion he had spoken out against passionately in the past, or refuse to do so and take the risk that the Liberals might lose their resolve with the extra-billing legislation if the political pressure became too extreme. Ultimately, in a decision that would foreshadow his tenure as premier, Rae (1986) chose policy over principle, deciding to support the Liberal motion. He laid out his party’s position in very clear terms:

If this is what it takes to get the bill through, then we are prepared to see that gets done. If at the end of the debate tomorrow we have the completion of third reading and if at the end of third reading we have proclamation, which I am also assuming is going to take place, it will be a historic day in the life of this province” (Jun. 19).

Rae’s support of the Liberals marked a significant moment in the evolution of time allocation in the legislature. From this point forward all three parties had now taken at least some role in supporting it. Each of the three parties had now lost the moral authority to seriously challenge the government of the day on its use of time allocation, since their own party’s past involvement in similar practices could always be invoked as a demonstration of their hypocrisy. It is not an overstatement, then, to suggest that the use of time allocation on Bill 94 was a monumental step

in the evolution of house procedure, as it signified the dawn of the use of time allocation as a common mechanism used by all three parties to suffocate debate.

Petitioning the Government: The Filibuster of 1988

In the spring of 1988, the opposition parties collaborated to organize perhaps the most extreme use of obstructionist tactics in the legislature's history in protest of Bill 113, which permitted Sunday shopping in Ontario. The decision to allow merchants to remain open on Sundays had significant support throughout the province, but was also subject to fierce criticism, particularly within religious communities on the right and labour unions on the left. In short, it had the effect of dividing the majority legislature even further down partisan lines, as both the NDP and the Tories had considerable factions within their political bases that were vehement in their opposition to the bill. For Bob Rae (1989), the issue was no less fundamental than a question about religious values, and "a basic question of how we organize our time together as families and how we organize our time together in the workplace" (Jan. 10).

The New Democrats and Progressive Conservatives were aware that since there were no restrictions in the *Standing Orders* on the time set aside for the presentation of petitions, it made a of indefinite length to block the introduction of the Sunday shopping legislation a distinct possibility. If opposition members were to stand in the house and read petitions on to the record, the Speaker would have little choice but recognize them for as long as they continued to do so. It was here that the contradiction between the emerging, hyper-partisan culture of Queen's Park, and the old, stable system of cooperation began to emerge. So long as the opposition was willing to exploit *Standing Orders* that were sufficiently flexible to allow for the house schedule to be set by the house leaders, the government would be left with little choice but to close these loopholes if it were to avoid parliamentary deadlock.

On April 14, 1988, the NDP and the Progressive Conservatives spent the majority of the sessional day presenting petitions, blocking the house from proceeding to the Introduction of Bills or the Orders of the Day. As a result, the Liberals were unable to introduce Bill 113 for first reading in the house as they had planned. The government argued that the Speaker was within his rights to rule the endless reading of petitions out of order, since he had discretion to rule on any contingencies not provided for in the *Standing Orders*, and the presentation of petitions, “on a continuous basis,” constituted a “clear abuse of the process of this house” (Faubert, 1988, Apr. 14). Speaker Edighoffer (1988), however, ruled that the presentation of petitions did not violate the provisions set out in the *Standing Orders* (Apr. 14). In response to the government’s arguments, he ruled that the members themselves had “agreed and formed the *Standing Orders* that are here before you,” and that the Speaker’s role was merely to, “maintain those orders and to make certain that all members have the right to speak and to be heard” (Edighoffer, 1988, Apr. 14).

The filibuster continued through the week of April 18, as each sessional day began with Member’s Statements, Statements by the Ministry, and Question Period as planned, before the NDP brought the remainder of legislative business to a halt by reading petitions for the balance of the day. Earlier in the month, the government informed the house that Finance Minister Bob Nixon would introduce his budget on Wednesday, April 20th. However, as the three house leaders had yet to come to an agreement to end the filibuster, the NDP refused to cease reading petitions to allow Nixon to introduce the budget motion. Unable to proceed to Orders of the Day, Nixon stood on a point of order to ask for the unanimous consent required under the *Standing Orders* to bring an end to the reading of petitions. Unanimous consent, however, was denied, and as a result, for the first time in the legislature’s history, the government was unable to introduce its

budget motion to the house or to give its budget speech. Nixon was left with little choice but to simply deposit the government's budget with the Clerk while the New Democrats continued the practice of reading petitions through the end of the sessional day.

After having obstructed proceedings for more than a week, the NDP house leader finally came to an arrangement with the Liberals to end the delay and resume normal proceedings. At 5:10 p.m. on Thursday April 21, the NDP filibuster came to an end and the Speaker called for the Introduction of Bills, allowing the government to at long last introduce Bill 113. However, when the Speaker called for unanimous consent, the opposition opposed, and refused to return to the legislature to vote. As a result, the bells rang throughout the evening of April 21 until the house resumed on the 22nd, at which point the Speaker announced that an arrangement had been made between the three parties to delay the vote on the introduction of Bill 113 until the following Monday morning. As a part of the deal, the government agreed to allow the bill to be subject to the scrutiny of a lengthy menu of public consultations and committee hearings throughout the summer months before proceeding to third reading. This being the case, the Speaker was left with little choice but to deem the bells to be ringing through the weekend until a vote could be taken on Monday. At just after 1p.m. on April 25, 1988, a week and a half after the delay began, the vote on first reading of Bill 113 was recorded, bringing an end to the nearly 100 hour-long sessional day, the longest in the legislature's history at the time (Mellor, 1988).

A New Precedent: The Use of a Single Time Allocation Motion for Two Bills

As one of its first acts upon recalling the legislature in early January 1989, the government brought forward a motion to adopt the reports of the Standing Committee on the Administration of Justice on Bills 113 and 114. Having learned from its experiences on first reading of Bill 113, and facing continued resistance towards the legislation from both opposition

parties, the government made the decision to bring forward a motion of time allocation on both of the Sunday shopping bills. The motion, introduced January 19, 1989, was designed to apply to both Bills 113 and 114 and sought to bring both the Committee of Whole House and third reading about in a timely fashion without obstruction from the opposition. In a speech to justify his introduction of the motion, Government House Leader Sean Conway (1989) argued that the bills had been subject to a weeks-long public consultation process in various locations around the province, lengthy committee hearings, and had received over 60 hours of debate in the legislature. He claimed that the motion did not constitute closure, since it permitted debate over the bills to continue within the timelines set out by the government. The time had come to, “now move these two bills on to the next stage of debate so that we can continue a good dialogue and bring all of this to an orderly conclusion,” he argued (Conway, 1989, Jan. 23).

The opposition, however, maintained that the use of time allocation motion to usher two bills through the house was a violation of procedure and should be ruled out of order by the Speaker. They claimed that time allocation was neither provided for in the *Standing Orders*, nor was there sufficient precedent for the government to use the guillotine to pass more than one bill. The establishment of a precedent allowing the government to time allocate two bills in the same motion could lend itself to further abuses in the future if a government chose to use this procedural tactic to expedite the passage of multiple pieces of legislation at once. Speaker Edighoffer (1989), however, ruled that there was precedent in the British parliamentary tradition to use time allocation for multiple bills. He also cited an example from Westminster from 1988 during which the Thatcher Conservative government used a single time allocation to jointly pass two unrelated bills dealing with school boards in Scotland and firearms. Furthermore, during the previous parliament, the three parties at Queen’s Park agreed by unanimous consent to allow a

package of three bills to be moved and debated together. Although in the referenced occasion the motion enjoyed the unanimous consent of the legislature, Edighoffer (1989) explained that, “it still represents the will of the house and this does not take anything away from the absolute right of the house to determine its own procedure” (Jan. 23). Given that in accordance with standing order 1(b), the Speaker was required to, “base his decision on the usages and precedents of the legislature and parliamentary tradition,” Edighoffer (1989) was left with little choice but to rule that the time allocation motion was in accordance with the procedures and practices of the house and should be allowed to stand (Jan. 23).

Predictably, the opposition was upset by the decision, arguing that the use of time allocation motions was becoming normalized at the expense of the democratic process. Bob Rae (1989) argued that the Speaker had set a “very dangerous precedent,” which implied that “the majority can in effect, without so much as a by-your-leave, amend the *Standing Orders* and simply force through legislation as it wishes” (Jan. 30). The minority parties “need more protection,” he argued, but instead, “we are now living with rules and precedents in this house which will not stand democracy well at the end of the day” (Jan. 30). Progressive Conservative House Leader Mike Harris (1989) argued that while his party had used time allocation in the past, it did so out of necessity as a means of addressing the economic crisis of the early 1980s. To use time allocation for legislation as “insignificant” as Bills 113 and 114, he argued, was to set a dangerous precedent. Harris claimed that he felt “particularly betrayed,” since as house leader he had been promised that if he agreed to limit debate on second reading that another opportunity would present itself (Jan. 24). This opportunity, he persisted, had been taken away in an underhanded and unfair fashion, and caused him to feel as though he had, “let my members

down by trusting in the good faith, by trusting in the sense of fairness, of the government that the opportunity would be provided” (Harris, 1989, Jan. 24).

New Democrat Michael Breagh (1989) made a particularly compelling case against the use of time allocation on Bills 113 and 114 during debate on the motion (Jan. 24). He argued that the consistent use of the time allocation motion to pass legislation signaled a, “fundamental change in the nature in which Ontario is governed.” Breagh (1989) continued, lamenting the plight of the backbencher:

After you have been here for a while you really yearn severely, hoping that someday that will happen here, but it does not. You begin to understand how the political process overtakes the parliamentary process from time to time. The end result, when you have a government that is truly set in its ways and has a huge majority, is the kind of motion we have before us today. In its politest form, one could call this a time allocation motion. In its real form it is called a closure motion or a guillotine motion (Jan. 24).

Breagh took particular aim at the Liberals for resorting to this tactic, arguing that they, as a party that had only been in power for four years after having served 42 years in opposition, should know better. He argued,

This government should know because it is not old; complete senility has not set in yet. This is just some kind of early form of senility that has arrived here. This government knows that this type of time allocation motion right now is wrong. It is as inappropriate now as it ever was when the Tories introduced it. It is as wrong now for all the same reasons as they said it was wrong when the Tories tried to do it. It is not the way that a parliament goes about its business. It is not the way to overcome opposition parties who are doing, after all, what they are here for. They are here to argue the case. I would put it very simply this way. If it were true that what the government wants to do is the greatest thing in the world, if it were true that all of the arguments had been put, if it were true that the opposition parties should not speak any further on these matters, then even this government, timid as it is, would have absolutely no qualms about moving a straight, flat-out closure motion on these bills because that is the purpose of a closure motion. That is why it is in our *Standing Orders* (Breagh, 1989, Jan. 24).

Despite the protests of the opposition, on January 30th the government used its majority to pass the time allocation motion. Its use in this instance must be viewed in a somewhat different light than on previous occasions. While it was undoubtedly a preemptive attempt by the government

to ensure the Sunday shopping bills passed in a timely fashion, on this occasion the government resorted to time allocation only after the opposition tactics of April 1988 prevented it from introducing its budget in the house. In light of the recent willingness of the opposition to resort to its own extreme methods to hinder the government in the implementation of its agenda, time allocation could be viewed as an unavoidable method of confronting the more adversarial nature of house governance. Regardless of whether or not this was the case, the motion was an expression of the continued decline of decorum and collaboration between the government and the opposition at Queen's Park.

While the government prorogued the legislature shortly after passing its Sunday shopping legislation, the disorder that plagued the first session revealed itself again early in the second, when the opposition would again interrupt the proceedings of the house. The first delay occurred out of protest to a scandal involving Solicitor General Joan Smith. Earlier in the year, Smith received a call in the middle of the night from a young girl who expressed concern over the safety of her brother. While Smith attempted to reassure the girl that the police would look after the matter, the girl persisted that the situation was of the utmost urgency and required her intervention. Smith decided that the best course of action would be to go to the police station herself to express concern about the safety of the girl's brother and to urge them to look into the matter (Mellor, 1989). When the details of the Solicitor General's actions were made public, the opposition immediately demanded that she resign, since it is deemed inappropriate for any minister of the Crown to intervene on behalf of an individual citizen, regardless of the purity of the intent behind the act. After several days of calling for Smith's resignation to no avail, the Progressive Conservatives introduced a private members' bill entitled the *Executive Council Amendment Act*, which set out clearer standards for ministers in their relationships with the

judiciary and police, and provided that any minister who violates these standards be forced to immediately resign from cabinet (Mellor, 1989). On May 29, when the bill was called for first reading, and the Liberals refused to allow it to pass with unanimous consent, the opposition parties vacated their seats when the call for the vote on division was made, and refused to return for two days. When they finally reconvened to vote on May 31, the bill was defeated by the Liberal majority.

Once the house resumed normal proceedings on a motion of interim supply, NDP member Peter Kormos (1989) rose on a point of privilege and suggested that the premier “deliberately misled me and he deliberately misled the house” (May 29). The Speaker interrupted Kormos, asking him to withdraw his comments since “a member cannot accuse another member of deliberately uttering a falsehood,” under the rules of parliamentary procedure. Defiantly, Kormos (1989) reiterated his claims, insisting that, “the Premier lied to the house” (May 29). When Kormos refused to withdraw his comments, Edighoffer (1989) told the assembly that he, “had no choice but to name the member,” and to call upon the Sergeant-at-Arms to remove him from the legislature for the balance of the day (May 29). New Democrat Dave Cooke (1989) raised a point of order to argue that the words used by Kormos, although unparliamentary, were true, and therefore should be ruled as in order (May 29). When the Speaker refused to change his decision, Cooke stood in the house to challenge it on the basis that it was in violation of the procedures of the house.

After consulting with the Clerk, the Speaker ruled that there was indeed precedent for challenging the Speaker on a decision to remove a member from the house for unparliamentary language, and therefore he called for a vote to be held. The NDP, knowing full well that their case had little standing and no chance of being upheld in the majority Liberal legislature, once

again vacated their seats and allowed the division bells to ring. This time, they would allow the bells to ring for six days, until June 6, before returning to their seats to vote on the Speaker's ruling, but only after Solicitor General Smith announced her resignation from cabinet. Even the Tories, who were equally as committed to seeing to it that Smith resign her cabinet seat as the NDP, refused to join in on the obstructionist tactics, instead voting with the government to uphold Edighoffer's decision to name Kormos. The NDP, despite losing the vote, had managed to delay the proceedings of the legislature for nearly a week and a half in protest of the premier's refusal to ask Smith to step down. It would be the second such delay they would provoke in the span of 13 months, and it would not be the last.

The NDP would again obstruct the proceedings of the house, this time in protest of the highly contentious Bill 162, *The Worker's Compensation Amendment Act*. As a means of delaying the passage of this bill, the NDP once again resorted to reading full petitions on to the record when the bill was at committee stage. They used this tactic in order to extend the length of time the bill would spend in committee before it could be reported back to the legislature for further consideration (Mellor, 1989). After it became apparent that the opposition was prepared to use every tool at its disposal to stop the bill from proceeding beyond committee stage, the government imposed closure upon the committee and ordered the bill sent back to the legislature to adopt the report of its findings (Mellor, 1989). During the debate to adopt the recommendations of the report, the NDP attempted to delay proceedings again by reading a number of petitions on to the record and further stood in their positions to speak for extended periods of time. The New Democrats extended the debate on the bill from 4:05 p.m. through the night until 9:45 a.m. the following day, during which time Shelley Martel spoke for three hours

and 15 minutes, the third longest speech given during debates in the history of the legislature at the time (Mellor, 1989).

As a means of ensuring the opposition could not further stall the debate, on July 18 the government again moved time allocation. Government House Leader Sean Conway (1989) called the move a “last resort,” and a necessary means of dealing with an “obstructionist” opposition (Jul. 18). In his explanation of the time allocation motion, Conway (1989) said, “If two years in this job has taught me anything, it has taught me something about how the NDP in opposition, and on occasion with its friends to the right in the Conservative Party, can move from opposition to obstruction” (Jul. 18). Conway continued his justification of the motion, arguing that the government introduced the bill more than 13 months earlier, had allowed for significant time for public consultation, and seven days of debate, involving 22 members from all sides of the house. The NDP, he conceded, “has opposed this with all its vigour and with all its passion. I think it is fair to say it has been a difference almost on first principles” (Conway, 1989, Jul. 18).

NDP MPP Bob Mackenzie (1989) argued that the government was resolute from before the time the bill was brought forward that there would be few if any changes to it. Thus, while there were extensive hearings, these amounted to “window dressing,” to pacify public opposition (Mackenzie, 1989, Jul. 18). He argued that, “almost from day one the minister responsible for Bill 162 has made it clear that the bill will pass basically as it is (Mackenzie, 1989, Jul. 18). Indeed, he was talking to our critic and did not really want to enter into the public hearings we had” (Mackenzie, 1989, Jul. 18). Mackenzie (1989) continued that, “Not only were vitally interested parties denied a voice,” but during the committee hearings, “there was no response at all from the Liberal members of the committee. It was as though they were struck dumb, as though the fix was in and everybody knew it” (Jul. 18). Furthermore, Mackenzie blamed the

need to resort to “closure” on the personal dynamics established by the government house leader in his interactions with the opposition. He accused Conway of being “incompetent” in his “my way or no way” approach to house governance (Mackenzie, 1989, Jul. 18). House leaders meetings, he continued, are “always confrontational,” and so the opposition has felt that the only way to articulate their opposition clearly had been to through the “use of the rules or the use of the bells” (Mackenzie, 1989, Jul. 18). According to the NDP, then, the central problem with the decorum in the legislature had less to do with an obstructionist opposition than with a government house leader who refused to make compromises and who lacked the personal relationship skills to carry out the fragile task of all-party negotiations. Conway, Mackenzie (1989) argued, had “brought about the most unhealthy, nasty, personal and divisive house that is literally operating on invective and personal animosity...I think the government house leader should be replaced as a first step to restoring any civility in this house” (Jul. 18).

Further Restrictions Upon Debate: The *Standing Orders* Reforms of 1989

In response to the unraveling of house decorum, Conway announced a series of changes to the *Standing Orders* in late July that were designed to both close the procedural loopholes that had allowed for the opposition obstructionist tactics and improve the general atmosphere of the house. The changes to the *Standing Orders* were significant in that they established fixed time restrictions on a number of the procedures that had traditionally been left to negotiation between the parties in the legislature. Most fundamentally, the changes made reforms to the following:

- If division occurs, division bells are restricted to a maximum of five minutes.
- The period for petitions are restricted to a maximum of fifteen minutes per day.
- Motions to extend debate may be proposed by a Minister of the Crown without notice, although such motions may not extend beyond midnight.
- Eliminates challenges to Speakers’ rulings.
- Allowed the Chief Whip of any party to delay a vote until the following sessional day.

- Creates a new parliamentary calendar which creates an average of 100 annual sitting days per year.
- Eliminates the ability of the opposition to introduce motions for special debates, but replaces this with five opposition days per session during which the opposition would be granted the power to control the agenda of the house (Conway, 1989, Jul. 25).

The reforms to the *Standing Orders* established a more rigid house structure that made it even more difficult than before for the opposition to challenge government legislation. Whereas the previous format had provided the opposition parties flexibility to negotiate for additional time to debate issues of fundamental concern to them, the new procedures made such compromises from the government far less likely, since the majority of avenues left to interfere with the process were removed. Conway (1989) argued that the government felt that changes were necessary: “We were facing a pattern of obstructionism that was really making this place somewhat less effective and less efficient than the people of Ontario expect it to be” (Jul. 25). The reforms would bring about an end to the “endless ringing of bells, the mindless reading of petitions, the challenges of the Speaker’s rulings to precipitate bell-ringing, emergency debates,” that were, “coming fast and furious,” over the previous fourteen months (Conway, 1989, Jul. 25).

The opposition parties were unanimous that amendments to the *Standing Orders* were necessary. Michael Breugh (1989) expressed the sentiment of the preponderance of MPPs when he said that changes “were long overdue,” and would have the support of New Democrats in the house (Jul. 25). Although the opposition was not supportive of the increased rigidity of house protocols, they were appreciative of the concessions the government had made by making the chair of the Speaker electable by the whole house and by granting the opposition parties specific opposition days to control the house agenda and bring forward its own legislation.

NDP MPP Dave Cooke (1989) explained that with both the Sunday shopping bills and the *Workers’ Compensation Amendment Act* the opposition was “really backed into a corner,”

and so it followed that, “that is why those tactics were used” (Jul. 25). He added that, “We were going to use every rule that was at our disposal to stop that legislation and to hold the government accountable. That was our responsibility, that was our job and that is exactly what we did” (Cooke, 1989, Jul. 25). Cooke (1989) explained that his party was now, “happy that these rule changes are going to reform the system,” but was also pleased that they were able to use “outdated” rules to hold the government to account on two pieces of legislation that their party considered to be unacceptable (Jul. 25). “In many ways,” Cooke said, “we killed two birds with one stone” (Cooke, 1989, Jul. 25).

The new *Standing Orders* came into effect on the day the legislature returned from summer recess. The house ran considerably more smoothly during the fall months as the structured approach to parliamentary governance provided by the new *Standing Orders* ensured the advancement of the government’s program without obstruction from the opposition. The first opposition day in the history of the Queen’s Park was held on October 17, when the NDP introduced a motion to debate the government’s proposed auto insurance reforms (Sibinek, 1989). For the time being, all three parties were content with the new rules of the assembly. This period of armistice, however, was to be short-lived.

The 1990 Auto Insurance Controversy: The New *Standing Orders* put to the Test

The atmosphere of reciprocity in the legislature descended into dissention once again as the fall turned to winter. The Liberals introduced a controversial auto insurance reform bill that replaced the right to sue of persons injured in automobile accidents with a no-fault insurance system of payment. The NDP argued that the scheme was bound to result in higher premiums for Ontarians, and amounted to a publicly funded scheme of subsidization for the insurance industry. The Liberal government hoped to have the bill passed by late spring so that the new insurance

system could be up and running by the fall. The NDP, however, had every intention of delaying the government's timetable by dragging the bill through the committee stage for as long as possible.

On December 20th, new Government House Leader Christopher Ward (1989) introduced a routine motion to schedule committee business during the holiday break. Traditionally, these motions provide a sketch of the committee meeting schedule during the period of adjournment, often with provisions that the committee will report back to the legislature at some fixed date once the house is recalled. Such motions, however, are almost always agreed upon beforehand, and so are merely *pro forma* votes in the legislature. In an unprecedented maneuver that attempted to undercut the NDP's desire to drag the bill through committee, Ward (1989) brought forward a motion to set a fixed date for the Committee on General Government to report back to the house. The motion required that the committee meet for "a maximum of five weeks," in various places around Ontario, and that the bill be, "reported to the house on 19 March 1990" (Dec. 20). In the event that the committee failed to report the bill back to the legislature by the specified date, "the bill shall be deemed to be passed by the committee and shall be deemed to be reported to the house and the report shall be deemed to be received and adopted by the house" (Ward, 1989, Dec. 20).

The opposition was predictably outraged by the government decision to limit the consideration the bill would be given at committee stage, arguing it constituted a form of closure without having to resort to the inconvenience of a formal time allocation motion. This motion, NDP MPP Dave Cooke (1989) argued, had the effect of, "totally prejudging anything that might happen in the standing committee on general government on insurance" (Dec. 20). He argued the motion was "antidemocratic" and constituted the first time that the government had ever brought

in closure before on committee proceedings before it even began its work (Cooke, 1989, Dec. 20). “What the Liberals are really saying now,” Cooke (1989) declared, “is that it is all going to be a public relations exercise and that anything the public has to say will not be listened to by this government” (Dec. 20). Ward (1989) argued that the motion did not prejudice the committee, but brought the legislation back on the first day the house returned from break, where he promised the government would provide time at the Committee of the Whole, “to continue the discussion if the need arises” (Dec. 20). “We do not have the luxury,” Ward (1989) claimed, “to talk this out for a year and a half unless the drivers of this province are quite willing to accept increases in the neighbourhood of 30 percent for the coming year” (Dec. 20).

New Democrat Richard Johnson (1989) maintained that the abuse of a routine motion to suffocate debate on a highly contentious article of legislation struck at the very heart of the democratic process in Ontario. He recounted that recent years had witnessed a trend towards the evasion of the legislature by the executive in the name of efficiency. Johnson (1989) warned the assembly:

This is a very dangerous road to go down. The evolution in our parliamentary democracy should be slow and considered. It should not be precipitous and only meeting the needs of the executive council...there is a danger in looking at democracy and democratic institutions like this with an efficiency model rather than a democratic-procedure-and-rights-based model in mind. The more we swing into the presumption that the needs of the executive council are what this place must serve fundamentally, and not the needs of representation and the people as a whole, the greater the danger is to our democracy (Dec. 20).

Soon after the motion was brought forward in the legislature, the three house leaders agreed to extend the filing date of the committee report by one week. This short extension of the committee’s work demonstrated the leverage the new *Standing Orders* had provided the government, since it could now set a fixed house schedule without concern that the opposition might obstruct proceedings.

Despite its promise to allow for a robust debate on Bill 68, the government moved time allocation, the fifth of the Peterson era, on April 3, 1990, just a week after the committee was ordered to return its report to the legislature. Ward (1990) told the house it was with “great regret” that the government felt compelled to proceed with time allocation motion, but, “after having spent some 28 days, over 107 hours, discussing this matter, I do not believe the rights of the minority have been offended or abrogated in any way” (Apr. 3). NDP House Leader Dave Cooke (1990) argued that the motion should be ruled out of order because, “the government now treats time allocation motions, even though they are not provided for in our *Standing Orders*, as routine” (Apr. 3). He claimed that the continuation of this method of house governance would set a precedent empowering the majority to use time allocation as a method of invoking closure, “as often as it feels like using it” (Cooke, 1990, Apr. 3).

Although the changes to the *Standing Orders* the previous July established limitations on the methods available to delay the proceedings of the house, the opposition began searching for other procedural maneuvers not covered by the *Standing Orders* to extend debate on Bill 68. New Democrat Peter Kormos (1990), a self-described, “student of tradition and decorum,” recognized that although the procedural rules limited the time for petitions, motions, and division bells, no such restrictions had been placed upon the Orders of the Day (Apr. 4). According to house procedure, when Orders of the Day were called, any debate that had not finished the previous day was to be resumed by recognizing the speaker who held the floor when debate last adjourned. This meant that if Kormos could hold the floor until adjournment of the house, he would be the first speaker called for debate the following day, and could theoretically continue speaking each day until he was forced to stand down.

Kormos's filibuster began on April 3 on the debate scheduled for the time allocation motion. Every day for nearly a month, Kormos rose to speak at the beginning of the Orders of the Day, and held the floor until adjournment. Because the time allocation motion did not provide for limits on the debate over the actual motion itself, the government was powerless to require Kormos to stand down. On April 26, after Kormos had managed to delay the bill for more than three weeks, the government passed a motion without notice to extend the sitting of the house past midnight to force Kormos to continue speaking until he was no longer able to physically do so. Kormos began his speech at 4 p.m. on April 26, and held the floor throughout the night, ultimately reading letters and faxes from constituents on to the record. So determined was he to hold the floor that he began taking requests for letters from constituents by using the live broadcast of the proceedings to advertise for more calls. He reached out to constituents watching at home: "The phone number to call is 965-1224. I need your calls. If that line is busy, people can call 965-1239. Of course the area code is here in Toronto, area code 416" (Kormos, 1990, Apr. 27). At just after 9 a.m. on April 27, after speaking for 17 hours consecutively, the longest speech by a single member in the legislature's history ended when Kormos stood down. Upon doing so, he stated:

So I tell you, Mr. Speaker, I am tired... I could go on until one o'clock, two o'clock, or four or five. I could go on through to midnight tonight, I am sure of that, because my passion for the rights of drivers and taxpayers and, oh yes, innocent injured victims in this province is strong enough and has been reinforced by those hundreds and thousands of people phoning in and writing letters pleading for some decency and for some democracy here at Queen's Park. My passion is that strong. But do you know what, Mr. Speaker? I am fearful that the Liberals here do not listen. I am fearful that the Liberals do not care. I am fearful that the bonds between the Liberal Party in Ontario and the auto insurance industry are simply too strong to let the Liberals do what is right and do what is decent. At that, there is going to be an election in 1990, maybe before, probably after, Bill 68 gets rammed through, but we will let the electorate decide, I tell you that (Kormos, 1990, Apr. 27).

It was symbolic that what would turn out to be the final weeks of the final parliamentary session in the Peterson mandate saw an opposition filibuster hold up government business longer than any other in the province's history to that point. While Kormos's filibuster did not stop the passage of Bill 68, he had exercised his right as a member to use the means at his disposal to hold up the proceedings of the legislature, and exposed a loophole in the government's new *Standing Orders*. Ironically, after winning the general election just a few months later, the task would be left to the New Democrats to make changes to the *Standing Orders* to restrict similar opposition tactics.

Conclusion

The Peterson era will almost undoubtedly be recorded by history as both a time of immense transition in Ontario politics, but also as an interregnum period brought about by the relaxation of the crisis conditions that characterized the final years of the Davis government. It is impossible to speculate as to whether the Peterson government's approach would have differed markedly had economic conditions not allowed them to implement policy at a pace that was consistent with the democratic process. Although archival records from the Peterson years reveal that the government gave active consideration to the logic of Reaganism and Thatcherism, social and economic conditions were such that they were able to avoid navigating that political minefield during their tenure in office. The evidence shows that it has been the most reformist governments in Ontario that have shown a tendency to resort to the most extreme measures to insulate their decisions from the legislative process. Given that the Peterson Liberals ran a largely moderate, pragmatic government during times of economic prosperity, there was little need for them establish a procedural model for speed or to marginalize decisions from the parliamentary process. Instead, the Peterson government was able to make good on some of its

promises to restore trust in the democratic chamber following a tumultuous final few years of the Davis tenure. Decisions to televise legislative proceedings, to run a government with a more decentralized cabinet model, and to appoint an Independent Officer of the Legislature were all important steps to improve government accountability. The Peterson years also witnessed a reduction in the use of governance by regulation.

The democratic renaissance of this period should not be overstated, however. The Peterson era can be viewed as one in which certain trends established under Davis, such as time allocation, were reinforced, and in some cases strengthened. The government used time allocation on five different occasions—two more than the Davis government had—and passed new *Standing Orders* in 1989 that significantly diminished the leverage the opposition possessed to hold the government to account by delaying the passage of legislation. There was, however, a central difference between the Peterson government's approach to time allocation from those who came both before and after him: while the Davis, Rae, Harris, Eves, McGuinty and Wynne governments all used time allocation proactively, to implement their agendas, the Peterson government most often only used it as a last resort, as a method of breaking parliamentary gridlock brought about by an activist opposition.

The Peterson years were also something of a coming of age for the opposition parties, long consigned to the backbenches by the Tory dynasty. The alliance between the NDP and Liberals marked a watershed moment in Ontario's politics. Not only had two opposition parties toppled the longest serving government in the British Commonwealth, giving them capacity to influence policy, but they had also altered the province's entire political landscape. The days of the "clubby" atmosphere at Queen's Park in which all of the stakeholders understood their role as government member or opposition were consigned to the past. They were replaced by a highly

competitive dynamic in which all three parties would alternate opportunities to govern over the decade to follow. This produced an increasingly fractured and partisan legislature that began to reveal itself in Peterson's second mandate as the opposition resorted to a number of obstructionist tactics.

The 1980s, which began with Davis proclaiming the "Realities of March 19th" would close with Peter Kormos's month long filibuster, underscoring how profoundly the dynamics of the legislature had changed throughout the decade. Queen's Park, despite its reputation as a dull and obstinate political assembly, had experienced an awakening as the opposition parties began to assert themselves. These were undoubtedly the halcyon days for the opposition in Ontario; they were, however, to be short-lived. Within a few years, the Rae and Harris governments would take steps to close all of the procedural loopholes that had allowed the opposition to exercise their parliamentary right to obstruct house business in protest of the government's agenda.

CHAPTER SIX

“DEMOCRACY UNDER SIEGE”: THE NDP’S NEOLIBERAL TURN AND THE DECLINE OF PARLIAMENT AT QUEEN’S PARK; THE RAE YEARS 1990-1995

History will doubtless record the Ontario general election of 1990 as one of the most surprising electoral results in Canadian history. The election night results saw the NDP win a 74 seat majority government after taking only 37.6 percent of the total popular vote. The Liberals, who were reduced to the role of Her Majesty’s Official Opposition, lost 59 seats from their 1987 total, including Premier David Peterson’s London Centre seat. The NDP’s historic breakthrough was a watershed moment in Ontario politics. By electing the NDP, the public had entrusted a party to govern the province whose *raison d’etre* had traditionally been to oppose the existing structures of political and economic power. In opposition, the New Democrats had long functioned as the moral conscience of the legislature, taking strong, principled stances against government initiatives that, in their view, undermined the public interest. In its first Speech from the Throne, the new government promised to earn “the trust and respect” of citizens by opening Queen’s Park, “to those who have never before had an effective voice in the corridors of power” (Alexander, 1990, Nov. 20). In its pursuit to restore a sense of “integrity” at Queen’s Park, the New Democrats promised to hold the executive council accountable by establishing the highest standards of conduct, and to, “guard against institutional arrogance and the abuse of power wherever they exist” (Alexander 1990, Nov. 20).

The NDP, however, was confronted with two significant challenges that impeded its efforts to govern from the moral high ground to which it had for so long held claim. The first was a business lobby that launched a determined effort to ensure that the Rae government would not win a second term almost from the moment they were elected. On the morning after the NDP

election victory, the Toronto Stock Exchange “dropped sharply” as investors sold Ontario-based assets out of fears that a social democratic government might further impair an economy already suffering from a serious downturn (McArthur, 1990). President of the Ontario Chamber of Commerce, Linda Matthews, ominously warned the new government that they would “have to learn a lot very quickly about what’s important to the Ontario business community...we’ll be in there lobbying” (Matthews as cited by Gorrie, 1990, p. A1). In his memoirs, Rae recounted that the Bay Street lobby made the job of establishing a foothold in the province much more challenging than it already was. Major daily newspapers such as the *Toronto Sun* and *The Globe and Mail* lampooned the incoming government, helping to solidify the notion that, “this crazed group of socialists actually believed it was possible to spend its way out of the recession” (Rae, 1997). There was more than a kernel of truth in this notion, however. The New Democrats, at least initially, thought that the recession could best be managed through traditional Keynesian stimulus measures.

Secondly, soon after the 1990 election, the Ontario economy sunk into its worst recession since the 1930s. Ontario’s gross domestic product between 1990 and 1991 fell by almost one percent as the province adjusted to the consequences of the U.S.-Canada Free Trade Agreement (Statistics Canada, 2015c). Hundreds of small manufacturing companies in the province closed during this period, with more than 300,000 industrial sector employees losing their jobs in the process (Rae 1997). By 1992, unemployment levels rose to 10.8 percent despite the government’s initial efforts to encourage job creation through traditional Keynesian stimulus. The economy finally stopped its downward spiral in the middle of 1992, but it would be two years before the province’s GDP rebounded to 1990 levels (Statistics Canada, 2016b). It would take even longer for companies to begin hiring again, as the unemployment rate actually

increased in 1993 and fell only to 9.7 percent by 1994 (Statistics Canada, 2015c). The problem of economic decline was coupled with a policy of austerity at the federal level. In its 1991 budget, the Mulroney government imposed a series of restrictions on its social transfers to Ontario, which further eroded the government's capacity to address the unemployment problem without resorting to historic levels of deficit financing.

In its first budget introduced April 29, 1991, Finance Minister Floyd Laughren (1991), who had been given the tongue-in-cheek moniker Pink Floyd by *The Toronto Sun*, sought to, “pick up the slack in federal funding for social, health and educational programs,” by increasing spending. In order to address the recession, the NDP would allow the deficit to rise to a record \$9.7 billion over the course of the next fiscal year. Whereas the federal government had “abdicated its responsibility to promote economic growth during hard times,” the NDP argued that, “allowing the deficit to rise to this level this year is the most responsible choice we could make, given the economic and fiscal conditions we inherited as a new government” (Laughren 1991, Apr. 29). Infamously, Laughren (1991) told the legislature that, “we had a choice to make this year -- to fight the deficit or fight the recession. We are proud to be fighting the recession” (Apr. 29). Archived cabinet documents reveal that the cabinet remained committed to the principles of Keynesianism through 1991 despite considerable external pressure to abandon these efforts in pursuit of deficit restraint (Government of Ontario, 1991). The government remained primarily focused upon using the state to stimulate the economy as well as to offer skills training to the some 250,000 workers displaced by the recession. There is no mention in any of the 1991 cabinet material consulted for this project of the deficit-hysteria that would come to characterize the final years of the NDP mandate.

Public response to the 1991 budget was predictably mixed. While labour unions gave Laughren's Keynesian approach to the recession an "A-plus," the business community was fierce in its opposition (Maychak 1991, p. A.19). For the first time in recent memory, the introduction of a budget gave rise to a protest on the front lawn of Queen's Park by Bay Street investors who were outraged with the NDP's decision to run a \$9.7 billion deficit while increasing the capital tax on banks and loan and trust companies by 0.2 percent (Rae, 1997, p. 28). Similarly, critics of the Rae government from around the country went on the public record to express their disapproval of Ontario's Keynesian approach to economic governance. Prime Minister Brian Mulroney called the NDP's approach, "a reluctance to confront issues" (Mackie, 1991, p. A.1). Economists warned that if Ontario did not reign in its deficit in short order it would face a downgrade on its credit rating from the major lending agencies. The loss of triple-A credit status, they argued, could jeopardize the province's capacity to borrow from private institutions and function as a drain on investment (Walkom, 1994).

By early 1992, as the economy continued to spiral downwards, and Treasury projections indicated that the annual deficit could come in above \$20 billion, the Rae government's tone on austerity shifted markedly. Early in the New Year, Rae went on television to appeal directly to Ontarians that he was now of the view that, "public sector restraint had to be the order of the day" (Rae, 1997, p. 233). This could be achieved within a vision of social democracy, he argued, so long as it was balanced with significant public and private sector investment in employment generating policies (Rae, 1997, p. 233). In his memoirs, Rae revealed that by the end of 1991 he had come to the realization that he no longer believed "pretending that there wasn't any kind of a limit to the credit card was a prescription for serious policy" (Rae, 1997, p. 230-31).

So it was that in April 1992, Floyd Laughren presented what has become known as the “three-legged-stool” budget, which focused on three central priorities: a jobs plan, spending on human services such as health care and education, and deficit reduction (Laughren, 1992). The government would reduce total spending by more than \$3 billion from its 1991 budget, which included spending reductions in 15 separate ministries (Laughren, 1992). While the 1992 budget mixed Keynesianism with neoliberal policy solutions, by the time of the 1993 budget the Rae government had become firmly committed to the logic of fiscal restraint. During his 1993 budget speech, Laughren (1993) boasted that for the first time since 1942, Ontario government spending would actually decline from one fiscal year to the next. The NDP would cut the costs of running programs by 4.3 percent from 1992 levels, and reduce the size of government by 5,000 employees from 1991 levels.

Laughren (1993) warned that without putting the brakes on debt levels, “even assuming that international bankers would lend us the money, our interest costs would take off” (May 19). The necessary savings were to be achieved by finding efficiencies in the bureaucracy, through the elimination of jobs, and by negotiating new contracts with public sector employees. When the government was unable to reach a settlement with public sector workers through negotiation, it simply legislated a new contract with a wage freeze, granting significant powers to cabinet to enforce its terms through order in council. Archived files from the Productivity and Savings Committee show a restraint program that extended so deep into the public service that no luxury was spared; managers in the public service, for example, were required to ensure that each department phased out the use of cellular phones, bottled water, and scaled back travel expenses for all government employees (Ministry of Labour, 1993).

Ultimately, the NDP's mandate can be summarized as having two distinct phases. During the first phase, it attempted to govern in accordance with the principles of Keynesianism and the lofty moral standards it had set for itself in opposition. The second, which began in 1992 and became institutionalized by 1993, was characterized by a turn towards a policy of fiscal austerity designed to bring the deficit under control. This turn towards neoliberalism was accompanied by a political strategy that saw the government attempt to make up for lost time by imposing unprecedented restrictions upon debate in the legislature as a means of swiftly implementing its restraint program. Although some of the NDP's early efforts at marginalizing parliamentary debate can be attributed to a highly partisan and contentious atmosphere in the legislature that necessitated government intervention to break impasse, in the second half of its mandate the NDP began to use such tactics indiscriminately in order to rush its unpopular austerity program through the legislature and grant itself the authority to streamline the public sector. The case presented in this chapter is that an important part of the explanation for the NDP's unprecedented use of parliamentary tactics to suffocate debate is to be found in its shift to a policy of fiscal discipline in early 1992. Having already spent the year and a half attempting to spend their way out of the recession, the government's change in thinking meant that significant and unpopular changes would have to be carried out in short order. The slow, deliberative nature of the parliamentary process meant that if the government were to initiate the public sector restructuring necessary to bring the deficit under control, it required procedural mechanisms that could expedite its legislation through the assembly. In so doing, however, the New Democrats would set several new precedents that undermined the legislative branch, and ultimately prepared the way for the Common Sense Revolution in 1995.

Reorganizing the Executive Council

One of the Rae government's first acts upon taking office was to establish a cabinet structure best suited to manage the economic crisis. This meant developing a more streamlined cabinet structure that would further embed the finance ministry at the centre of government. In the post-1991 era, this new cabinet structure was the means through which the Rae government enforced its restraint agenda across government ministries. In the spring of 1991, the government tabled Bill 82, *An Act to Establish the Treasury Board*. The bill, which established a Treasury Board of cabinet with responsibility for expenditure management and planning was designed to replace the "fragmented and dispersed" relationship between the Management Board and the Ministry of Treasury and Economics that had led to, "inefficiencies in budgeting and program management" (Laughren, 1991, Jun. 20). Laughren (1991) argued that under the existing arrangement, "no clear leadership was being brought to the expenditure management and planning functions of government," nor was there an, "effective mechanism for reviewing and evaluation existing programs and services to ensure that full value was being achieved for taxpayers' dollars" (June 20). Such prudence in fiscal management, the New Democrats maintained, was imperative given the economic and fiscal circumstances confronting the province. Under the new cabinet model, the Treasury Board would have the authority to approve the budgets of all government departments, veto any spending in any ministry where necessary, establish policies for the preparation of estimates, and set the fiscal agenda for the government more generally (Laughren 1991, Jun. 20). The Management Board, meanwhile retained responsibility for the oversight of service delivery, human resources management and employee relations. The Treasury Board, then, was to function as the nucleus of the new cabinet, ensuring that all ministries conformed to the fiscal agenda set by the Premier's Office and the newly established Ministry of Finance. It was this hierarchical cabinet model, with management power

firmly entrenched in the hands of Finance, that provided the necessary state architecture for the extensive neoliberal restructuring that was to occur under both the Rae and Harris governments.

While the Peterson years were characterized by a relative turn away from the use of the executive authority as a method of circumventing the legislature, under the New Democrats the pendulum began to swing back to the days of the anti-inflation measures put in place by the Davis government in the early 1980s. Upon taking office, Rae promised to establish cabinet and caucus models structured upon the principle of consultation. Indeed, some have posited that one of the reasons for the NDP's unassured and slow response to the recession early in its mandate may have been due to a disordered decision making process that lacked in central coordination (Walkom, 1994). While Rae did consult with caucus, the demands of backbench members were contradictory to the policy direction the government felt was necessary to address the grave economic conditions confronting the province. Cabinet meetings, meanwhile, were often run like university seminars, with Rae functioning as the discussion leader, and cabinet ministers offering their advice on how the government should proceed (Walkom, 1994). Although the party's ideological instincts suggested a Keynesian response to the recession, the hegemony of the neoliberal orthodoxy in the west by the early 1990s caused the government to lose its nerve on a massive stimulus package that might have been sufficient to revive economic activity.

While Rae continued to attend caucus meetings to discuss policy with backbench government members, by the latter half of his mandate these meetings had largely become window-dressing. Many New Democrat members had taken on the mantra of restraint themselves, while most of those who were opposed had migrated back to their constituencies in hopes of salvaging their own seats in the next election. Others, such as maverick Peter Kormos,

spoke out openly against the government. In a 1993 speech, Kormos told the legislature that he was unwilling to be one of the “cheerleaders” of the government’s turn to neoliberalism:

Now I've got to acknowledge that I haven't been a very good caucus member. I haven't been. I don't know how to bowl...I'm not going to bowl in the five-pin bowling league. I'm not going to don pom-poms and go into a cheerleading routine. But I tell you, I'm going to do what I can to make sure that the integrity of this House, this Legislature, is (1) restored and (2) maintained (Apr. 27).

Although Kormos (1993) was unwilling to be “cowed,” many backbench members were (Apr. 27). Ultimately, the true legacy of the Rae government may be that it served as a crucial testing ground for many of the legal practices the Harris government mimicked and intensified to implement the Common Sense Revolution. The use of the executive authority to undertake the reorganization of the public service, established first under Rae, would prove to be arguably the most important tactic used by the Harris revolutionaries just a few years later.

Streamlining the Public Sector Through Regulation

With deficit projections bulging upwards of \$15 billion for the 1992 fiscal year, the NDP undertook to restructure the financial architecture of the provincial government. The rebalancing of the funding structure between Queen’s Park and the municipal governments, referred to as disentanglement, was designed to improve overall government efficiency by reducing overlap, and clarifying roles. In 1993, Queen’s Park and the Association of Municipalities of Ontario reached a transfer agreement over the provision of several key services. While the province agreed to pay for 100 percent of the costs associated with welfare services, cities took full responsibility for the provision of services more customarily associated with municipalities such as utilities, roads, ambulances, garbage collection and snow removal. The agreement also included a provision to reduce unconditional grants from the province to municipalities.

The process of disentanglement was facilitated in large part by the *Municipalities Amendment Act*. Bill 165 took steps to increase the amount of money municipalities were allowed to borrow to in order to increase their own deficits. In contrast to the Davis government's *The Property Tax Stabilization Grant Act*, which provided grants to municipalities in an effort to get them to reduce their borrowing and keep property taxes low, the Rae government actively encouraged municipalities to borrow more money in order to facilitate its plan to download services onto the local property tax base. The bill gave cabinet the authority to establish by order in council, "borrowing limits to replace the present project-by-project review necessary to obtain approval from the Ontario Municipal Board" (Bill 165, 1991). The purpose of this legislation was to give cabinet the power to expand municipal borrowing limits without having to pass a private bill or so much as debate the matter in the legislature. While expanding access to money allowed the government in the short-term to off-load services, granting an executive council that by this time had become preoccupied by deficit reduction the power to function as the gatekeepers of borrowing limits for cash-starved municipalities, risked creating severe long-term overleveraging problems for the province's cities.

Although the purpose of disentanglement was ostensibly to improve bureaucratic efficiency and provide clarity in terms of the sources of program delivery, its effect was to offload costs from the province on to the municipal tax bases. In 1992, the government announced that it would cap increases in transfer payments to the province's school boards at one percent for the next year. The cuts to transfer levels left boards of education in a precarious position given that education costs were rising far faster than the rate of inflation. Liberal MPP Jim Bradley (1992), said that the cuts left boards in a difficult position: "Either you increase taxes and maintain the services, many of those services and programs mandated by the provincial

government, or you have the other option of cutting services” (Jul. 13). Most boards, Bradley argued, were adopting both approaches and, “accepting the criticism, taking the flak, when in fact it is the provincial government which should be receiving that criticism” (Bradley, 1992, Jul. 13). He went on to point out a contradiction in the government’s rhetoric:

The premier of this province constantly whines at federal-provincial conferences and in this house and protests everywhere the fact that the federal government won't give him sufficient funds to carry out what he feels is his mandate and his responsibility. Yet his government does exactly the same thing to the municipalities, to the local transfer agencies, including the boards of education” (Bradley, 1992, Jul. 13).

The Rae government used a similar tactic in its effort to restructure the municipal planning process. The *Planning and Municipal Statute Law Amendment Act* eliminated locally based municipal advisory committees, and granted cabinet the authority to make urban planning decisions by regulation. The intent of the legislation was to streamline the planning proposal process by eliminating the requirement for public hearings through the advisory committees, which could often drag on for considerable periods of time (Bill 163, 1994). The bill gave the Minister of Municipal Affairs full discretionary power to make decisions regarding the approval, amendment, or denial of planning and consent-to-severance decisions throughout the province.

In 1994, the government once again resorted to the use of its executive authority as a means of reducing the regulatory burdens on businesses investment in Ontario. Bill 187, *An Act to Reform the Law regulating Businesses*, granted sweeping powers to cabinet to eliminate provincial regulations through order in council. It empowered cabinet to unilaterally make changes to regulations affecting filing requirements for businesses, the establishment of databases, and standards related to the disclosure of information among others. Just as it had done with its disentanglement agenda, the New Democrats sought the shelter of delegated

legislation a means of granting itself the flexibility and expediency to change regulations across numerous ministries.

The executive authority functioned as a crucial vehicle through which the neoliberal state form took shape in Ontario. For the New Democrats, use of its executive power was not borne out of any philosophical antagonism to the deliberative and democratic process, but out of the recognition that it could not deliver change at the speed required to get the deficit under control during their mandate without it. While many Ontarians might have agreed that deficit reduction was necessary, few were willing to sacrifice their own interests to achieve fiscal balance. Therefore, the government foresaw that only way to reliably achieve the savings required would be to establish centralized managerial control, and to use the power of the provincial executive to enforce unpopular decisions. As the years went by, the New Democrats became increasingly comfortable with this notion, despite its obvious contradictions with their traditional beliefs.

The Social Contract: Undermining Public Sector Bargaining Rights

The NDP came to power amidst considerable optimism within the labour community that the election of the first decidedly pro-labour party in the province's post-war history would result in a number of long-awaited reforms, and continue the labour peace established under the Peterson government. Early in its mandate, the New Democrats delivered on a series of reforms to employment standards that would earn them the accolades of union leaders. In 1991, for example, the government passed Bill 14, the *Pregnancy and Parental Leave Employment Standards Amendment Act*, which shortened the period necessary to qualify for parental or pregnancy leave, and lengthened date on which a pregnant woman could take leave from work from 13 to 17 weeks before the expected date of birth. Bill 7, the *Employment Standards Amendment Act*, also passed in 1991, implemented a wage protection program mandating that

employees be entitled to receive up to \$5000 in compensation if an employer failed to pay his or her wages. It also required employers to remain liable to laid off workers for six months of salary and 12 months of vacation pay. Most notably, Bill 4, the *Labour Relations Amendment Act*, made it illegal to use replacement workers during a strike or lockout, and established a “just cause” provision that protected employees from dismissal after union certification.

By 1993, however, it had become apparent that the NDP’s austerity agenda would conflict with the interests of the province’s public sector unions. Early in the New Year, Rae (1997) began to discuss with cabinet the need to take dramatic steps to cut public sector costs. To trim public sector salaries to a more sustainable level, Rae speculated that his government might have to eliminate as many as 40,000 jobs. Since giving layoff notices to such a large number of employees was neither consistent with his, nor his party’s belief system, Rae did what would become his hallmark as premier—sought political shelter in a compromise solution that ultimately satisfied no one. Rae’s answer was to propose what he called a “Social Contract” in which the majority of public sector jobs would be spared, but the government would achieve savings by requesting that the union consent to a wage freeze, and requiring employees to take certain number of unpaid days furlough days per year which would colloquially become known as “Rae Days.” As Rae (1997) himself put it, “better a Rae Day—or two or ten—in the context of a long-term job than no job at all (p. 252).

In April 1993, the Rae government assembled public sector union representatives for joint negotiations on the framework of the Social Contract (Rae, 1997, p. 245). However, contract negotiations did not prove fruitful, and the public sector unions refused to accept either the wage freeze, or the government’s proposed furlough days. In turn, Rae made the decision that if an agreement could not be reached by the end of May 1993, his government would take the

precedent-setting step of using legislation to force the Social Contract on public sector employees without their negotiated consent. Indeed, the only comparable precedent in Ontario's legislative history was the Davis Tories' *Inflation Restraint Act*, which Rae and the NDP had fought so ardently to stop in 1982.

On June 14, 1993, the NDP introduced Bill 48, *The Social Contract Act*. The bill was designed to, "achieve significant savings in public sector expenditures in a fair and equitable manner," and to encourage, "efficiency and productivity savings," by cutting more than \$2 billion from the public sector, spanning eight different ministries (Bill 48, 1993). The bill also empowered cabinet to impose a wage freeze of up to three years and/or up to three unpaid furlough days per year in pursuit of this objective without having to ratify such decisions in the legislature. Liberal MPP Greg Sorbara (1993) argued that the regulatory authority granted to the Minister of Finance had essentially placed "arbitrary powers placed in his hands, where he can make decisions on behalf of 900,000 workers as to what he thinks is right or wrong in Ontario" (Jun. 13).

In keeping with the government's devotion to fiscal discipline, it followed up the Social Contract with legislation designed to reorganize the health sector. In 1993, the government commissioned a Hospital Restructuring Committee designed to search for cost savings in the health sector. Previously confidential cabinet documents from the committee show that the government sought advice from private sector management consultants about how to improve the administrative structure of Ontario's health care system. The committee considered a number of changes, including the amalgamation and reorganization of hospital management structures in various communities, changes to the dispute-resolution process with health care workers, the

contracting out of certain services, a growth in the use of home care services, and a reduction in staff across the health care sector (Government of Ontario, 1994).

The results of this planning process resulted in Bill 50, the *Expenditure Control Plan Statute Law Amendment Act*. The legislation gave the Minister of Health sweeping powers to control the restructuring process. Bill 50 granted regulatory power to the minister to determine the number of times that doctors were permitted to bill the province for specific treatments for individuals and to rule that doctors should not be paid for services provided that were determined to be unnecessary. Perhaps most significantly, the bill also authorized the executive council to suspend contractual obligations to employees in the health sector in commensuration with the Social Contract, and to refer them to arbitration where a negotiated contractual settlements could not be arrived at. In essence, then, this provision gave cabinet the power to override the collectively bargained reimbursement structures for health practitioners in order to achieve its fiscal targets (Bill 50, 1993).

Minister of Health Ruth Grier (1993) claimed that such measures were necessary in order to harness rising salary costs in the health care sector, which acted as a significant drain on the provincial treasury. She explained that, “if we keep spending as though the sky were the limit, we will not have a universal health care system to pass on to our children and our children's children, because the system would become unsustainable” (Grier, 1993, Jul. 26). Liberal MPP Barbara Sullivan (1993), however, argued that the bill undermined the principle of parliamentary democracy by granting the health minister, “draconian powers to impose massive cuts on medical services, and hence, patient care” (Jul. 26). The government’s relationship with province’s public sector unions had become so poisoned that it had little choice but to use the political shell provided by the executive authority to enable ministers to make cuts without

having to engage in either contractual negotiations, or bring them back to the legislature for ratification. This was a tactic to which both the Harris and McGuinty governments would turn in the future to force contractual terms upon the public sector and to make politically contentious cuts to core government services.

The Introduction of the Omnibus Bill

The ambitious nature of the government's deficit reduction program required large-scale changes to the province's fiscal structure. Meanwhile, there was urgent demand within the Premier's Office and the Ministry of Finance to cut costs as soon as possible. Neither objective, however, was particularly well suited for the slow and considered nature of the legislative process, which was designed to encourage public debate and deliberation. The NDP made the decision to overcome this obstacle by bundling several of its most ambitious reforms into omnibus bills that would allow them to pass a number of loosely affiliated bills all at the same time, whilst allowing the opposition the time to debate only a single bill. Although omnibus bills had been common in the legislature's history, they were generally used to include a number of closely related housekeeping measures as part of the same bill so as to avoid having to pass several different pieces of legislation for minor changes to the law. Omnibus bills, in this respect, had generally enjoyed all-party support since their policy implications were usually of a trivial nature in the grand scheme of the government's overall program.

It is no coincidence that the Rae government's shift towards the use of omnibus legislation in the spring of 1993 was contemporaneous with both its turn towards neoliberal policy solutions and its preoccupation with restructuring the state apparatus. Omnibus legislation proved to be an alluring parliamentary tactic for a party seeking to undertake complex and multi-faceted changes in short space of time as the New Democrats were. The majority of the omnibus

bills proposed by the NDP did possess a common theme in that they sought to reform the government or other state institutions to improve their efficiency and to reduce their costs to the public treasury. These changes often occurred across several ministries, affecting numerous pieces of legislation. Passing each of the proposed reforms individually would have absorbed the majority of the government's agenda had it provided full time for debate on each bill, but by packaging multiple bills together, it was able to implement changes quickly and with minimal political consequence. The use of omnibus legislation also allowed the government the strategic advantage of burying controversial policies within legislation that contained otherwise popular measures, thus downplaying its more controversial elements.

The government's first abuse of omnibus legislation occurred on May 17, 1993, when it introduced the *Capital Investment Plan Act*. The bill amended seven different bills and made significant changes to several different ministries through the establishment of four new Crown corporations: the Ontario Financing Authority, the Ontario Transportation Capital Corporation, the Ontario Realty Corporation and the Ontario Clean Water Agency (Bill 17, 1993). The establishment of the Ontario Realty Corporation was designed to obscure the extent of the province's debt load by empowering the government to transfer publicly owned assets such as land, buildings and resources to the corporation, allowing it to count the funds received as revenue. While the Ontario Realty Corporation would have the right to keep these assets and sell them back to the government, it was also granted the authority to seek private sector buyers for public assets at the minister's discretion. Through the establishment of the Crown corporations, the government was able to move more than 3,000 employees off of the government payroll and on to the budgets of the newly formed corporations to claim that it had taken steps to reduce the size of the public service.

Bill 17 also included provisions to shift the financial burden of the public school system onto the municipal tax base by reducing transfers to public school boards by \$600 million per year, instructing them instead to borrow the money from the private sector (Phillips, 1993). While the government promised to refund the money borrowed by the school boards at the end of the 20 year funding cycle, this maneuver allowed it to claim this money as savings while creating considerable pressure for local school boards, fearful of incurring significant debt loads of their own, to simply raise property taxes to make up the difference in the transfer cuts. Other provisions in the bill enabled the province to use the new Clean Water Agency to find “efficiencies” in water management (Bill 17, 1993).

Although the bill arguably contained a number of similarities in that it created several Crown corporations, all of which were designed to help the government reduce its deficit, the introduction of a bill that made so many fundamental changes to the architecture of the state without having first received the unanimous approval of the opposition was without precedent at Queen’s Park. Parliamentary tradition stipulated that changes of such magnitude should have been separated and passed as four individual bills, each of which would have to be allocated time for debate on its own merits. In hindsight, Bill 17 proved to be one of the most significant pieces of legislation in the province’s history, not because of the policies it implemented—important though they were—but because it would serve as a proverbial canary in the coalmine for what lay ahead in Ontario’s immediate future. The blueprint established by Bill 17 would become one of the essential procedural mechanisms through which the New Democrats would seek to reform the public sector.

Two weeks later, on June 1, 1993, the government proceeded with another omnibus bill, which would have important implications for the province’s tax structure. The significance of

Bill 29 was that it was a budget implementation bill. Rather than separate the major features of its budget into multiple pieces of legislation to be debated on their own, the government sought to pass all of the taxation matters announced in their budget in a single piece of legislation. Economic Development and Trade Minister Richard Allen (1993) explained the government's omnibus bill strategy in the legislature: "You know the government has to change with the times," he said (Jun. 22). "You know that economic circumstances change. You know it is necessary to have some flexibility in programming" (Allen, 1993, Jun. 22). Just as the case had been in the early 1980s, economic crisis became the justification for upending parliamentary tradition to increase the speed with which the government was able to implement its fiscal plan. In the process, however, the New Democrats were setting a new precedent that undermined the spirit of parliamentary supremacy.

The government again brought forward omnibus legislation in June of 1993 to implement other aspects of its budgetary policy. Whereas Bill 29 implemented the taxation policy announced in the 1993 budget, the *Expenditure* and the *Non-Tax Revenues Statute Law Amendment Act*, dealt with the revenue aspects. It made amendments to a number of bills including the *Corporations Information Act*, the *Small Business Development Corporations Act*, the *Health Insurance Act*, the *Ontario Drug Benefit Act*, the *Game and Fish*, and the *Public Lands Act* (Bill 81, 1993). One issue that drew particular criticism was the government's decision to amend the *Ontario Drug Benefit Act* to grant cabinet power to impose user fees on the purchase of pharmaceutical products. The opposition argued a change that would require patients to pay additional fees on the purchase of drugs deserved to be considered as a single bill and given considerable time for debate and public consultation, rather than bundled in a package with miscellaneous legislation imposing royalties on commercial fishing and additional hydro

charges for developers, among other provisions. Upon consultation with the opposition parties, the government ultimately agreed to withdraw its “severe and heavy handed” bill and unbundle it into separate pieces of legislation (Wilson 1993, Dec. 8).

Any hope that the goodwill expressed with the withdrawal of Bill 81 in December 1993 would carry over to the following year was sabotaged when the house returned from recess and the NDP introduced another omnibus budget measures implementation bill. Bill 160, the *Budget Measures Act*, amended 16 separate pieces of legislation ranging from reforms in education to corporate taxation. Liberal MPP Murray Elston (1994) lamented that there were elements of the budget that his party would have willingly supported, but when they were bundled with various other issues his party opposed, they could not give it their support:

Why wouldn't we be dealing with some of the things on the Game and Fish Act? Why do we have to hide it under the cloak of this omnibus bill? What about the Ontario home ownership plan? Good news for a lot of people, a well-received portion of this year's budget, why does it have to be in this omnibus bill? (Elston, 1994, Jun. 13).

Similarly, Liberal MPP Eleanor Caplan (1994) argued that with its third significant omnibus bill in the last year, the government had begun to exhibit a “command-and-control method of governing,” that was “tremendously undemocratic” (Jun. 23). She warned that the NDP had established:

an enormous precedent which I predict will be used by future governments because the precedent has been set and established to deal with budgetary matters flowing from the provincial budget in one piece of omnibus legislation, I believe democracy and the precedents of this house are such that we will look back on this day and see this precedent as not having been a positive one (Caplan, 1994, Jun. 23).

Caplan's warning proved prophetic. Within a year, the Harris government would be in office, and the omnibus bill proved to be the most important legislative tool available to it in the implementation of its radical restructuring plan.

Later the same month, the government introduced the *Planning and Development Municipal Statute Law Amendment Act*, which amended parts of more than 20 pieces of legislation (Grandmaître, 1994). The NDP made the case that these changes were necessary to streamline the approval processes of urban planning and to implement major planks in the government's fiscal restraint agenda that were of the utmost urgency. When opposition members expressed their desire that the bill be unbundled and debated as several pieces of legislation, the government invoked time allocation. Jim Bradley (1994) summarized his reaction to the government's tactics:

I think this is regrettable for democracy, because it again places in the hands of those who are not elected, the people who cannot be accessed by the general public very easily, much more power and less power in the hands of democratically elected politicians. We're the only people they can get at. We are the ones who have to be reassessed and either elected or not elected at election time. That does not happen with those who are in the civil service; that does not happen with those who work for the Premier's office or who are political appointees in ministers' offices; in other words, people who have had in several governments many powers and I think in this government even more powers because of the changes to the rules that were made at the behest of Mr. Rae (Nov. 2).

Any doubt that the use of omnibus legislation had become a normalized element of NDP procedure was eliminated with its June 6, 1994 introduction of a massive bill designed to make "moderate but real improvements in service to the public and improvements in the administration of government and its programs" (Bill 175, 1994). Bill 175 amended over 100 pieces of legislation, across 14 different ministries, and repealed seven acts entirely. While the government claimed that most of the changes were minor and involved only matters of housekeeping, amendments ranged from allowing alcoholic beverages to be sold in provincial parks, to the payment of driver's licenses by credit cards, to the harmonization of federal and provincial food grading systems in the name of improving government efficiency.

Progressive Conservative MPP David Tilson (1994) claimed that his privileges as a member had been violated by the omnibus bill, since its format did not afford him the same opportunity to debate the various provisions that would have been available to him had the government presented the bill in 14 different pieces of legislation for each ministry it affected. He argued that the opposition critics for each ministry under omnibus legislation would be limited to just 30 minutes to deal with all of the changes proposed. While omnibus bills had been ruled in order with house procedure in the past, he asked the Speaker to consider that Bill 175, “goes beyond the generally accepted form of legislation and is using an omnibus format that is inconsistent with the practice of omnibus bills” (Tilson 1994, Oct. 31). Furthermore, the bill did not meet the standard set by parliamentary precedent in which omnibus legislation was required to feature, “one purpose that ties together all the proposed amendments and therefore renders the bill intelligibly for parliamentary purposes.” In Bill 175, he argued, “the range and scope...are not related in any meaningful way” (Tilson 1994, Oct. 31). Ultimately, the Speaker ruled that while he shared the concerns expressed by the opposition, he had no choice but to rule that Bill 175 was in accordance with the procedural protocols of the house. This was the case since there existed, “plenty of precedents for omnibus legislation of many types,” and because, “it is not the responsibility of a Speaker to take it upon himself or themselves to split proposed legislation” (Morin, 1994, Oct. 31).

It is often assumed that the Harris government is responsible for pioneering the massive omnibus bill as a tool to marginalize the legislature. This is an assumption that is no doubt rooted in the fact that the Harris government often used the omnibus bill prodigiously, far eclipsing any bill passed by the New Democrats. However, the precedent was first established in the late spring of 1993, when the Rae government, consumed with making up for lost time in bringing the

deficit under control, sought to bundle its legislation together to get it through the legislature in short order. It was these first few bills passed by the New Democrats in 1993 and 1994 that put the notion of the omnibus bill as a series of unrelated measures to the procedural test, and entrenched them as practice at Queen's Park.

The Customization of Time Allocation at Queen's Park

A Chaotic First Year

Despite having been the catalyst of the tumultuous atmosphere that hung over Queen's Park during the Peterson era, the New Democrats pledged that they would reach out across the aisle to establish an effective and democratic working relationship with the opposition to bring a semblance of order and decorum back to the legislature. To be sure, there was considerable optimism that the New Democrats, who had long served as the democratic conscience of the legislature, and had stood in steadfast opposition to attempts by the both Liberal and Conservative governments to circumvent the will of the house, would reverse the use of procedural trends to marginalize the legislature that had taken hold at Queen's Park over the course of the 1980s.

In the early months of the NDP's mandate, the house leaders did meet on several occasions on the recognition that it was in the interests of all three parties to foster a more functional procedural environment in the legislature. Although the house leaders did manage to forge a temporary truce, it would be undone shortly after the legislature returned from winter recess by the opposition's resistance to one of the government's signature legislative initiatives, Bill 4, the *Residential Rent Regulation Amendment Act*. A tension quickly emerged between the starkly opposite views of the social democratic New Democratic Party and those of Mike Harris, the leader of the Progressive Conservative Party, who had moved the party towards a more

fundamentalist interpretation of economic liberalism (McDonald, 2005). When the Rae government attempted to move Bill 4 through the house using normal procedural channels, the Tories took pains to block its passage.

Making good on their commitment to facilitate better relations between the three parties, the New Democrats first sought to break the impasse through a series of meetings between the house leaders. When the Progressive Conservatives refused to allow the bill to pass without significant amendments that would have reconfigured the entire intent of the bill, the NDP made the decision to proceed with a time allocation motion to ensure the bill's passage. By bringing down the guillotine, the NDP were breaking one of their fundamental promises just months into their first mandate. Bill 4 had received 10 hours and 33 minutes of debate in Committee of the Whole, and eight hours and 36 minutes of debate on second reading (Eves, 1991). In a candid speech to the legislature, Government House Leader Shelley Martel explained that the government felt it had little choice but to call for time allocation given the intransigence of the Progressive Conservatives. She described the most recent house leaders meeting:

It was clearly told to me that the government would have to do what the government had to do. That was a pretty clear signal to me, and I think everyone around the table understood what that meant. What it meant very clearly was that the issue would be forced and we would have to bring in a time allocation motion (Martel, 1991, Apr. 10).

The NDP were unapologetic. Dave Cooke (1991), the Minister of Municipal Affairs and Housing, who as former house leader for the NDP in opposition had fought numerous battles against the Liberals when they attempted to use time allocation, argued that since the Tories had, "said from day one they are opposed to Bill 4," the government was left with "no alternative," but to bring down the hammer of time allocation to get the bill through the legislature (Apr. 10). In a considerable departure from his position as a member of the opposition just a few months earlier, Cooke (1991) told the assembly that the government had "an agenda to protect tenants

and we as a government are determined to do that. The Conservative Party is trying to prevent that from happening and that is why we have had to bring in time allocation today” (Apr. 10). In response, Progressive Conservative MPP Ernie Eves identified the absurdity of Cooke’s comment given his previous position on the issue. “My, how times have changed,” Eves (1991) said, “the former house leader of the New Democratic Party, now the Minister of Housing, standing up and talking about defending time allocations” (Eves, 1991, Apr. 10).

Liberal MPP Yvonne O’Neill (1991) argued that the use of time allocation on so controversial a bill without giving additional time for deliberation and public consultation undermined her rights a member and the spirit of the democratic process. She said,

I take this motion as being arrogant. It is a sad commentary on what I know and many know as a bad bill. It is an abuse of majority government. We are limiting debate on a bill that is not fair. It is retroactive. It has had incomplete public hearings. More people have been turned away from expressing a viewpoint on this bill than were received, and in every instance this bill is controversial. It has been the focus of two major marches to this legislature, the only bill that has received that kind of attention in this province, so we are shooting down debate from the floor of this legislature, while we are still listening to and discussing the very first amendment presented by my party. I feel this is an infringement of my rights as a member of this legislature. The NDP government is acting exactly like the Mulroney government, “it is either our way or the byway” (O’Neill, 1991, Apr. 10).

The time allocation on Bill 4 was significant for a two reasons. First, it signified a breakdown in the short-lived pledge for cooperation among the three parties from which the 35th Parliament would never recover. Second, it also represented the first time that the NDP, the party that had stood steadfastly against time allocation on so many occasions over the previous decade, had eagerly endorsed its use. The surprise was not merely that the government used this procedural tactic, but that they did so using the same arguments, and in accordance with the same logic, as the Liberals and Conservatives had done before them. It is not an overstatement to suggest that Bill 4 signified the moment at which time allocation became entrenched as a staple of house procedure. While it had arguably become customary long before this, the NDP had previously

always been able to claim a moral high ground as the gatekeepers of parliamentary democracy. However, having adopted time allocation so brazenly in this instance, all three parties had now established a recent history of having brought forward and used time allocation as a tactic for the implementation of their legislative program.

Any pretension of collegiality that may have remained after the NDP's first use of time allocation was eliminated when Floyd Laughren introduced his first budget in April 1991. In protest of the Keynesian-style stimulus measures it sought to impose, the Progressive Conservatives once again took to a series of parliamentary tactics to delay the routine proceedings of the house. On May 6, the Tories engage in obstructionist tactics, the absurdity of which had precedent only in the actions of the New Democratic Party themselves during the Peterson government. During members' statements, Tory MPP Norm Sterling (1991) rose on a point of order to voice his displeasure with the government's budget. Although he was repeatedly rebuffed by the Speaker who ruled that his arguments did not constitute points of order, he would rise three more times throughout the day as a method of stalling proceedings.

Later the same day, Progressive Conservative Leader Mike Harris rose in the legislature to introduce private members' legislation, Bill 95, the *Zebra Mussels Act*. While the *Standing Orders* provided that the introduction of bills had to allow for each of the member, the Speaker and the Clerk to all read the title of the bill onto the record in both English and French, they included no restrictions upon how long the title may be. So it was that when Harris introduced Bill 95, its title included the name of every lake, river, and stream in the province, which he proceeded to read onto the record for the duration of the day (Harris, 1991). Although the reading of the bill was dispensed with at end of the day, Harris had succeeded in making his point about the budget by stalling normal proceedings for the entire afternoon.

The Tories would continue to delay the proceedings of the house in the days to follow. Beginning May 7, they sought to exploit another loophole in the *Standing Orders* by bringing forward repetitive motions for adjournment of debate and for adjournment of the house without first giving notice to the government. Since there was no provision in the *Standing Orders* for how many motions for adjournment members could bring forward in a given sessional day, Conservative members continued to rise to move adjournment, requiring time-consuming votes on division. Although the NDP was able to use its majority to defeat each of the motions for adjournment, the Tories succeeded in absorbing considerable time scheduled for the budget debate. In the first two weeks of May, the opposition introduced eight motions for adjournment of debate of the house and eight motions for adjournment of house business during routine motions. Additionally, the opposition introduced 21 private members' public bills, many of which dealt with the same issues, and rose on 19 mostly superfluous points of order on matters related to the failure of the government to respond to written questions in a timely fashion under Section 95(d) of the *Standing Orders* (Warner, 1991).

On May 13, Government House Leader Shelly Martel (1991) argued on a point of order that the opposition tactics constituted, "an abuse of process and of democracy," because Mike Harris had already made it clear that he would not support the budget under any circumstances (May 13). She claimed that while the government had attempted to extend an olive branch by offering an extension of debate in committee, Harris called the premier a "dictator," and argued that such a debate would be superfluous given the NDP's majority (Martel, 1991, May 13). Martel (1991) implored the Speaker to use his, "inherent authority to prevent such abuses of process from bringing the work of the house to a standstill," since the interruption of proceedings had, "nothing to do with bringing out alternative points of view on the budget" (May 13). Tory

MPP Donald Cousens (1991) argued that the government was attempting to, “bring its power into focus, using the Chair against the opposition to achieve the government’s ends” (May 13). Cousens also pointed to the deep irony of the government’s position given that it had been the initiator of the majority of the obstructionist tactics in the legislature’s recent history. He quipped that

It would be absolutely hilarious if it were not necessarily so sad, the fact that the government, when it was in opposition, used every device and technique possible to try to draw attention to the issues and in so doing was able to articulate a concern that otherwise it felt could not be expressed (Cousens, 1991, May 13).

After hearing submissions from the government and opposition, Speaker Dave Warner (1991) ruled that Martel’s request that he intervene to resolve the impasse was “incompatible with not only the nature of the office of the Speaker but also the idea of parliamentary democracy” (Warner, 1991, May 27). In short, so long as there remained an opportunity for the house leaders to negotiate a settlement, he ruled that this route should be explored rather than asking him to exercise his rarely used discretionary authority to invoke closure on the opposition’s obstructionist tactics (Warner, 1991). While the parties were ultimately able to come to an arrangement that saw the budget pass in accordance with the government’s time constraints, Warner’s ruling marked a watershed moment in the history of legislative procedure at Queen’s Park. The New Democrats, having lost on this point of order, began preparations to bring forward amendments to the *Standing Orders* to ensure that future attempts to obstruct its agenda could not occur without contravening the rules of house. The resulting reforms to the *Standing Orders* would permanently reshape the procedure at the Ontario Legislature.

Civility returned to the legislature for the balance of the year, but by the spring of 1992, the Progressive Conservatives once again refused to cooperate with several of the NDP’s signature pieces of legislation. The Tories were unwilling to negotiate time limitations for debate

on Bill 143, which implemented a Waste Management Authority to seek out locations for new landfill sites in the Greater Toronto Area. In response, the NDP proceeded with the second time allocation motion of their mandate on April 16, 1992 (Martel, 1992, Apr. 16).

Less than three weeks later, the government attempted to invoke closure without notice during third reading of Bill 86, *Gasoline Tax Amendment Act*, after frustrations in their negotiations with the opposition. NDP member Ed Philip (1992) rose in the house to move that, “the question now be put,” on third reading of the bill given the, “very urgent business this house has to deal with on a number of matters” (May 6). Deputy Speaker Gilles Morin, who served as a member of the Liberal Party, was in the Speaker’s chair at the time of Phillip’s request for closure, and elected to use his discretionary authority to disallow the request for closure. Morin (1992) told the house, “I feel there hasn’t been sufficient debate on this third reading; therefore, the debate will continue” (May 6).

Although the NDP could not challenge the Speaker’s request, some members used their time during third reading to express their discontent with Morin’s decision. For instance, Gilles Bisson (1992), New Democrat MPP for Cochrane North, argued that the urgency of the economic crisis required that the business of the house move forward:

We’re in the middle of the worst recession since the 1930s. To have the opposition stall, deter and try to slow down every piece of legislation that we’re putting through for their own political means is not appreciated on the part of the people of this province... we have the right and we have the responsibility to govern this province over the next four years. The quicker the opposition can realize that, the quicker we can get to the business of this house and deal with the issues that affect the people of this province, day by day (May 6).

With the Speaker having rendered his decision, the NDP had little choice but to continue to debate the bill for the balance of the evening as the house schedule directed. While they were able to work out an arrangement with the opposition to end debate on Bill 86, the arbitrariness of

Morin's decision did not sit well with the government. To them, it had become obvious that change was necessary to blunt opposition efforts to stall their agenda.

Formalizing Time Allocation: The 1992 *Standing Orders* Reforms

What followed from the tumultuous first 20 months of the Rae government was the implementation of the most restrictive amendments to the *Standing Orders* in the legislature's 125 year history at the time. There can be little question that the amendments to the *Standing Orders* announced on June 25, 1992 were a seminal moment for procedure at the legislature. While the reforms to the *Standing Orders* under the Peterson government restricted the time allocated in the house for petitions and division bells, they had largely kept with the legislature's tradition that important decisions regarding the legislative schedule were left to deliberation between the house leaders. The changes implemented by the NDP, however, went far beyond this, taking power away from the house leaders by establishing formal time limits on all aspects of routine proceedings in the legislature.

The amendments set definite time limits of 30 minutes on all speeches in the house unless otherwise agreed to by consent of the assembly, with the exception that during debate on second reading or third reading of a bill, a debate on the Speech from the Throne, a budget motion, interim supply, or any other substantive government motion, the first member for each party was permitted to speak for up to 90 minutes. The reforms also established a time limit of 30 minutes for the "Introduction of Bills" in light of Mike Harris's attempts to exploit this loophole in the *Standing Orders* to delay proceedings in May of 1991 (Mankiel, 1992).

Additionally, the *Standing Orders* made, for the first time, specific provisions for time allocation. Whereas one of the central criticisms of the first time allocations moved during the 1980s was that such motions were not formally provided for in the Ontario *Standing Orders*, the

NDP resolved this problem once and for all by entrenching them as a part of house procedure, and establishing rules surrounding their usage. The new rules allowed a Minister of the Crown or the Government House Leader to move time allocation on any government bill or substantive government motion so long as notice was filed with the Clerk before 5:30 p.m. the previous evening. When any time allocation motion was the first order of the day, it was incumbent upon the Speaker to put the question before the house without further debate at the end of that sessional day (Mankiel 1992). This particular provision had its roots in Peter Kormos's infamous filibuster on the Peterson government's auto insurance reforms. As a concession to the opposition, the government allowed that three full days of debate must be held on a motion for time allocation on second reading of a bill or any substantive government motion. Perhaps most importantly, the government included a provision that prohibited the Speaker from overruling any time allocation motion as being out of order. (Mankiel 1992).

In short, the changes to the *Standing Orders* granted the government full control over the proceedings of the house by ensuring that each bill would pass within the time limitations set out in the new reforms. While negotiations between the house leaders would continue to establish the time set out for debates, they would now be required to do so within the framework of limits in the *Standing Orders*. The long-standing tradition at Queen's Park in which house business was set through negotiation between the house leaders on the principle that all parties should have input into the process, was now resigned to the history books. From this moment forward, the government of the day would have the right to pass any piece of legislation without having to placate the opposition at any stage of the process. In the event that the opposition attempted to stall the passage of a bill, the government now held the formal right to pass a motion of time allocation that the Speaker would be powerless to object to.

Government House Leader Dave Cooke (1992) argued that the new *Standing Orders* were necessary to “modernize the rules in the legislature,” in order to “bring in some changes to the rules that will allow the government of the day to get its legislative agenda through the house,” in light of the increased use of obstructionist tactics by the opposition (Jun. 25). Liberal House Leader Steve Mahoney (1992) made it clear in no uncertain terms that his party had not consented to the amendments as the New Democrats had claimed in their initial attempt to provide the illusion of all-party agreement. In his speech on the changes he made his position clear:

I want to set the record straight and tell you there was no deal on the part of the official opposition, the Liberal Party. What there was in essence was capitulation, facing the reality that the government, with its large majority, really had us in a position where we were backed up against the wall, backed into a corner, no tomorrow, all those clichés that forced us to say, "Well, I guess you're going to shove this down our throat and I guess we're just going to have to live it. The reason there was no deal or no agreement, even through all the negotiations the government house leader referred to with regard to the opposition house leader and the house leader for the third party, is that the word “draconian” would not do justice to some of the amendments (Jun. 25).

Mahoney argued that while his party disputed the time limits placed on speeches, it was particularly concerned about the decision to formalize time allocations and eliminate the Speaker’s prerogative to disallow them. In a moment of prescience given what was to come only three years later upon Mike Harris’s election as premier, Mahoney (1992) warned the legislature of the implications of the new time allocation rules:

If a government does not abuse it, the implication may not be that great. But what about a government that does abuse it? This government may say, "Well, gee, we wouldn't do that." What if -- and I would ask members in the opposition to think about this -- we wound up with some very radical right-wing government, maybe 20 years from now, that might decide it's going to ram through its legislation and its agenda and to heck with the members of the opposition? This will give them the power to do it (Jun. 25).

For Mahoney, the changes were a far too drastic step and undermined the very foundations of representative democracy. He argued that the time limits placed on speeches

functioned as a form of time allocation, and that new rules surrounding the establishment of both mechanisms were merely superfluous. The two reforms, he said, acted as a “double hammer” that was, “totally unnecessary and simply shows that this government is afraid to debate the issues that are of such significance at any length beyond the controls it's putting in place” (Mahoney, 1992, Jun. 25). Liberal MPP Greg Sorbara (1992) concurred with Mahoney’s sentiments:

What's happened here is that the government, the state, the executive, the cabinet, the power of the state has been increased and the power of the opposition, the power of the minority, has been reduced. I want to just tell you, I think the last thing we need in this great province is a further augmentation and a further centralization of the power of the state (Jun. 25).

Perhaps most tellingly, New Democrat Peter Kormos (1992), spoke out against his own government’s reforms. In a speech to the house he declared that he could not in good conscience support the new *Standing Orders*, calling them a, “dangerous assault on what this institution should be” (Kormos, 1992, Jun. 25). He warned that while the opposition obstructionist tactics might make such reforms provocative, government backbenchers should beware making hasty decisions. “I’m incredibly concerned,” he said, “that what we’re seeing here is a silencing of backbenchers, a silencing of opposition members, and I’m confident that democracy will not necessarily be well served” (Kormos, 1992, Jun. 25).

The government put the new *Standing Orders* into use shortly after their implementation, bringing forward a time allocation motion on Bill 40, the *Labour Relations Amendment Act* just two weeks after they were passed by the house. Under the motion, the bill would receive five weeks of public consultations during the summer, and two days for both Committee of the Whole and third reading upon the recall of the house in the fall (Cooke, 1992, Jun. 25). The opposition

decried the use of time allocation on a highly contentious piece of legislation. Long-time MPP Sean Conway (1992) argued:

It is absolutely unprecedented that this or any government in this jurisdiction would introduce a bill of this kind on the 4th of June 1992 and expect to have that bill given Royal Assent on or about Thanksgiving of the same year. That is mind-boggling. My friends, particularly the Treasurer, know that (Jul. 14).

Tory House Leader Ernie Eves, however, had resigned himself to the reality that governance through the executive had become the model in Ontario. He lamented that:

I don't believe in Tinkerbell... I can remember Bill Davis's government ramming through legislation without amendment, I can remember David Peterson's government ramming through legislation without amendment and now I have lived through Bob Rae's government ramming through legislation without amendment. That is the way the place operates (Eves, 1992, Jul. 14).

The new *Standing Orders* also received the first test of their legitimacy when on July 17, the government introduced a motion for time allocation on third reading of Bill 150, which had begun the previous day. The NDP employed a new provision in the *Standing Orders* that allowed it call a bill to vote on third reading after only two days of debate. The difficulty, however, was that while the government had satisfied the condition of allowing two days for debate, Progressive Conservative MPP Norm Sterling, whose speech was cut short by the motion, had not yet completed the 90 minutes allotted to him in the *Standing Orders*. In this respect, the new provisions in the *Standing Orders* seemed to contradict one another. Liberal MPP Greg Sorbara (1992) argued on a point of order, that the attempt by the government to bring about a vote without first allowing Sterling to complete his time constituted closure rather than a time allocation motion and should be ruled out of order. He argued that the government's attempt to mask closure as a motion for time allocation was, "the most serious assault on our right to debate legislation ever presented in this house," and pleaded with the Speaker to, "reflect on this issue, to sleep on this issue, to read the precedents of the house" (Sorbara, 1992, Jul. 20).

The following day, Speaker Warner (1992) ruled that the time allocation motion was in order since the government's satisfaction of the provision requiring two days' debate was sufficient to call for a vote the following day under the new *Standing Orders*. While the motion did indeed cut Sterling's speech short, the time limitations set out in the new rules were merely maximum thresholds, and therefore did not preclude the government from truncating them through time allocation any more than if the parties were to come to a unanimous agreement to yield the balance of their time. Fundamentally, however, Warner's decision reaffirmed the extraordinary powers granted to the government by the standing order reforms. The government now had full control over the legislative process, and by abolishing the prerogative of the Speaker to overrule motions of time allocation, had eliminated any check on its power. If the first month were any indication, the government had not merely implemented the new rules as a safeguard, but rather a routine part of its strategy for house governance.

Trends of Time Allocation at Queen's Park

The use of time allocation by the NDP may be crudely divided into two periods. The first, throughout 1991, saw the government use of time allocation as a last resort to thwart efforts by an obstructionist opposition to stall its agenda. The second began in 1992 with the adoption of the new *Standing Orders*, after which the government began to use time allocation with an increased frequency and contemptuousness. Crucially, this trend is also consistent with the government's shift towards a politics of austerity. The central difference is that while the government used time allocation reluctantly and to break parliamentary deadlock during the first period until the passage of the new *Standing Orders*, after this time it began to pass time allocation motions preemptively, and often without provocation, as a means of fast-tracking its restraint agenda through the legislature. The new *Standing Orders*, by formalizing the practice of

time allocation, eliminating the right of the Speaker to overrule time allocation motions, and establishing limits on each aspect of the sessional day, created an environment in which the Rae government could be assured it would be able to implement its deficit reduction strategies without interference. Time allocation, then, looms as an indispensable part of the story of the government's implementation of fiscal discipline measures.

Although the government passed time allocation motions on three occasions in 1992, it was not until 1993, when the government passed time allocation an unprecedented eight times, that the full impact of the new *Standing Orders* were felt. The most controversial bill subjected to time allocation in 1993 was the Social Contract. The government's desire to fast-track Bill 48 led it to bring forward a time allocation motion despite having never given the bill a chance to be reviewed in committee, without public hearings, and with only a day at Committee of the Whole. Although the government had originally promised to only use the new *Standing Orders* when all other contingencies had been exhausted, it was now moving preemptively to suffocate debate on a controversial and precedent-setting piece of legislation that would affect more than one million public sector workers. It justified its decision to truncate debate on the premise that the Social Contract was emergency legislation that demanded immediate implementation in order to bring the province's budgetary crisis under control. For the Chair of the Management Board of Cabinet, Brian Charlton (1993), who introduced the motion, claimed that it was the government's responsibility,

to ensure that this legislation is amended and passed as quickly as possible to deal with so that those parties to this legislation, those parties that will be impacted by this legislation, whether the employers or employees, will fully understand the context in which either a negotiation and a settlement will be reached or an imposition will be imposed (Jul. 5).

MPP Dennis Drainville (1993), a former New Democrat, who had left the party to sit as an independent because of the government's increasingly anti-democratic tendencies, said he felt

betrayed by Rae's initial promise to the NDP caucus that time allocation motions under the new *Standing Orders* would only be deployed, "carefully and judiciously" (Jul. 5). Instead, he argued, the government had made time allocation routine on every controversial bill before the house, often restricting debate on sensitive and contentious issues before reasonable debate could occur. With regards to the Social Contract he argued,

We would think that commensurate with the importance of this bill, we would have a government that would afford the legislature and the members of this legislature the amount of time that they need to go through this legislation and to talk about this legislation and put forward substantive amendments that would help to change this legislation and make it better. What in fact we see is that, as usual, the government is trying to destroy the democratic process. They are not indeed allowing adequate debate on Bill 48. They are not allowing for public hearings. They are in effect not even allowing the people of the province the opportunity to have this looked at through the eyes of the public... Indeed, what we see in this house continually is that the government is pushing through legislation which is going to have a very major effect on people, legislation that is going to affect what people make, what people's seniority is going to be like in the future, what kind of collective agreements they are part of. They are in fact taking away the very process of law that defends those people and gives them an opportunity of being protected in their jobs and in their earnings. What do we have then? We have a government that cannot be trusted, we have a government that cannot be believed in terms of the kinds of priorities it puts out there, but more than that, we have a government that has believed in a total lack of faith in the parliamentary system and how that system can work in this place between all the parties (Drainville, 1993, Jul. 5).

The government's rhetoric surrounding the use of time allocation began to change in 1993.

While opposition interference with legislative initiatives remained the central justification for the government's application of time allocation, under the new *Standing Orders* it could no longer reasonably claim impasse was its primary rationale. Instead, the government's language began to shift towards the *urgency* of passing certain seminal bills as a means of carrying out its agenda and bringing the deficit under control. This shift in rhetoric, however, was crucial because it indicated that, for the Rae government, time allocation was no longer a last resort measure, but had become a means to an end. By 1993 time allocation had actually become part of the NDP strategy to guarantee that its agenda would be implemented within the aggressive time frame it

set out. From this point forward, time allocation would become a conventional part of business at Queen's Park regardless of which party was in power.

In 1994, the government continued to use time allocation to pursue its restructuring agenda. It used it to ensure the passage of Bill 143, which transferred a number of important powers to the regional body of Ottawa-Carleton as means of maximizing government efficiency in the Ottawa area. The bill was rushed through the legislature despite widespread public concern about the transfer of local democratic control in the suburban municipalities to a regional body with increased powers. The government would also fast-track the *Tobacco Control Act* and the *Labour Relations Act*, using time allocation to ensure that the bill received Royal Assent before the government adjourned for the summer on June 23, 1994.

The legislature remained on summer recess until October 31, a period of more than four months. When it returned, the NDP again invoked a number of time allocation motions in an effort to pass the final major initiatives of its mandate before calling an election. As though to reaffirm the extent to which the use of the guillotine had become routine under the Rae government, the NDP would move time allocation again three more times during the fall despite the fact that the legislature only sat for 20 days. The opposition argued that if these bills were of such significance, the house ought to have sat for a sufficient period to debate them properly, rather than compressing them into a 20 day time period and using the time allocation to rush them into law. Jim Bradley (1994) proclaimed that:

Democracy is under siege in the Legislative Assembly of Ontario. After imposing draconian new rules that severely limit the ability of opposition members and government backbenchers to carry out their responsibilities by restricting the amount of time MPPs are permitted to speak, and giving ministers new powers to determine the length of debates, this government has now also restricted the parliamentary calendar and has reduced the number of days this house normally sits (Nov. 28).

Perhaps appropriately, the final moments of the Rae government's mandate in the legislature would be spent giving Royal Assent to Bills 163, 165, and 173, each of which the government had used time allocation to pass. The legislature under Rae sat for the final time on December 8, after which the premier advised the Lieutenant-Governor to prorogue the house. Rae would wait until April 28, 1995 before calling an election for June 8. In the Rae government's final year in office, the legislature sat for only twenty days, which amounted to an unprecedented silencing of the democratic process at Queen's Park. Bob Runciman (1994) summarized the general sentiment towards the NDP's approach to house governance over its final year in office by observing that, "it would appear they don't want to face the heat or the critical scrutiny that they'd be forced to face if the house is sitting. They have no real agenda" (Nov. 29).

The government was by now trailing badly in polls and appeared to have given up hope that their diminished prospects of remaining in office would be aided by facing the perpetual scrutiny of the opposition in the legislature, and so simply elected to shut the house down in hopes that their fortunes might somehow turn for the better if they could shield themselves from criticism. Rather than engage in democratic debate on an election platform, they returned to the house for just three weeks to tie up loose ends and time allocate those bills that the opposition objected to so that they would be finished by the first week of December. While time allocation was a convenient method for an unpopular government to avoid exposing itself to further criticism, its disregard for the parliamentary process set a precedent for future governments that could utilize it as an escape hatch when the political scrutiny became too much to stand.

Conclusion

There was a rich symbolism in the fact that the legislature sat for only 20 total days during the Rae government's final year in office. This was a government that by half way

through its mandate had deviated from many of the most fundamental principles that had defined the party for decades. Not only had the NDP abandoned its Keynesian roots, but it had become a devout convert to the orthodoxy of neoliberalism, taking the most aggressive steps towards state restructuring in the history of the province at the time. Furthermore, in its haste to implement the large-scale changes necessary to achieve its deficit reduction goals, the government sought to make up for time lost during the first years of its mandate by forcing its neoliberal reforms through the legislature at a precipitous pace, undermining the principle of parliamentary debate to a degree unprecedented in the chronicles of Ontario's history. The economic crisis facing the province became the catalyst that allowed the Rae government to justify all forms of parliamentary tactics to implement its agenda.

By the end of its mandate, time allocation had become a central part of regular proceedings in the legislature, having been enshrined in the assembly's *Standing Orders*. Furthermore, although time allocation had only been used on six occasions prior to the NDP's election in 1990, the New Democrats brought it forward on an unprecedented 21 separate occasions during its four and a half years in office. The NDP also made significant changes to the composition of cabinet, establishing the Treasury Board of cabinet, which concentrated cabinet power by providing the Minister of Finance with an effective veto over spending decisions. Additionally, the Rae government introduced the use of the omnibus bill as a parliamentary tactic for the introduction of numerous, often unrelated, initiatives in a single bill.

It is somewhat ironic that the party that had fiercely spurned both the use of parliamentary tactics to expedite the passage of legislation as well as the adoption of neoliberal policies in opposition, left behind a legacy as arguably the most anti-democratic government in Ontario's history in its pursuit of deficit reduction. The language used by the Rae government to

justify the use of such tactics was similar to that employed by the Davis government during the inflation restraint crisis a decade earlier. The same principles Bob Rae had vehemently opposed as undemocratic, he now defended as necessary to bring the province's deficit under control. Thus, when the Harris government came to power after the 1995 election, the path had already largely been blazed for them by the New Democrats. In pursuit of the rapid implementation of their Common Sense Revolution, the Harris government did not have to invent any new legislative precedents. The precedents of omnibus legislation, time allocation, the use of order in council, and the highly centralized cabinet model left behind by the Rae government in its efforts to initiate the neoliberal restructuring process, meant that the Harris Tories merely had to deepen roots in ground which had already been prepared for them by the NDP.

CHAPTER SEVEN

REVOLUTION AT QUEEN'S PARK 1995-2003

At a crucial turning point in the 1995 election campaign, Progressive Conservative leader Mike Harris made a campaign stump speech standing in front of a large sign that read: *Welfare, Ontario. Population: 1,000,000*. With the enormous prop as his background for all of the assembled cameras to record, Harris admonished the Liberal and New Democrat governments for a decade of overtaxing ordinary working people, while providing income for more than one million Ontarians to stay at home. Although the math behind the party's claim that 1,000,000 residents were receiving welfare was dubious, the Progressive Conservatives found a receptive audience in a deficit and recession-weary province in search of a panacea (Ibbitson, 1997). Running on a platform they called the Common Sense Revolution (CSR), the Progressive Conservatives provided Ontarians a convenient scapegoat for the cloud of economic malaise that hung over the province with the promise of a return to prosperity through a series of massive spending and tax cuts and reforms to the public sector.

In order to comprehend the rise of the Mike Harris Tories to power it is essential to first come to terms with the political and economic turmoil that confronted the province during this period. By the middle of the 1990s, Ontario was coming to terms with its place in the de-industrialization of the North American economy. Employment in manufacturing in the province declined sharply in the years following free trade. While the manufacturing industry employed more than 1,444,000 Ontarians in 1989, by 1993 this number had fallen to only 820,800. These ratios were further pronounced in the rural regions of the province. The Hamilton-Niagara Peninsula (-31.7 percent), London region (-13.6 percent), Kitchener-Waterloo-Barrie region (-25.8 percent), Windsor-Sarnia region (-18 percent), and Northeastern Ontario (-32.8 percent) all

lost considerable employment in the manufacturing sector (Statistics Canada, 2011b). The instability that characterized the period following the end of the Big Blue Machine ushered in a period of unprecedented instability in the normally calm waters of the Ontario politics. Initially, voters shifted to the left to elect parties that promised a return to the age of Keynesian stimulus and economic growth. However, the political tumult and unpopularity of the Rae government's response to the recession—first to run up considerable deficits, only to spend the final three years of its mandate alienating the province's public sector unions by trying to bring the deficit under control—along with the severity of the recession that impacted Ontario in the early 1990s, meant that there was considerable appetite for change.

The Progressive Conservative campaign attempted to establish a dramatic shift to the right as the recipe for the restoration of reason after a decade of decadence and fiscal irresponsibility in Ontario. Welfare recipients would not be the only targets. Rigid union structures were blamed for the sluggish Ontario economy due to their demands for unreasonably high wages. High business taxes, used to fund unnecessary programs, were responsible for the flight of industry from Ontario. Meanwhile, channeling the rhetoric of Reaganism, the Progressive Conservatives claimed that high taxes on income functioned as a brake on economic development, since people had less of their own money to spend. The CSR promised a 20 percent income tax cut to stimulate the economy by allowing individuals to invest their money in the private sector instead of using it to finance the province's social infrastructure.

Despite trailing the Liberals by more than 30 percent to the Liberals in pre-election polls, by mid-campaign the Progressive Conservatives took a lead they would never relinquish. On June 8, 1995, the Tories leapt from third party status with just 20 seats in the Legislature to a massive majority government winning 82 of a possible 130 seats. With its new majority mandate

the Harris government sought to implement a public sector restructuring program unlike any the province had ever seen. While the Davis, Peterson, and Rae governments had each begun the process of making reforms to the state apparatus, such changes had been primarily aimed at restraining public sector spending rather than a broad restructuring of the state apparatus. Reductions in income tax premiums would be accompanied by significant cuts to a variety of programs ranging from social assistance, education, and transfers to municipalities and public utilities. The Tories sought to re-engineer entire areas of jurisdiction by completely overhauling managerial and program delivery structures that had been in place for decades. In many cases, this would lead to the amalgamation or outright elimination of longstanding public institutions.

The government faced two problems in their effort to implement their agenda. First, it would have to find a way to get all of its radical reforms through a hostile legislature. This would prove to be a significant challenge, since the legislative process was designed to encourage a slow and deliberate consideration of issues to act as a counterforce against exactly the kind of radicalism the Tories proposed. Furthermore, the government could anticipate that the opposition parties would use every means at their disposal to undermine their efforts. It could be certain that the opposition parties would demand extensive public consultations, committee hearings, and time apportioned for debate in the legislature on its most controversial measures, meaning each initiative could take months to pass. Secondly, even once it managed to get its agenda through the legislature, it would still have to deal with a path-dependent public service and community efforts to undermine the government's plans at the implementation stage.

In response to these challenges, the government developed a dual strategy. First, in order to pre-empt efforts by the opposition to block their agenda, the Progressive Conservatives adopted an approach to parliament that, as Loretto (1997) has claimed about the Harris cabinet

model, was “built for speed” (p. 101). It would establish its legislative agenda by following in the example of the NDP, who had introduced the concept of packaging unrelated reform measures in large omnibus bills that were only subject to the time restrictions of debate for a single bill. Utilizing the omnibus bill would allow the government to combine several of its restructuring initiatives into one bill that, if time allocated, could be rammed through the legislature and become law within a matter of weeks. This process began in the fall of 1995 with the introduction of the *Savings and Restructuring Act*, which amended or eliminated hundreds of unrelated bills and regulations under the umbrella of a single piece of legislation. The effect of Bill 26 would be to make dozens of significant changes at once in order to overwhelm opponents of the government's reform agenda. The very nature of the omnibus bill was that it included such a significant number of changes that oppositional forces had little chance to build public support against any single one of them. The omnibus bill became a crucial political instrument in the Harris government's policy implementation agenda. In the first two years of its mandate, the Harris government set new precedents for the use of omnibus legislation, time allocation, and re-wrote the *Standing Orders* to severely restrict the time provided for the opposition to debate legislation.

Second, once its legislation passed through parliament, the government sought to streamline managerial control over the implementation and consolidation of its restructuring efforts by establishing a cushion between the decision making process and both the public sector and citizens of the province who might obstruct its efforts. In order to do this, the government made prodigious use of the executive authority to grant itself the authority to supervise and direct the restructuring process without interference. This included granting cabinet the authority to manage its reforms through order in council, the suspension of local democracy through the

appointment of financial supervisors, and the appointment of commissions responsible only to cabinet to manage the implementation process. By the end of its two mandates, the Progressive Conservatives had pushed the limits of nearly every possible legislative instrument and established a new culture at Queen's Park that had no precedent outside of wartime in a Canadian parliament.

It is probable a restructuring process of the scale proposed by the Harris government could not have been achieved without the suspension of the traditional rules of parliamentary democracy. The use of omnibus legislation and time allocation provided an essential ingredient to the government's implementation plan by allowing it to subvert the traditional rules of parliament to facilitate the implementation process in the first two years of its mandate. Having moved its reforms through the legislature, the government could then focus on the consolidation and administrative implementation phase of its agenda. This latter process was facilitated by the government's unprecedented use of its executive authority, which permitted cabinet to oversee and control the reengineering of the administrative apparatus. One of the legacies of the Harris government is that not only did it successfully achieve a broad reconfiguration of the public sector in Ontario, but it also managed to alter the state's political apparatus to such an extent that its structure was adequately prepared to accommodate future rounds of neoliberal reforms. The permanence of this subversion of the legislative to the executive function in Ontario is no less important than the reforms to the state administration, but is far less well understood. This chapter will explore how this trend unfolded during the Progressive Conservatives' two mandates from 1995-2003.

The Harris Government's Approach to Parliament

There are two primary explanations for the government's approach to parliamentary governance. The first is that political necessity demanded a parliamentary branch that could facilitate the government's ambitious reform agenda in a reasonably short period of time. During any other period in Ontario's history, undertaking any *one* of the major reforms planned by the CSR would have, on its own, absorbed much of the government's political capital. Bill Davis was only willing to take on the public sector unions to reduce inflation after he had won a majority government in 1981. The Peterson government suffered considerable political backlash for its efforts to reform the workers' compensation and automobile insurance systems. Meanwhile, the Rae government survived its 1993 Social Contract experience in name only. The Premier's Office was well aware that the radical reforms the Tory government planned would necessitate an entirely different strategy if the party were to retain the political capital to carry them out. Staffers spent the summer months of 1995 devising a policy implementation scheme to minimize the damage that inevitable conflicts with labour and other activist organization would inflict upon the government's popularity. It decided to bring forward its major reforms in the first two years of its mandate, presenting controversial policy to the public in large bundles that made it difficult for public and political opposition to coalesce around a single issue before another significant reform was brought forward (Ibbitson, 1997). The government would then use whatever means necessary to move its policies through the legislature at breakneck speed. This approach proved far more effective as a public relations strategy than the traditional method of releasing a constant slow drip of controversial measures over a lengthier time period.

Secondly, the Harris government had a profoundly different conception of the role of the state any other government in the province's history. At the heart of neoliberal thought there exists an antagonism to traditional views of the state as an entity that exists to represent the

common interest, and to cultivate cohesion out of a plurality of interests internal to civil society. Instead, neoliberalism attempts to obscure notions of citizenship and community by reducing all aspects of society to the logic of the marketplace. Clarke (2004) has argued that the transformation of citizenship in the neoliberal world-view can be reduced to three separate categories: the scrounger, the taxpayer, and the consumer. On this view, the government's role in neoliberal society is inverted from traditional conceptions of the state; instead of functioning as a neutral arbitrator among competing viewpoints, the state takes the hegemony of the market as a *fait accompli* and, consequently, has different functions for different groups.

For the scrounger, the person who lives off of the avails of productive individuals, the state must devise disciplinary policies to incentivize him or her to seek to sell labour to the marketplace through a reduction in financial assistance. Indeed, it was on the basis of this logic that the Harris government sought to scapegoat welfare recipients for the province's economic stagnation during the 1995 campaign. For the taxpayer, the state must function as a guardian of public money, ensuring that it is used only in the most efficient ways, and on matters that hold utility in the marketplace. Finally, for the consumer, government must adjust its policies to ensure that services are rendered in the most efficient and effective way possible. In most cases, consumers should not be forced to pay for services they do not use. At the same time, governments should look to reconfigure their policies in order to orient them towards the realities of a global marketplace. This includes the politics of deficit reduction and a suppression of business taxes as a means of attracting private sector investment, and thereby jobs, to the region.

It was on these grounds that the Harris government was able to justify its disregard for the traditional rules of democratic institutions. Parliamentary procedures served merely to obstruct the government from doing what it considered to be its democratic duty—to fulfill its

mandate by implementing the reforms set out in the CSR, and to better serve the taxpayers and consumers of Ontario. In this sense, the Harris Conservatives were true revolutionaries. So deeply committed were they to implementing their restructuring agenda that they did not so much as pay lip service to their opponents while systematically undermining centuries old parliamentary traditions. While it is true that many of the tactics the Harris government utilized to insulate their agenda from public opposition had been previously tested by other governments, the scale, extent and speed with which they used them were without precedent in the history of the Ontario Legislature.

The Use of the order in council as a Method of Managing the Restructuring Process

Bill 26: Restructuring Through the Centre

The Harris government displayed the tendency to centralize power in the executive from the beginning of its mandate. Its first, most aggressive attempt to restructure the province's finances was Bill 26, the *Savings and Restructuring Act*, a massive omnibus bill that was without precedent in terms of either the size or the scope of the reforms being undertaken. Its stated purpose was to, "achieve fiscal savings and promote economic prosperity through public sector restructuring, streamlining and efficiency and to implement other aspects of the government's economic agenda" (Bill 26, 1995). Foreshadowing a strategy that would become a hallmark of the Harris Conservatives, the bill granted the executive council sweeping powers to fundamentally reshape the structure of government by order in council. The most significant power designated by the bill granted the Minister of Health the authority to amalgamate or close any hospital and to terminate any service in the province without having to consult either the legislature or the public. This included the power to, "refuse applications for appointment and

reappointment to the medical staff, revoke existing appointments and cancel or substantially alter the privileges of any physician on the medical staff” (Bill 26, 1995).

Bill 26 also permitted the minister to, “reduce, suspend, withhold or terminate funding to a hospital if the minister considers it in the public interest to do so” (Bill 26, 1995). Where hospitals were unable to balance their budgets, or exhibited what in the minister’s opinion constituted financial “mismanagement,” he or she was empowered to appoint a hospital supervisor with, “the exclusive right to exercise all the powers of the board and, where the hospital is owned or operated by a corporation, of the corporation, its officers and the members of the corporation” (Bill 26, 1995). This considerable power, to appoint a financial czar with absolute power to undertake the financial restructuring of public institutions was a trend that the government would return to numerous times over the next several years. Finally, returning to the practices of the Davis government, the bill also provided for a cabinet-appointed Hospital Restructuring Commission that was charged with the responsibility of making recommendations to the minister as to which hospitals should be closed, maintained or amalgamated, and assist with the restructuring process to make the province’s hospitals, “more efficient and sustainable” (Wilson, 1996, Jan. 29).

The *Savings and Restructuring Act* also contained provisions to grant considerable powers to the Minister of Municipal Affairs and Housing to undertake the process of disentanglement between the province and its municipalities. Under the Tories' disentanglement plan, the province would reassume full financial responsibility for the soft services such as education, health, and social assistance, while municipalities would provide hard services such as roads, garbage collection, and public transit. This consolidation of the disentanglement process would preoccupy the majority of the Harris government’s first mandate and much of its second.

The first step was to grant the minister significant powers to amalgamate or dissolve any municipalities or local boards that it deemed to be superfluous or inefficient. Ostensibly, this was done to eliminate extra layers of bureaucracy in local government, but it also had the effect of granting the executive the power to amalgamate smaller or financially unstable local governments in preparation for the downloading of services that was soon to follow. In exercising these powers, the minister was granted the authority to annex lands belonging to a municipality, amalgamate municipalities, join a municipality to a county, or dissolve all or part of a municipality by regulation (Bill 26, 1995). By enshrining these powers in Bill 26, the government ensured that it could make the changes necessary to undertake its ambitious disentanglement plan out of plain sight and without having to deal with the inevitable protests from local residents that would ensue. The decision would simply be made and implemented; while local residents could voice their displeasure, the government would not provide them with a forum to do so.

Furthermore, the minister was authorized to enact disciplinary measures upon any local government that did not comply with its demand for deficit reduction by exercising its authority to arbitrarily withhold municipal grants (Bill 26, 1995). Through this process, the province could achieve two goals. First, it granted the minister the power to restructure local governance structures if necessary to ensure that they were able to accommodate the considerable hard services that it intended to download onto the municipal tax base. Second, it gave the minister the ability to attach conditions to grants and to enact discipline where it was deemed necessary. This had the effect of forcing municipalities to make cuts to the hard services the government would thrust upon them, by requiring that they maintain a balanced budget. In this way, the government could trim billions off of the provincial deficit. Granting such czar-like powers to

cabinet to demand conformity with the government's fiscal targets was a crucial strategic arrow in the government's quiver, and one they would return to in the years to come on several occasions.

In 1997, the government passed the *Services Improvement Act*, which continued the downloading of hard services to municipalities. The bill was the outcome of recommendations by the Who Does What Committee, a panel of Conservative members, who reported to cabinet in secrecy and without having partaken in any public consultation. The *Services Improvement Act*, an omnibus bill, provided for the restructuring of numerous provincial and municipal services. Most notably, the government followed through on its commitment to download complete funding for public health services such as ambulances, health clinics and community centres to municipalities. At the same time, the province uploaded responsibility for financing and managing the province's education system to Queen's Park. As had become the pattern under the Harris government, the shift of responsibility of services to local government did not carry with it a commensurate transfer of power. Instead, the *Services Improvement Act* allowed the minister to direct and supervise the provision of these services arbitrarily. Section 11(1) gave cabinet the authority to make regulations regarding the costs associated with providing health services in the province. In other words, under the terms of the bill, the government retained the authority to override municipalities through regulation to ensure that rogue local councils would remain within the province's budgetary targets.

Liberal MPP Gerry Phillips (1997) contended that the government was engaging in downloading to find savings in lower priority services as a means of exercising full centralized control over the province's education system. He explained,

Mike Harris wants to control education. His office has been just salivating at the chance to be in complete control of that education system, and they are going to be. January 1

they're going to set the budget for every school board and whoever controls the purse strings -- you can be guaranteed we will see province-wide bargaining with the teachers and then, dare I say, with the rest of the staff, because there's going to be only one body setting the whole budget for every school board. It is complete central control of the education system, and the Premier, in my opinion, is spoiling for a fight with the teachers (Phillips, 1997, Sep. 2).

The Harris government's restructuring plan, while couched in the language of increased local control, then, was fundamentally about centralizing power as a means of controlling costs. The downloading of services accomplished two important goals in this respect. First, given that the government wrote provisions into legislation allowing them to influence key elements of the disentanglement process through regulation, they continued to exert control over the provision of these services by disciplining any local governments that did not comply with their mandate. Although municipalities would be responsible for dispensing these services and have the capacity to make some administrative decisions, Queen's Park retained control over the financial framework. The cuts to many of these core services were to be made by the municipalities themselves under the supervision of the province, giving the Harris government the added benefit of insulation from the political consequences of these decisions. Secondly, downloading core services allowed the province to upload education, giving it full control over the highly decentralized public school system that had previously been the domain of dozens of different, often ungovernable boards. Central control would allow the province to command costs by negotiating with teachers directly, setting policies, and changing curriculum, all the while reducing the role of democratically elected school boards to that of provincial technocrats with little agenda-setting power.

Centralizing Education

The government fulfilled its commitment to seize control of education from the school boards through the *Fewer School Boards Act*. Bill 104 ushered in dramatic changes to the

province's education system, largely through a heavy-handed centralization of power in the executive council. In total, the government reduced the number of school boards across the province from 164 to 72, and the number of trustees from more than 1900 to nearly 700 (Snobelen, 1997). Bill 104 also reduced the composition of all boards in Ontario to between five and 12 trustees, and up to a maximum of 22 for the Metropolitan Toronto School Board, which had responsibility for more than 300,000 students (Snobelen, 1997; MacLellan, 2009). Minister of Education John Snobelen (1997) argued that the bill was necessary to, "streamline the way education in Ontario is financed and governed," on account of the fact that school boards had demonstrated little control over their spending habits" (Jan. 21).

The *Fewer School Boards Act* granted cabinet increased power to use orders in council to reconfigure school boards by regulating their composition, decision making processes, election guidelines, and geographical boundaries. The bill authorized the Minister of Education to unilaterally change school board boundaries by regulation as a method of reducing the number of total boards and trustees in the province. It also established an Education Improvement Commission, which, similar to the Hospital Restructuring Commission established by the *Savings and Restructuring Act*, was authorized to supervise the transition to the new system of education governance in the province (Bill 104, 1997). Just as had been the case with the Hospital Restructuring Commission, its counterpart was accountable only to cabinet and was required to follow any directions issued by the Minister of Education (Bill 104, 1997). Its responsibilities ranged from reviewing budgets and ensuring compliance with ministry mandates, to requiring the production of documents and information for audits or disciplinary measures dispensed to non-compliant local governments (Bill 104, 1997).

Most strikingly of all, The *Fewer School Boards Act* contained two extraordinary provisions that were without precedent in Ontario's history. The first held that no court was permitted to review or question the directives of the commission. Theoretically, this meant that the commission would have free rein to violate any law, or the rights of individuals, without repercussion through the justice system. Recognizing that this clause was certainly unconstitutional, the government eventually amended the legislation to remove this clause. Secondly, the bill contained a provision often referred to as a Henry VIII clause after the 16th century king's effort to grant himself the authority to govern by proclamation. Section 349(2) stipulates that, "in the event of a conflict between a regulation made under this part and a provision of this act or of any other act or regulation, the regulation made under this part prevails" (Bill 104, 1997). This extraordinary power would ensure that the government could make any unforeseen adjustments to its transition plan, even if so doing was in violation of provincial law.

Although the government would eventually repeal this provision, it did so only after an alliance of teachers' unions took action against the bill. In his decision, Justice Campbell ruled that it was premature to render a decision on the use of such powers unless or until the government made an attempt to use them. While there was precedent for the use of such provisions being upheld by the Supreme Court this had been invoked under emergency circumstances during the First World War when the federal government passed the *War Measures Act*, which included such a clause so that it could react quickly in the event of changing circumstances association with the war effort (Re: George Edwin Gray, 1918).

In his ruling Justice Campbell condemned the government for resorting to the use of such extreme measures. He wrote,

It is one thing to confer this extraordinary power if it is actually needed for some urgent and immediate action to protect an explicitly identified public interest. It is quite another thing to hand it out with the daily rations of government power, unlimited as to any explicit legal purpose for which it may be exercised (Ontario Public School Boards' Association v. Ontario, 1997, p. 14).

Campbell maintained that the use of this power is “constitutionally suspect” in peacetime circumstances,

because it confers upon the government the unprotected authority to pull itself up by its own legal bootstraps and override arbitrarily, with no further advice from the Legislative Assembly, and no right to be heard by those who may be adversely affected by the change, the very legislative instrument from which the government derives its original authority (Ontario Public School Boards' Association v. Ontario, 1997, p. 13).

Despite this setback, the Harris government demonstrated that it would use all means at its disposal to give itself the sweeping powers necessary to undertake a swift and comprehensive restructuring program. Furthermore, it spoke to the government's contempt for democratic institutions, which they viewed primarily as impediments to the implementation of their agenda to serve the taxpayers' interests.

The second major initiative in the Harris government's education reform platform was the *Education Quality Control Act*, a massive omnibus bill that both centralized control over education policy in cabinet, and gave the executive the power to unilaterally cut education expenses by more than \$1 billion. The legislation also included a provision to remove the rights of teachers to negotiate the terms of their working conditions. This included issues such as preparation time, class sizes, and total hours spent in the classroom. Instead, the power to make determinations regarding these aspects of teachers' working conditions was removed from the public realm entirely, and placed at the discretion of the minister. Under Subsection 11(7) of the bill, the minister could make regulations regarding the length of the school year, instructional time within the year, the number of days allocated for exams, as well as the number of vacation

days that would be permitted. Furthermore, Section 127.1 removed principals and vice-principals entirely from the realm of collective bargaining. The power to designate the terms and conditions of their work would instead be transferred to cabinet, and set out through regulation (Bill 160, 1997).

The ambitious reforms necessary to achieve the fiscal targets in the education sector required removing virtually all discretionary power over spending decisions from the chaos of local democracy, and centralizing that power in the hands of the cabinet. John Snobelen (1997), the Minister of Education, argued that such severe measures were necessary, “for the sake of our children’s future,” who would otherwise be confronted with unsustainable debt levels caused by unsustainable spending (Sep. 29). The old system he argued, was, “perfectly designed to hide provincial politicians from accountability. We propose a system designed to meet the needs of our students and to end the old game of hide and seek between the province and the boards” (Snobelen, 1997, Sep. 29). This new system would reduce costs and increase efficiency by establishing a management structure, “built up from the classroom, not down from the board room” (Snobelen, 1997, Sep. 29). In short, for Snobelen, the ministry could be trusted to make management decisions in the long-term interests of the school systems that the more decentralized school board structure could not. Liberal MPP Lynn McLeod, however, claimed that the minister’s appeals to improved accountability were deceptive. She argued that “This bill doesn’t serve the purpose of greater accountability for education. It certainly tells us where the buck stops, because every single decision in education is going to be made at the minister’s desk” (McLeod, 1997, Sep. 29). Instead, she contended, the primary purpose of Bill 160 was to

give the power to the minister and to the cabinet to decide what will happen in education. It doesn’t tell us how they’re going to use those powers, how they’re going to use those tools; it just gives them the power (McLeod, 1997, Sep. 29).

As a means of enforcing the essential features of its education restructuring program, the government passed Bill 74, the *Education Accountability Act* in its second mandate. The bill permitted the Minister of Education to discard the terms of existing collective agreements with teachers in order to enforce new instructional time provisions. High school teachers were required to teach seven rather than eight classes during the school year, in addition to assuming increased responsibilities for extracurricular, counseling, and administrative duties previously exercised by staff members specifically designated to these tasks. The government's intention was to cut expenses by reducing the number of paid administrative and teaching positions by forcing existing staff to give up preparation and administrative time.

Bill 74 imposed the threat of sanction upon any school board that did not follow the regulations of the Minister of Education. Section 230 empowered the minister to direct an investigation of a board where he or she had, "concerns relating to the boards' compliance with certain legal requirements" set out by the ministry (Bill 74, 2000). In the event that the investigator's report disclosed evidence of non-compliance, Bill 74 granted the minister the authority to direct the board to address the non-compliance immediately. Should the board continue to fail in its compliance with these terms, the minister would be empowered under the bill to take full control over the board (Bill 74, 2000).

The government followed through on its threats to take over three school boards in in 2002 when the local boards in Toronto, Ottawa, and Hamilton were unable to balance their budgets. In each instance, the government appointed an emergency economic supervisor to oversee a restructuring process to return the board to a fiscal surplus. This process involved the complete suspension of the democratically elected school board's power throughout the duration

of the supervisor's mandate. In all three cases, the supervisors took to initiating cost reductions through a mix of austerity measures, ranging from teacher layoffs to school closures.

Municipal Restructuring

As part of its reconfiguration of municipal government, the Harris government announced in December 1996 that it planned to force the amalgamation of Metropolitan Toronto with the introduction of Bill 103, the *City of Toronto Act*. The bill dissolved the cities of Toronto, York, East York, North York, Etobicoke, and Scarborough to create a newly amalgamated City of Toronto. The new city would be divided into 44 wards with a city council consisting of one member from each ward (Bill 103, 1997). Arguably the most remarkable section of the bill was a clause that transferred political power during the period from its introduction in the legislature until the new city came into existence on January 1, 1998 to a cabinet-appointed board of trustees who were empowered to oversee the financial affairs of each of the affected municipalities. Bill 103 granted these boards the power to direct, supervise, and where necessary, overrule all decisions of the old city councils. The board would additionally have the authority to make appointments to boards and commissions, hire and fire city employees, direct the privatization or reorganization of municipal services, and impose deadlines for compliance to its directives (Bill 103, 1997).

In short, the province took the extraordinary step of dissolving the existing municipal councils comprising the province's largest city, only to replace them with an interim financial authority accountable to cabinet that would oversee the restructuring process during the transition. The commission was granted full supervisory power over financial transactions to ensure that to that, "municipal expenditures and municipal assets, assets that belong to the people, are safeguarded during this time of change" (Leach, 1997). Minister of Housing and

Municipal Affairs Al Leach (1997) levied an ominous warning to those communities that might disregard the orders made by the transition committee:

We've also heard some politicians say that the advice of the board of trustees does not have to be recognized and that they have no legal right to do their job until the legislation is passed. That's technically correct. However, as the trustees' right to examine municipal decisions will be retroactive to the day this legislation was introduced, it is in everyone's interests to cooperate with them (Jan. 14).

Liberal MPP Mike Colle (1997) called the appointment of the transitional supervisory body “unprecedented,” and a contravention of the basic principles of democracy (Jan. 15). He explained:

here's a duly elected local government, supported by grass-roots organizations and neighborhoods, essentially dictated to by an imposed trusteeship that under law has no jurisdiction, but this minister somehow tried to intimate that these people had power when the bill hadn't even gone to second reading (Colle, 1997, Jan. 15).

Despite ample polling data revealing widespread discontent with the restructuring plan, the government intended to usher the bill through the legislature with little public consultation. Critics charged that the decision to amalgamate Toronto would erode the local responsiveness that could only be provided by councilors serving smaller, more geographically specific locations. To tear these municipalities apart would be to silence many whose voices would be lost in the expansive new “Mega City.” The government, however, rationalized its decision to amalgamate Toronto as an enhancement of democracy. Al Leach (1997) argued the new arrangement would bring greater accountability:

Today, with so much duplication and overlap, taxpayers have no idea who is accountable for what in their neighborhood. Under the provisions of the new City of Toronto Act, people will have a very clear idea of who is responsible and who is accountable. This act is not just about efficiency and cost saving. It's also about making government truly representative, truly accountable and truly responsible to the people who elect it, and that's what democracy really means (Jan. 14).

The following day, he continued his speech, adding that amalgamation would decrease the government's size:

it will reduce the number of politicians from 106 to 45, and services will be delivered at a price that we can afford. A unified Toronto will have a better chance of bringing investment into the GTA and it will give us greater clout in the international arena (Leach, 1997, Jan. 15).

At issue here was a fundamentally different view of what constituted good government between the Conservatives and their critics. On the Conservative viewpoint, good government was defined by an ideal of effective fiscal management and responsiveness to taxpayers. The new Toronto was to be "more streamlined, more accountable and more efficient," and therefore more deeply obligated to serve the taxpayer's interest than more decentralized structure (Leach, 1997, Jan. 15). From the opposite perspective, the role of government was to improve the well-being for the community as a whole, which locally elected councilors were more readily able to facilitate than those belonging to a large metropolitan city council.

To take but one example, the minister used the power provided to him in the bill to override a decision by the East York City Council, which had voted to explore the idea of gifting certain buildings in the community to non-profit housing agencies in anticipation that they would be privatized by the transitional committee. In the legislature, Al Leach (1997) raised this as an example of why the government needed a transitional team with such extensive power:

If there was ever a doubt about whether that power was necessary, it disappeared on December 16. That's the day when East York council voted to explore options for giving away public property to a non-profit foundation, giving away buildings built and paid for by the taxpayers of East York. Having a board of trustees that can watch over issues like that is definitely in the public interest" (Leach, 1997, Jan. 14).

For the Conservatives, accountability meant preserving taxpayers' money, even when that included governing by fiat, to overrule the authority a democratically elected council.

The Mega City issue also laid bare a further contradiction at the heart of the Conservative government's view of democracy. While the Conservatives had always maintained a commitment to grassroots democracy, and the use of referenda as a means of policy making, its highly centralized, often dictatorial approach to governance ran contrary to this view. When the government was approached by the soon-to-be-amalgamated municipalities about holding a referendum to determine the issue, they rejected the idea outright. While Al Leach (1997) admitted that, "referendums have their place," he argued that, "in some cases there are more effective ways to gain public input. With respect to one Toronto, we believe the best way is through the legislative process and committee hearings" (Jan. 14). Leach made these claims despite the fact that the government had already tried to fast-track Bill 103 through the legislature with minimal public consultations, only to be restrained by opposition resistance. When the Toronto referendum results were tallied in early 1997, they revealed that roughly 76 percent of metro residents opposed amalgamation (Wildman, 1997, Sep. 11). Despite the overwhelming victory for the "No" forces, the Conservative government ignored the results and charged ahead with its plans, ultimately time allocating the bill to secure its passage by the end of April 1997. It was clear that despite the government's rhetoric, its primary concern was with restructuring at the expense of public consultation and openness.

Shortly after winning its second mandate, the Harris government set out to restructure four other metropolitan areas on the same justification it had used for the *City of Toronto Act*. Before doing so, however, the government tasked four cabinet-appointed special advisors to review each municipality for possible amalgamation. Unsurprisingly, the advisors' findings provided local variations on the same theme: each metropolitan area should be restructured to reduce overlap and operating costs through a process of local amalgamation that would

streamline and simplify service delivery. The advisors' findings were enshrined in Bill 25, the *Fewer Municipal Politicians Act*, introduced in December 1999, which empowered the province to dissolve certain municipalities in the Ottawa-Carleton, Haldimand-Norfolk, Hamilton, and Sudbury areas by amalgamating them into larger metropolitan municipalities. The number of municipalities in the four areas scheduled for amalgamation were reduced from 35, while the number of total politicians were cut from 254 down to 64 (Clement, 1999).

The *Fewer Municipal Politicians Act* enacted many of the same essential features of the *City of Toronto Act*, including the imposition of a transitional supervisory committee that was granted full and immediate power to carry out financial transactions. As was the case in Toronto, existing municipal councils were stripped of their authority to make financial transactions without the committee's approval. Again, the transitional committee was empowered to make regulations pertaining to all activities of the councils, and to set the budgets for each of the new municipalities for two entire fiscal cycles. In essence, the transitional committee functioned as an extension of the Minister of Housing and Municipal Affairs, who retained the authority to make regulations pertaining to all activities of the committee (Bill 25, 2000). In case this was not sufficient for the province to imprint its mandate on the newly created cities, Bill 25 also permitted the minister to change existing by-laws by regulation alone, granting it extraordinary authority to override the decisions of democratically elected councils both past and present. Under the bill, then, local authorities, boards, and municipal councils were subject to the whim of the minister who was empowered to throw out laws, create new ones, restructure finances, hire and replace city administrative staff, and sell off assets, among other powers.

Perhaps most significantly, the Harris government once again passed into a law a bill that included a Henry VIII clause. Subsection 37(2) provided that, "in the event of a conflict between

a regulation made under this act and a provision of this act or of another act or a regulation made under another act, the regulation made under this act prevails” (Bill 25, 2000). Liberal MPP Jim Bradley (1999) called the clause “repulsive” and “draconian to the greatest extent” (Dec. 20). David Christopherson (2000) summarized the government’s decision to repeal the provision thusly:

A clause like this surely would have been challenged constitutionally. I can't imagine a Supreme Court of Canada saying that this is acceptable. Obviously, the word got to this government. They had to pull this back or they'd have a major tiger by the tail (Apr. 27).

Dubbed the “omnibus sledgehammer bill” by Liberal MPP Lynn McLeod (1999), the *Fewer Municipal Politicians Act*, was also significant omnibus legislation that amended several bills in the process of creating the new municipalities (Dec. 7). The opposition argued that the government ought to split the bill up into four separate pieces of legislation to ensure that each would receive proper time for debate and could be dealt with according to its locally specific characteristics. The government, however, claimed that there was no need for separate bills since the special advisors conducted public consultations and had taken local variables into consideration in their reports. The government expressed a desire to have the bill, which was introduced on December 6, passed before the house recessed for Christmas without committee hearings or further consultation. It would ultimately resort to time allocation to ensure that Bill 25 passed third reading on December 20th, only two weeks after it had been introduced. NDP MPP David Christopherson (1999) encapsulated the opposition’s response to the government’s actions regarding the bill:

Let me also say to the minister that his comments—this whole business of accountability, and he's going to improve democracy—are so galling, absolutely galling in the face of a mammoth bill like this that in every likelihood is going to be rammed through this house in a matter of a few days: 167 pages affecting hundreds of thousands of people, and not one minute of committee hearings—never mind public hearings—to do the work that we do at committee, which is to go through these bills and make sure they're as good as they

can be and to try to avoid major mistakes...Don't talk to us about accountability. You're the ones who don't understand democracy (Dec. 13).

In early 2000, the government passed Bill 62, the *Direct Democracy through Municipal Referendums Act*, which provided the newly municipalities with a framework to hold referenda. Minister of Municipal Affairs and Housing Tony Clement maintained that the bill reaffirmed his party's long-standing commitment to openness and accountability. He reminded Ontarians that "the current premier of the province of Ontario, Mike Harris, has been advocating the greater use of direct democracy quite consistently since at least 1990" (Clement, 2000, Apr. 25). However, while Bill 62 provided the means to hold referenda affecting by-laws, zoning regulations, and other responsibilities that fall within the municipal sphere, they did not give local governments the ability to overturn the provincially mandated amalgamation schemes. The government would claim to support a spirit of openness and accountability, but only to matters related to municipal governance. Where the amalgamations were concerned, referendum results, which overwhelmingly rejected the mergers, were ignored as the government charged on ahead with its plan.

Undermining Public Sector Unions

As part of its agenda to reduce government operating costs, the Harris government passed legislation to strip public sector employees of their collective bargaining rights through the establishment of dispute resolution processes that were designed to privilege the government's fiscal restraint plan. In 1997, the government passed Bill 136, the *Public Sector Transition Stability Act*. The bill established the Labour Relations Transition Committee (LRTC), which was empowered to deal with "the high volume of complex labour issues that may arise as the result of the school board, hospital and municipal mergers, and amalgamations" (Witmer, 1997, Aug. 25). The committee, similar to those established in the health and education sectors, would

be responsible to cabinet, and play a central role in constraining the labour issues that were likely to arise out of the mergers, amalgamations and the redelegation of service delivery. The LRTC was granted sweeping powers to resolve contractual disputes between union representatives and new employers in areas where changes to the jurisdictional authority over service delivery had occurred. Under the terms of the bill, the decisions of the LRTC were binding, leaving labour unions without recourse to public hearings, consultations, or the right to appeal its decisions (Bill 136, 1997). It was permitted to function in secret, with accountability only to cabinet. Furthermore, its mandate was interpreted broadly to, “engage in other such activities as the Transition Commission considers will further the purposes of the act” (Bill 136, 1997). The vagueness of this clause gave the committee considerable scope to make changes according to its own discretion. The considerable latitude the bill provided to the committee gave it the power to unilaterally claw back gains made by employees through collective bargaining if deemed necessary as a part of the transitional process.

The *Public Sector Transition Stability Act* also established a Dispute Resolutions Commission (DRC) to replace the existing arbitration process for public sector employees denied the right to strike either through essential service or back-to-work laws. The bill authorized cabinet to replace any member of the commission without reason in the event that his or her decisions did not conform to the government’s austerity agenda. This unprecedented degree of interference from cabinet violated the principle of objectivity and independence in the dispute resolution process. NDP MPP David Christopherson (1997) said,

This commission, unlike arbitrators, who decide in any other instance where a matter goes to an arbitrator, is chosen by the cabinet. Well, those lucky, lucky public sector workers. They get to have their collective agreement written by Mike Harris's golfing buddies (Aug. 25).

In addition to this, the bill also granted the Chief Commissioner broad powers determine, “such matters that the Commission or panel considers necessary to enable the parties to conclude a Collective Agreement” (Bill 136, 1997). This deliberately vague provision gave the Chief Commissioner the right to determine the format of a dispute hearing, consolidate numerous bargaining disputes into a single hearing, establish limits on the length of deputations or reports to the committee, decided when or if to hold a hearing all, and approve or disapprove which materials are admissible in the hearings. This ensured that collective bargaining would be a centralized process, in which a cabinet-appointed officer would be empowered with full oversight of the dispute resolution process.

Although the use of the order in council to shield highly controversial policy from political interference had been an increasingly common tactic at Queen’s Park since the Davis era, the extent and scale of the Harris government’s use of the executive authority had no precedent in the province’s history. The Progressive Conservatives entered uncharted territory by including provisions in bills granting authority to obsequious commissions to undertake the restructuring process under the supervision of the executive council. Using this approach, the government was able to streamline decision making processes, removing the prospect for path dependency within the public sector that might have undermined its aggressive reform efforts. While the commissions established by the government could be relied upon to rubber stamp the majority of changes it mandated, the government also granted cabinet power in the majority of its major legislation to overrule these commissions in the event that they failed to comply with their plans. An additional benefit to the government of farming power out to commissions responsible to cabinet was to ensure that it could implement its policies at the breakneck speed the Premier’s Office desired, since it neither had to consult the public nor the legislature to

actualize institutional change. During the policy implementation stage, then, the executive council was empowered to make the majority of its decisions behind the veil of the state.

There can be little doubt that this unprecedented centralization of power in the executive was an essential tool in the government's extensive neoliberal restructuring plan. By insulating their decisions from the reach of the legislature, the Harris Conservatives were able to carry out their reforms in a rapid and rationalized manner that ensured a minimum of public exposure to their most controversial changes. In so doing, however, the Harris government had to undermine nearly all of the institutional counterforces that had been designed over the last century and half in the Westminster tradition to keep governments responsible to the legislative function. This was arguably best illustrated by the government's efforts to implement Henry VIII clauses, and the additional clause in the *Fewer School Boards Act* absolving the Education Restructuring Commission from appeal through Canada's justice system. While these provisions were deemed unconstitutional and were eventually repealed, they reflected the great lengths to which the government was willing to go in order to undermine democratic institutions that might obstruct their efforts to remake the province's administrative architecture.

The Omnibus Bill

Although the use of the executive authority was crucial to the implementation of the Harris government's radical agenda, it is arguably the case that omnibus bills were the most important instrument in the government's legislative toolkit. From the beginning of its mandate, the Harris government began using omnibus legislation to make numerous sweeping changes to provincial law. On November 29, 1995, little more than two months after its Speech from the Throne, the government introduced the *Savings and Restructuring Act*, one of the most controversial pieces of legislation ever brought forward in the Ontario Legislature. The bill made

26 amendments to 44 separate statutes and included 17 separate schedules, most of which had no meaningful relationship to each other. Among other things, the “bully bill” as it was colloquially known, granted the government significant powers to impose and eliminate certain taxes, direct the closure of hospitals by regulation, amalgamate municipalities, and impose mandatory arbitration upon public sector employees (Bill 26, 1996).

Bill 26 was unique not merely in the terms of the sweeping nature of the reforms proposed by a single bill, but also in the unprecedented procedural tactics used by the government to ensure its swift passage through the legislature. Despite introducing a bill with numerous highly contentious and intricate changes to provincial law, the government told the opposition house leaders that it intended to have it passed before the house recessed for Christmas break, and would use time allocation in order to ensure this occurred. This meant that the several hundred page bill that made reforms to dozens of different pieces of legislation, would receive no time in committee and a bare minimum of debate in the legislature.

Additionally, the government made the decision to introduce the *Savings and Restructuring Act* without notice on the same day as its fall economic statement, in an effort to overshadow the bill with the massive cuts announced by Finance Minister Ernie Eves (Ibbitson, 1997). Due to the economic statement, the two opposition leaders were in lock down when the bill was introduced. Leader of Her Majesty’s Official Opposition Lynn McLeod argued that this constituted a breach of her privilege as a member. In a speech to the house, she said,

To think that a government could present a bill of this nature without notice, without any indication of what would be in this bill; to do it at a time when we were, under the government's orchestration, in a lockup, unable to even be aware it was being introduced and so raise our concerns on first reading as we are required according to our responsibilities to do; to think that they could do that; to think that they could then expect that this kind of bill would be -- not debated, because we will not have an opportunity for debate, but passed without debate, without consultation, without due consideration, before Christmas, is truly a breach of the privileges of every member of this house...it is

an abuse of power of a kind that we have never encountered in this province before. It is an abuse -- and I ask you to rule on this -- of the privileges of the members of this house, because if this government can behave in this way, it takes away from us our ability and our duty to debate the issues that are of public interest (McLeod, 1995, Nov. 30).

Long time MPP Sean Conway (1995) argued that, “never in my time has there been a bill that is so unprecedented in what it proposes to do,” in terms of the size and the scope of the reforms proposed in the bill (Nov. 30). For him, the bill constituted a breach of privilege because it attempted to circumvent the legislative process by rushing numerous highly consequential reforms through the house with a bare minimum of debate. Conway replied to rebuttals from the Progressive Conservative benches that the results of the 1995 election granted them the right to implement their mandate. He argued that although the government had,

clearly won a right to change the course of Ontario's public policy, they have not won the right, no government ought to have the right, ever, to proceed with such unilateralism, with such callous regard to an appropriate time for legislative scrutiny and public interest (Conway, 1995, Nov. 30).

He continued, asking the Conservatives a rhetorical question: “when does revolution become dictatorship? It becomes dictatorship when this house is presented with, and passes on the nod, Bill 26” (Conway, 1995, Nov. 30).

A further concern with Bill 26 was that it contained many of the features of a budget bill masquerading as a routine piece of legislation, since it authorized the government to amalgamate municipalities, implement new fees and taxes, and establish the apparatus necessary for deep spending cuts without being subject to the necessary requirements of the budget process. The opposition argued that if the government were free to pass significant and varied spending reforms without being subject to the rigors of the budgetary implementation process, it would set a precedent that could allow future governments to exploit this loophole by passing supply bills without holding the confidence of the house.

Despite appeals from the opposition, the Speaker ruled that while he was concerned with the intent of Bill 26, it did not constitute a breach of privilege. On the question as to whether the government breached the privilege of the leaders of the opposition parties by keeping them in lock down during the introduction of the bill in the legislature and by introducing it without notice, the Speaker determined that the members' rights were not violated since,

Members are not, nor should they be, forced to enter a lockup. It is not a question of privilege since I must assume that the members agreed to attend the lockup even though they were aware that it would cover at least a portion of the time that the house would be sitting" (McLean, 1995, Dec. 4).

Speaker Al McLean determined he could not rule the bill out of order despite its unprecedented omnibus provisions. He contended that there existed

no rules or precedents in this house or in other jurisdictions that give me the authority to rule Bill 26 out of order or to divide it. I can find no major difference between Bill 26 and omnibus bills that have confronted previous Speakers of the House of Commons (McLean, 1995, Dec. 4).

Instead, he encouraged the government and opposition parties to work together to "find solutions to the problem of the omnibus nature of this bill" (McLean, 1995, Dec.4). The Conservatives, however, were not interested in negotiating solutions with the opposition. They would instead charge forward and pursue all avenues to ensure the bill's passage before house recessed for Christmas.

McLean's decision charted the course for the Tories to continue to fast-track their legislative initiatives by introducing massive omnibus bills. While Bill 26 remains arguably the most controversial omnibus bill in the province's history, the Tories passed several other bills that rivalled it in both their size and implications for the province. One such piece of legislation, Bill 47, dealt with measures contained in the 1996 budget, but included other elements that had nothing to do with announcements made during the Finance Minister's budget address. For

example, the bill included amendments to the *Family Benefits Act*, the changes to which were not even mentioned in the budget. By including changes to the *Family Benefits Act* in its budget measures legislation, however, the government was able to limit the debate and exposure that could be devoted to its controversial cuts to family allowances.

Omnibus legislation also played a critical role in the government's red tape reduction strategy. Shortly after taking office, the Harris cabinet appointed a Red Tape Review Commission comprised of 11 Tory MPPs to review opportunities for reducing regulatory burdens in the private sector and finding efficiencies within government. The report released in January 1997, made 132 recommendations, which included the following: establishing a framework to facilitate the elimination of unnecessary laws or regulations, the elimination of costs in the delivery of government programs, the harmonization of the interjurisdictional relationship between Queen's Park and its municipalities, the removal of duplication between various levels of government, an extension of the hours of overtime employees are able to work in any given week, and streamlining of the process for overtime approval (Red Tape Review Commission, 1997). Rather than bringing forward dozens of separate bills to deal with the hundreds of separate amendments the government claimed were necessary to streamline the public sector and scale-back regulation, it would instead use the omnibus bill to push numerous significant reforms through the house at once. In 1997, it would pass Bills 115, 116, 117, 118, 119, 120, 121, and 122, each of which contained hundreds of amendments to adopt the recommendations from the Red Tape Commission's Report. While the government made a concession to the opposition by dividing the massive omnibus reforms into eight separate bills designated by ministry, each made numerous, mostly disconnected changes to the law, and were rushed through the house on a time allocation motion.

Even in its second term, when much of the major restructuring the government set out to accomplish had been achieved, it continued to use omnibus legislation as a means of both saving time on its institutional reform agenda and minimizing the political damage any of its reforms might incur to the party's brand. Examples include the transfer of health services to municipalities (*Services Improvement Act*), empowering the Minister of Health to continue to direct hospital closures (*Ministry of Health and Long-Term Care Amendment Act*), providing tax credits for private schools (*Responsible Choices for Growth and Accountability Act*), the implementation of restrictions on teachers' labour rights as well as the reconfiguration of their work time (*Education Improvement Act*), and amalgamating municipalities (*Fewer Politicians Act*).

When he became premier in the spring of 2002, Ernie Eves became particularly reliant upon omnibus legislation, using it early in his mandate to pass the *Post-Secondary Act*, which packaged six separate acts into a single bill, and the *Electricity Pricing Conservation Supply Act*, designed to offer a variety of tax credits to incentivize businesses to invest in Ontario's newly privatized energy industry. In 2002, the Eves government also passed Bill 179, the largest bill introduced in the legislature since the *Savings and Restructuring Act* in 1995. It was a massive omnibus bill comprised of 247 pages that addressed more than 400 items, ranging from domestic violence to international interests in aircraft equipment, and encompassed 15 ministries, while repealing 15 separate acts (Martin, 2002). One of its most controversial elements was a clause that removed the appointment of members of the Ontario Securities Commission from the scrutiny of the Government Agencies Committee of the legislature.

Liberal MPP Caroline Di Cocco (2002) argued that the government's use of omnibus legislation was "eroding our democracy" by undermining the foundational spirit of legislative

governance (Oct. 21). She contended that the government, “appears to continuously try to circumvent the rules...by doing little things, by putting little sections in an omnibus bill that’s supposed to be just housekeeping” (Di Cocco, 2002, Oct. 21). Over the course of its two mandates, the Conservatives made consistent use of the notions of red tape and efficiency to mask some of their most controversial measures by burying them within large omnibus bills.

NDP MPP Peter Kormos (2002) summarized the government’s approach:

When this government talks about efficiencies, what it’s really talking about is circumventing the legislature, circumventing the public committee process, circumventing public scrutiny and circumventing an opportunity for not only members of this chamber but for members of the public to review the contents of the bill, to examine it with a view to how it’s going to impact upon them and their respective communities (Kormos, 2002, Oct. 21).

The importance of the omnibus bill to Progressive Conservative government’s policy implementation strategy cannot be overstated. As evidenced by their introduction of the *Savings and Restructuring Act* only weeks into their first parliamentary session, the government saw the omnibus bill as an important part of their strategy to accelerate their restructuring initiatives through the legislative branch. Taking this approach allowed the government to begin the process of implementing their policies at the administrative level, while at the same time reducing the public exposure that their highly controversial measures would be subjected to. This was a practice they would return to on numerous occasions to pass their major neoliberal reforms. Even during the consolidation phase, the government continued the trend of using omnibus bills to move its agenda through the house. This was particularly true under the Eves government, which passed a number of immense omnibus bills that made amendments to hundreds of different pieces of legislation. Although the use of the omnibus bill as a deliberate tactic to subvert parliamentary debate was a precedent that dated only to 1993 when the Rae government began

using it, by the end of the Progressive Conservatives' second mandate just a decade later, it had become a common part of procedure at the Ontario Legislature.

The Decline of Parliamentary Procedure under the Progressive Conservatives

Establishing a New Precedent for Time Allocation

By the time the Harris government came to office in 1995, time allocation had become an established part of the business of the house. After having been used for the first time in the modern history of the legislature by the Davis government in 1982, it was applied with increasing frequency in the years following by all three parties in office when confronted with contentious political issues or an obstructionist opposition. The use of time allocation reached its heights during the NDP's mandate, which used it on 21 separate occasions during its four and half years in office, and established formal rules for its application in the legislature's *Standing Orders*. The Harris government first resorted to time allocation during its battle with the opposition over the *Savings and Restructuring Act*. Its desire to have the massive omnibus bill passed before the house adjourned for the Christmas holidays was met with fierce hostility by the opposition, who called for a lengthy public consultation process, and for the bill to be split into several separate pieces of legislation. In many ways, the *Savings and Restructuring Act* marked a watershed in the Ontario Legislature's procedural evolution, and served as a litmus test for the capacity of the province's institutions to keep an aggressively reformist executive branch accountable to the legislature.

After McLean ruled that it was neither in keeping with the practice of the Westminster system for the Speaker to use his discretionary power to intervene and force the opposition to split the *Savings and Restructuring Act*, nor to disallow the government to use the instrument of time allocation on an omnibus bill, the opposition was left with little recourse to compel the

government to allow for public hearings. As the Conservatives hurried the bill through the house in the month of December, Liberal MPP Alvin Curling made a decision to obstruct the passage of the bill. On December 6, 1995, as Government House Leader Ernie Eves brought forward a normally routine motion for unanimous consent for the house to move to the Orders of the Day, the Liberals forced a vote on division by refusing to give unanimous consent. When the Speaker called each member to rise and be counted for a divided vote on whether the house should proceed to the Orders of the Day, a number of Liberals including Alvin Curling and fellow Liberal MPP Bernard Grandmaître refused to stand and be counted. Under standing order 28(c), it was impermissible for a member to be in the house and refuse to vote on division over any matter. When the Liberal members refused a second request that they stand to be counted on division, Al McLean (1995) warned them:

I'll ask once again that those who are opposed would rise. I have no alternative but to enforce the *Standing Orders* of this legislature. If the members are not going to vote, then I will have to name the members. The rules of the house are very clear (Dec. 6).

When both Curling and Grandmaître continued to refuse to stand to vote, McLean proceeded to name them and ask the Sergeant-at-Arms to escort them from the house. Although Grandmaître left the Chambers without incident, Curling refused to leave his seat, locking arms with fellow Liberal MPPs David Ramsay and Tony Ruprecht. In a show of solidarity, the remaining members of the Liberal caucus and the entire NDP caucus formed a circle around Curling to prevent the Sergeant-at-Arms from escorting him from the house. While the Speaker reminded Curling that according to standing order 15(d) any member who disobeyed an order of the Speaker could be subject to suspension for the balance of the parliamentary session, Curling continued to resist, remaining in his seat despite McLean's warnings and repeated requests to follow his orders. Unable to remove Curling without first breaking through the ring of opposition

MPPs surrounding him, the Speaker was forced to recess the house. Curling remained in his seat throughout the evening and into the night, refusing to leave until he received assurances from the government that they would allow for public consultations.

Curling finally vacated his seat the following morning at 10:11 a.m., at which time it was too late for the legislature to begin another sessional day. After the 18 hour delay, the government had little choice but to simply adjourn the house for the weekend. The government, recognizing that Curling's actions had created a precedent for other opposition members to engage in similar tactics, made the decision to concede to opposition demands for public consultations in order to work out an arrangement for the bill's unobstructed passage by the end of January 1996. A new time allocation motion was brought forward in the house the following week requiring that the house return early from the Christmas holiday to debate and pass the *Savings and Restructuring Act* no later than January 29. The opposition, having come to an agreement with the government, did not contest the motion. While Curling's resistance was unable to ultimately stop the passage of Bill 26, he managed to achieve the important concession that the government would delay its timetable by more than a month in order to conduct public consultations and allow for additional debate in the legislature.

The consequence of Curling's obstruction of proceedings was also to nurture a temporary culture of cooperation among the house leaders in spite of the opposition's deep hostility to the government's reform agenda and the tactics it used to achieve its objectives. Despite the government's desire to rush its legislation through the house, it was able to reach consensus with the opposition to set a parliamentary calendar for the passage of all of its legislation through to the end of 1996 without recourse to time allocation. This spirit of reciprocity, however, ended in January of 1997 when the government recalled the house two months earlier than it had initially

planned in order to announce a series of significant reforms. In what would later become known as “Megaweek,” the Tories brought forward several complex bills designed to implement its disentanglement agenda. In all, the government announced \$6.4 billion in transfers to municipalities to assume responsibility over welfare, child care, nursing homes, transit, public health, and subsidized housing. In turn, the province took responsibility for \$5.4 billion in education financing (Walker, 1997). The opposition decried the announcement of the most fundamental restructuring of the Ontario government in modern history in a single week as an attempt to overwhelm the public with the scale and complexity of the changes. In an op-ed article to the *Toronto Star*, Liberal Leader Dalton McGuinty (1997) claimed that the Megaweek announcements were intentionally “designed to confuse” (p. A17). McGuinty (1997) wrote: “Each of the complex announcements could have been made a few weeks apart, giving people a chance to study, digest and debate them before they were finalized” (p. A17). With its Megaweek initiatives, the government again resorted to its strategy to manage controversial reforms by inundating the public with numerous significant and complicated reforms at one time so as to obfuscate the implications of the reforms and minimize the amount of scrutiny they would be subjected to. This is a tactic to which they would return time and again.

The Opposition’s Last Stand: The Filibuster of 1997

Without question the most controversial initiative brought before the house in the winter of 1997 was the *City of Toronto Act*. Although the bill was introduced in December 1996, it was brought forward for second reading during Megaweek. It was under the cover of the intense media scrutiny surrounding the *City of Toronto Act* that the Conservatives sought to bury the most controversial elements of its disentanglement program. From the outset, the government declared its desire to pass Bill 103 by the early spring without permitting public consultations.

On January 19, 1997, Government House Leader David Johnson brought forward the second time allocation motion of the government's mandate, and the first in over a year, on the *City of Toronto Act*. The motion required that the committee report to the house no later than March 6, that debate in Committee of the Whole be limited to one hour, and that third reading be limited to a single sessional day. Under the conditions of the time allocation motion, the government could have the *City of Toronto Act* passed by the second week of March.

The opposition argued that the bill should not go forward until all of the referenda throughout Toronto's six municipalities had been held, and after extensive public consultations. Liberal MPP Joe Cordiano (1997) argued that the government,

deemed the time we are taking to democratically debate matters of such grave importance to this province as a waste of taxpayers' time and money because it doesn't conform to their tight schedule to get everything rammed through this legislature (Jan. 19).

NDP MPP Marilyn Churley (1997) called it, "a sad day for democracy," that the government would resort to time allocation in order to muzzle an opposition trying to ensure that the public received adequate consultation on the major changes planned for the province's largest city (Jan. 19). She claimed that under the Harris government,

undemocratic action is the norm, not the exception, that when they put in place trustees and a transition team, they not only are denying the people who have been elected in those cities to represent their voters; they're also denying the people in this house (Churley, 1997, Jan. 19).

On April 2, 1997, the government brought forward the *City of Toronto Act* for the consideration of the Committee of the Whole House. The New Democrats, who had been unsuccessful in their efforts to have the government consider either the rejection of the amalgamation by the residents of the six communities affected by the bill, or to allow public consultations, were resolved to once again obstruct proceedings. The first sign that April 2 was to be unlike any other in the legislature's 129 year history occurred immediately after the Prayers to

open the sessional day. NDP member Francis Lankin rose on a point of order to ask the Speaker whether it would be permissible for the Committee of the Whole House to extend past the one hour permitted by the time allocation motion in the event that the opposition were to bring forward amendments that went beyond the time set out for it. In response to Lankin, Speaker Chris Stockwell ruled that while time allocation motions dictate the way that a bill is to be considered at various stages of the process, the decision as to whether the house would proceed to third reading was solely at his discretion. In short, he ruled that the NDP would be permitted to go beyond the allotted one hour if, at the Speaker's discretion, the amendments were relevant to the bill (Stockwell, 1997, Apr. 2).

Stockwell's decision set the stage for a showdown that would stall the business of the legislature for more than two weeks and establish a new precedent for filibusters at Queen's Park. Once the Committee of the Whole was commenced, the NDP announced its intention to introduce over 13,000 amendments to the bill. The vast majority of the amendments were minor variations to the NDP's request that the community have the opportunity to hold public hearings on Bill 103. However, instead of proceeding with a single amendment to this effect, the New Democrats introduced an amendment for each street, avenue, road, boulevard, lane, and crescent in the affected municipalities. Each motion was a variation of the following with only the street named changed:

NDP motion, Subsection 24(4):

I move that Section 24 of the bill be amended by adding the following subsection:

Public consultation

(4) Despite Subsection (1), no regulation that may affect the residents of Abbotsfield Gate living in the urban area shall be made unless the following conditions have first been satisfied:

1. The minister has given notice of the proposed regulation, in a manner that will come to the attention of the residents of Abbotsfield Gate living in the urban area.
2. The minister has considered all written submissions made by members of the public that his office received within 30 days after the notice was given.
3. If 10 or more persons requested a public hearing within 30 days after the notice was given, a public hearing has been held and the minister has considered all oral submissions made at the hearing.
4. The minister shall give three weeks' notice of a public hearing, in the same manner as the notice under paragraph 1.
5. The notice under paragraph 1 shall,
 - i. include a copy of the proposed regulation,
 - ii. tell members of the public where and how to obtain, without charge, a copy of this act together with background material,
 - iii. advise members of the public of their rights under paragraphs 2, 3 and 4,
 - iv. advise members of the public where their written submissions and requests for a public hearing should be sent (Churley, 1997, Apr. 2).

Unless the Speaker ruled the filibuster as being out of order, all 13,000 motions would have to be read onto the record and ultimately voted upon by the legislature. To work through the thousands of streets in the Toronto area, it was feared, could take months of 24 hour per day sittings. As expected, Government House Leader David Johnson (1997) rose on his own point of order to argue that the amendments were out of order on the grounds that they were “in the spirit of mockery” of the procedures of the house (Apr. 2). In constructing its argument on the “frivolous and vexatious” nature of the amendments alone, however, Johnson (1997) made a crucial mistake (Apr. 2). As NDP MPP Tony Silipo (1997) pointed out, parliamentary precedent dictates that in order for an amendment to be ruled out of order on “frivolous” grounds it must be demonstrated that, “it attempts to alter the objective of the bill” (Apr. 2). Silipo made the case that while the amendments would require considerable time to work through, the request for

public hearings was germane to the bill itself, and in no way altered its central objective. The amendments would merely establish, he argued, “a series of actions that would have to be taken by the minister, but to do that in a way that still respects and reflects the intent of the legislation” (Silipo, 1997, Apr. 2). In his ruling, Stockwell (1997) agreed with the NDP’s contention that the motions were not in and of themselves “frivolous and vexatious.” Instead, he stated that while he could not rule on the thousands of additional motions since he had not yet seen them, before him appeared to be, “motions put by honourable members, honourable (sic)” (Stockwell, 1997, Apr. 2).

The introduction of the thousands of NDP amendments began at approximately 7:00 p.m. on April 2. Members took to shift work as the legislature sat around-the-clock for the next several days. At the same time, Premier Mike Harris left for a vacation at Whistler Ski Resort to wait out the filibuster (Crone, 1997). On April 6, Stockwell ruled on a government point of order appealing to the Speaker to use his discretionary powers to end the filibuster, which he argued had proven to be an excessive abuse of parliamentary privilege and contrary to the spirit of the house. By the time of the ruling, the house had reached the letter “E” on the Toronto area street names, but still had more than 5,000 more street names left to read on to the record, and 3,000 additional NDP amendments, as well as deferred votes for on each amendment. (Crone, 1997). NDP Leader Howard Hampton warned: “We will be here for a very long time. I think we’re still close to 40 days and 40 nights” (Hampton, as cited in Crone, 1997, p. B3).

Stockwell found that there was precedent to reduce the redundancy by simply reading the name of the street on to the record rather than forcing both the member who introduced the amendment and the Clerk on duty to read it in its entirety, but ruled against a government request to have similar amendments voted on as a single block. He also ruled that there remained

insufficient grounds to put an end to the amendments and allowed them to continue. Stockwell maintained that the assembly found itself in the midst of “exceptional circumstances,” and as such, urged the house leaders to negotiate a settlement if they desired an end to the filibuster before it ran its natural course (Stockwell as cited by Crone, 1997, p. B3). While the government had offered the opposition two weeks of public hearings to break the stalemate, the NDP rejected their attempt at conciliation, asking instead that the government allow for a binding referendum on amalgamation (Crone, 1997).

The filibuster contained its share of bizarre moments. In one instance, Progressive Conservative members in the legislature seemingly forgot to announce their objection to one of the amendments when the Chair asked for an oral vote on one of the motions (Morin, 1997). As a result, the motion passed, and the residents of Cafon Court in Etobicoke were temporarily granted the right to public hearings on the amalgamation. This was later amended out of the bill, but it spoke to the remarkable circumstances in which the assembly found itself in the midst of 24 hour per day marathon sessions. On another occasion, Peter Kormos rose on a point of privilege to further extend the filibuster by reading from Hansard the lyrics to a song he recited in the legislature earlier the same year. It read:

We're gonna clean out the Eves, chase off the thieves,
tell Mike Harris where to go.

We're gonna flush 'em down the drain,
pull the Leach from our veins, and free Ontario.

'Cause Johnson's a weenie and so is Palladini,
and Mike keeps Harrissing the poor.

We're gonna send all those dopes back to the slopes,
and free Ontario.

And when we kick out their butts, we'll cut all the cuts,
and tell them, megacity, no.

We're going to break off our chains,

pull the Leach from our veins, and free Ontario.
'Cause Johnson's a weenie and so is Palladini,
they all keep Harrissing the poor.
We're gonna send all those dinks back to the links,
and free Ontario (Kormos, 1997, Apr. 3).

Taking the bait, Minister Tony Clement (1997) raised a point of order for Kormos's use of "unparliamentary" language in reference to Ministers of the Crown, bringing to a halt the introduction of motions while the members debated the point and a decision was rendered (Apr. 3). Ultimately, the Deputy Chair of the Committee of the Whole ruled that Kormos's language was in order, since he was quoting his own words in Hansard regarding lyrics that had been written by somebody else; more importantly, he had succeeded in briefly extending the filibuster by agitating government members.

The spectacle dragged on through the end of the week of April 2 and in to the following week. Finally, on April 11, the NDP agreed to end the filibuster in exchange for an additional two weeks of debate before the bill would be put forward for third reading. The government, however, would neither hold public hearings, nor recognize the referendum results from the six affected municipalities. Shortly after 9:00 p.m. on April 11, the assembly voted to adopt the report from the Committee of the Whole House, thus ending the longest sessional day in the province's history after more than eight days and three hours. While the NDP was not able to force the government's hand to hold public hearings, Kormos argued that the filibuster, "brought a little bit of democracy back to the chamber" (Kormos as cited in *Filibustering Finished*, 1997, p. B7). The New Democrats were successful at holding up the government's entire agenda for a period of two weeks, but their tactics also cast a permanent pall on any spirit of cooperation that had existed. As a case in point, by the end of the filibuster the New Democrats had already brought forward more than 1,500 amendments for Committee of the Whole House on the *Fewer*

School Boards Act, which they threatened to bring forward if the Conservatives once again refused public hearings. From this point onward the government began preparations to change the *Standing Orders* so that they could time allocate bills without interference, and block any opposition attempts at delaying their legislative agenda. At the end of the marathon filibuster, Al Leach warned “clearly the floodgates are now open. We’ll have to look at changing the rules” (Leach as cited in Opposition filibuster ends, 1997, p. A3).

The End of the Filibuster at Queen’s Park: The 1997 *Standing Orders* Reform

The day after the *City of Toronto Act* passed third reading, the government passed a time allocation motion to “discharge” the *Fewer School Boards Act* immediately from Committee of the Whole House to avoid the prospect that the NDP might once again introduce thousands of amendments. Instead, under the motion, the bill was moved to third reading without allowing for any debate at Committee of the Whole (Johnson, 1997, Apr. 22). The opposition raised objections about this tactic on the grounds that the motion “violates a very fundamental right of all members of the house to move amendments to public bills” (Wildman, 1997, Apr. 22). However, Stockwell found that the time allocation was consistent with the protocol of the assembly because, once adopted by the house, time allocation motions function as temporary *Standing Orders* at the various stages of the bill. He explained his decision thusly:

to look at it another way, the house adopts its *Standing Orders* by motion. If such a decision of the house were final and unchangeable, then the house would be powerless to revise its own *Standing Orders* in the future (Stockwell, 1997, Apr. 22).

While the government was able to use time allocation to avoid another marathon filibuster, it indicated its intent to make changes to the *Standing Orders*. On June 2, 1997, the day of the Canadian federal election, Tory MPP John Baird held a press conference to announce a series of changes to the *Standing Orders*. The opposition argued that the government chose the

day of the federal election to attempt to bury news of the most restrictive changes to the *Standing Orders* in the legislature's history. The Conservatives rebutted that the reforms were designed to improve the efficiency of the legislature, but in practice they had the effect of removing all plausible mechanisms to allow the opposition to delay the proceedings of the house. The changes, introduced in the legislature on June 16, 1997, included the following:

- Reduced speaking time on all bills and motions from 90 minutes to 40 minutes for leadoff speeches. Follow up speeches were limited to 20 minutes rather than the traditional 30 minutes members had previously been granted. After five hours of debate, speakers were limited to just 10 minutes.
- Permitted members to abstain from voting on any matter before the assembly.
- A provision which allowed the Speaker to continue with the regular business of the house in the event that a member refuse to leave his or her seat after being named by the Speaker.
- Allowed chairs in Committees and Committee of the Whole House to group votes on amendments, to dispense with reading amendments of any kind, and to establish filing deadlines for amendments.
- Permitted the Speaker to deem adjournment procedures concluded at 6:25 p.m. and allow the government to introduce a motion without notice for an evening session from 6:30 to 9:30 p.m., which would count as an additional sessional day.
- Authorized the Speaker to rule out of order any motion he or she deemed to have been moved with the intention of causing delay in the proceedings of the house.
- Granted the house leader the option whether to provide a previously mandatory business statement for the upcoming week.
- Motions for Interim Supply were limited to a single sessional day of debate rather than the several days they traditionally received.
- Government bills introduced during the final two weeks of a parliamentary session were permitted to receive immediate procession to second reading.
- The time designated for answering *Order Paper* questions was increased from 14 to 45 days.
- All standing committees were reduced to nine members.
- Allowed the Speaker to refuse to adjust voting times and adjournment times if a delay occurred as a result of unforeseen circumstances.
- Required any point of privilege not directly related to the business of the day receive a minimum one-and-a-half hours' notice. The Speaker was granted the authority to deny a request for a point of privilege which violated this principle. Such rulings were not subject to debate.

- Limited individual members to a maximum of 10 questions on the *Order Paper* at any given time.
- Members were forbidden from interrupting the Speaker when he or she has risen to speak, render a ruling, or placing a question before the house. (Decker, 1997; Johnson, 1997, Jun. 16).

All of the rules were to be applied retroactively so that any bill before the house would be subject to the new procedures. The government maintained that the new procedures improved the legislature's accountability to the public, who expected politicians to focus on policy implementation rather than obstructionist tactics. In addition, it claimed that the reduction in speaking time included in the reforms were designed after the *Standing Orders* at the federal House of Commons, and addressed the, "concern that the time is restricted and many members are not allowed or do not have the opportunity to participate in the debate of this house" (Johnson, 1997, Jun. 16).

Liberal MPP Jim Bradley (1997) retorted that the federal house had more than three times the members of the Ontario Legislature, and that if the government took issue with providing opportunity for members to speak it should "allocate more time" for them to do so (Jun. 16). Bradley (1997) argued that the drastic, extreme changes to the *Standing Orders* were designed primarily to,

make it more convenient for the advisers, the unelected whiz kids, the people who have little regard for those of us who are elected, to get their way, and to get their way more quickly. It has nothing to do with anything else and people in this province should know that (Jun. 16).

He argued that democracy is best exercised

when there is a strong and influential opposition, with the tools to be able to slow down, and on very rare occasions, halt the government for a short period of time to allow it to reconsider, to allow it to reflect, to allow it to make changes to its own legislative initiatives (Bradley, 1997, Jun. 16).

Furthermore, the new *Standing Orders* would function to, “diminish the role of members of this house. This legislature, if this motion passes, will be a much more insignificant place than it has been for many years since I've been in the house” (Bradley, 1997, Jun. 16). NDP MPP Bud Wildman (1997) contended that new house rules were “not about democracy,” but rather, “the kind of efficiency that makes it possible for the government to deal with issues quickly without proper debate” (Jun. 17). The amended *Standing Orders*, he claimed, made it possible, “for any government, this government or any future government, to bring in the most controversial legislation and have it passed before the public even knows about it. That's not democratic. You might as well just rule by decree” (Wildman, 1997, Jun. 17).

The Customization of Time Allocation in the Ontario Legislature

The NDP filibuster and the reforms to the *Standing Orders* that followed marked a shift in the relationship between the government and the opposition parties. The new *Standing Orders* skewed the power balance even more significantly in the government's favour by eliminating virtually any mechanism through which the opposition might threaten to obstruct proceedings. Stripped of this capacity to hold up the business of the house, the opposition had little to offer the government besides agreeing to stand down on the highly structured time allotments provided for debate on certain bills in exchange for lengthier debates on other items. In the wake of the filibuster on the *City of Toronto Act*, the Tories attached time allocation motions to 14 individual bills in just seven months before prorogation, revealing the extent to which the spirit of cooperation between the house leaders had been irreparably damaged by the government's heavy handed approach to the Megaweek legislation and the opposition's obstructionist reply.

The most contentious time allocation motion passed by the government during this period was to a package of six bills concerned with red tape reduction that the opposition derisively

named “the omnibus six pack” (Colle, 1997, Dec. 11). An outcome of the report by the Red Tape Reduction Commission, the government introduced six separate omnibus bills dealing with hundreds of individual reforms to the structure of government. While the bills passed second reading in June 1996, they had been temporarily shelved once the government became preoccupied with its disentanglement agenda. As the parliamentary session drew to a close in December 1997, the government attempted to have all six bills treated as a single piece of legislation during its various stages. In short, the government was attempting to pass six bills with the time for debate that would normally be given to a single bill, on legislation that was already contentious due to their omnibus status. There were two relevant precedents for this in the recent history of the legislature. First, the NDP passed a time allocation motion with numerous bills attached to it in 1992. The difference, however, is that that particular time allocation motion was the result of an all-party agreement, whereas the opposition remained vehemently opposed to the omnibus six pack. Secondly, Bills 113 and 114, the Sunday shopping legislation, were passed as a tandem under the Peterson government. However, that time allocation motion was subject to more than 60 hours of debate (Wildman, 1997, Dec. 16). The opposition argued that the omnibus six pack set a highly dangerous precedent, which, “will allow the government then to simply, at the end of the session, bring in as much legislation as it wishes and with one fell swoop pass that legislation with a minimum of debate in this house, with a minimum of consideration” (Bradley, 1997, Dec. 16). NDP MPP Gilles Bisson (1997) issued an ominous warning to the government: “Be careful. The precedent you're setting here you may one day have to live with” (Dec. 16). His words would prove to be prophetic. The packaging multiple bills together in single time allocation motion became preferred tactic of the Liberal government a decade later to the immense frustration of the Progressive Conservative opposition.

If it can be said that time allocation became habitualized under the NDP, one can characterize the post 1997 period during the Progressive Conservatives' mandate in office as the period during which it was entrenched as a customary matter of house business. Even the Rae government, which established the standard for time allocation, only invoked it 21 times relative to 163 bills passed during its time in office. The first Harris mandate, meanwhile, attached time allocation motions to 41 of the bills it passed. Thus, while the first Harris mandate used time allocation more than any other government in the province's history, even it only applied it to approximately 35 percent of its legislative initiatives. The numbers indicate a clear trend towards the heightened use of time allocation. In its second mandate, the government attached time allocation motions to approximately 58 percent of total bills passed (See Table 7.1).

Table 7.1: Time Allocation Motions Passed by Harris/Eves Government Second Term

Session	Date	Total Government Bills Passed	Total Bills or Motions Passed Using Time Allocation	Percentage of Time Allocation Motions to Government Bills Passed
37th Parliament, 1st Session	(1999-10-20 - 2001-01-02)	49	22	44.9 percent
37th Parliament, 2nd Session	(2001-04-19 - 2002-03-01)	21	15	71.4 percent
37th Parliament, 3rd Session	2002-05-09 - 2003-03-12)	33	21	63.6 percent
37th Parliament, 4th Session	2003-04-30 - 2003-09-02)	8	5	62.6 percent

This trend is in part attributable to the erosion of an early commitment to cooperation with the opposition with regard to the government's agenda after the NDP filibuster, but it can also be explained by an increased disregard for the legislative process as whole. By 1997, the government seemed emboldened in its view that the legislature served as an impediment to its reform agenda, and that democracy was better served when the elected party had a free hand to implement its agenda without interference from an obstructionist opposition.

By the end of the Tory government's tenure in power, the use of time allocation had become so commonplace that the opposition hardly bothered to oppose it during debate. While opposition members would rise to speak during debate set aside for time allocation motions, most often they would make only vague reference to the motion itself before using the balance of their time to speak to the bill in question. During the final sessional day of the 37th Parliament, for example, the opposition spent its time during debate on a time allocation motion paying tributes to members who planned to retire at the end of the session. As Peter Kormos (2003) observed, it was "befitting" that the final moments of the 37th Parliament were spent debating a time allocation motion (Jun. 26). As the afternoon sitting of June 26 drew to a close, the government passed its final time allocation motion with hardly so much as a groan from the opposition members. Time allocation had become such an integral part of the fabric of legislative governance by the end of the Tory mandate that meaningful resistance had long since ceased to be anything more than an exercise in futility.

Circumventing Parliament: The Magna Budget

There is arguably no better illustration of the Progressive Conservative government's contempt for the legislative process than its unprecedented decision to introduce the 2003 budget at a Magna International Auto Parts factory in Brampton while the legislature was prorogued. On March 12, as members were preparing to return for the beginning of the spring session set to begin on March 17, Premier Eves called upon the Lieutenant Governor and asked him to prorogue the legislature indefinitely. Moments after the Lieutenant Governor granted the premier's request, Finance Minister Janet Ecker held a press conference outside the legislature in which she announced the government's plans: "We have completed our pre-budget consultations, we have listened to the people and we intend to deliver our budget at a yet-to-be-disclosed

location outside the legislature and while the legislature is not in session” (Ecker as cited by Conway, 2003, May 1). This announcement broke with the longstanding tradition in the Westminster system that supply bills first be introduced in parliament.

The government argued that despite the fact that the house was prorogued, it was imperative that the budget be presented on time. This reasoning, however, conveniently ignored the fact that the choice to prorogue, as well as the subsequent decision to hold the budget announcement outside of the legislature, were both made by the government within two weeks of each other, and in the absence of a political crisis that might justify the introduction of a budget during parliamentary intersession.

The event itself was unlike any other the province had ever seen. Ecker delivered the budget speech to an audience of mostly party loyalists. When her speech was finished, a large screen located next to her featured testimonials from other cabinet ministers who praised the government’s approach and its feature program announcements. Ecker also fielded pre-scripted questions from citizens, most of which avoided controversial interpretations of the government’s economic plan.

Minister of Energy John Baird (2003) contended that the government’s unique approach to the budget reflected the “evolving role of parliament” (May 14). He claimed that it sought to recognize the, “huge influence of mass communications,” by emphasizing the production quality of the event. He said,

No longer is there a 24-hour news cycle; there is in fact a news cycle that demands instant reaction, almost to the hour, if not the minute... This challenges parliament's role, and that's not a reflection on either opposition party or on the government (Baird, 2003, May 14).

Besides the violation of parliamentary tradition, the budget also raised questions about whether the government was in conflict of interest given that Magna International Chairman

Frank Stronach was a financial supporter of the Ontario Progressive Conservatives, and former Premier Mike Harris was a member of the company's board of directors (Mallan, 2003). Liberal MPP Michael Bryant contended that the event was a partisan political ploy designed to reward its largest financial donors. He said, "this confirms the worst—this is not about outreach to the people, this is about payback to noted supporters of the PC party" (Bryant as cited in Mallan, 2003, A6). NDP leader Howard Hampton echoed Bryant's sentiments, claiming that "the government is supposed to be in the democracy business, not in the auto parts business. This is truly one more gift to one of the closest corporate friends" (Hampton as cited in Mallan, 2003, A6).

When the legislature returned in May, the opposition protested to the Speaker that the government had acted in contempt of parliament by holding the budget announcement outside of the house. Liberal MPP Sean Conway (2003) argued that the government's actions constituted "an offence against the authority and the dignity of parliament" (May 1). The government countered that there was precedent for the announcement outside the legislature. In 1988, Finance Minister Bob Nixon was unable to introduce the budget in the legislature due to a filibuster by the NDP that occupied the business of the house. While Nixon ultimately did introduce the budget in the house, he was unable to deliver his speech until the filibuster ended, and subsequently had to announce its essential details outside of the legislative chambers. The difference in the 1988 precedent, however, is that the Liberal government at that time was restricted from making its budget speech by extenuating circumstances internal to the proceedings of the legislature, whereas in the 2003 example, the Eves government made a conscious choice not to deliver its budget in the house. In his decision, Speaker Gary Carr (2003) chastised the government for its approach:

Parliamentary democracy is not vindicated by the government conducting a generally one-sided public relations event on the budget well in advance of members having an opportunity to hold the government to account for the budget in this chamber. A mature parliamentary democracy is not a docile, esoteric or one-way communications vehicle; it is a dynamic, interactive and representative institution that allows the government of the day to propose and defend its policies -- financial and otherwise. It also allows the opposition to scrutinize and hold the government to account for those policies. It is an open, working and relevant system of scrutiny and accountability. I have a lingering unease about the road we are going down, and my sense is that the house and the general public have the same unease (May 8).

Carr (2003) ruled that “the 2003 budget process has raised too many questions for the house not to reflect on them,” and found that a *prima facie* case of contempt had indeed been established (May 8). He referred the matter back to the assembly in order to decide what to do. In the days following the ruling, Sean Conway introduced a motion to confirm the Speaker’s ruling that the government was in contempt of parliament and to resolve that all future budgets must be presented in the legislature first. Although the motion was ultimately voted down by the Tory majority, the opposition had managed to embarrass the government for its attempt to circumvent the parliamentary process. With only a few weeks left to sit before dissolution, the opposition had at last found cause to hold the government responsible for contempt of parliament. It was, however, a small victory.

Conclusion

The argument presented in this chapter is that the contemporaneous occurrence of both the radical neoliberal restructuring during the most anti-democratic government in the province’s history, is not of mere coincidence. By establishing a state of permanent crisis in the legislature, the Harris government was able to sufficiently insulate the restructuring processes from public control to guarantee that they would be carried out without democratic interference. A restructuring process of this magnitude, it is argued, could not have been carried out with such rapidity, or on such a scale, without the suspension of democratic principles. The use of legal

provisions to implement a form of technocratic control over virtually any interest that might oppose it—doctors, unions, municipalities, community interest groups, teachers, to name a few— was not only an important variable in the actualization of the CSR agenda, but an indispensable component of the its restructuring process.

When the Progressive Conservatives' mandate ended in 2003, they left the legislative chamber a fundamentally different place than they had found it. While the government's first mandate was characterized a by feverish restructuring program, by the time its second began, most of the major changes it proposed in the CSR had been implemented. The post-1999 period was characterized by the consolidation of both the radicalism of its first mandate, as well as its approach to parliament. Having already established new precedents in nearly every area, the government began to suffocate debate even more indiscriminately than before, using time allocation and omnibus legislation more as a matter of convenience and custom than for a discernible political cause.

The abuse of the legislative process reached what might be called a customization phase during this period, as governments began to use legislative provisions once reserved for emergency circumstances as a customary part of house procedure. This was perhaps expressed most clearly during the years of the seemingly directionless Eves government of 2002-2003, during which time the Tories used time allocation on nearly two-thirds of the total legislation it passed. While the Liberal government that followed it would vow to refrain from the use of the same tactics, they would predictably find it to their benefit to follow in the precedent that had been set for them by the Tories. The effect of the Common Sense Revolution, then, was not merely to restructure the public administration, but also to fundamentally alter the functioning of the state's political branch as well. One of the overlooked aspects of the Harris legacy is the

extent to which his government changed the customs of the legislative branch to such a degree that it could easily accommodate new waves of neoliberal reforms in the future. When their government reached its limits in the fall of 2003, this is a torch they would pass along to the McGuinty Liberals.

CHAPTER EIGHT

CONSOLIDATING A REVOLUTION: THE LIBERAL YEARS 2003-2014

In his final work, *Double Vision*, literary and social theorist Northrop Frye (1991) claimed that, “nothing in any revolutionary situation is of any importance except preserving it” (p. 9). For Frye, then, the true test of a revolution is defined not by the moment of rebellion itself, but by its ability to transcend the old order and sustain itself as a revolutionary force. It was this period of consolidation, after the dust on the revolutionary moment had begun to settle, that determined the ability of a social movement to entrench itself as a new historical pattern. The central question at the end of the Harris/Eves era, then, was whether the major state restructuring and the tactics used to implement these changes would survive the transition to a new government. Dalton McGuinty came to office in the fall of 2003 on a promise to reverse the changes made during the Progressive Conservative government, including a pledge to restore democracy to the legislative chamber. Within a year of taking office, however, the McGuinty government had done little to undermine most of the structural reforms implemented during the Harris era. While the Liberals restored spending to numerous social programs that had faced the most severe cuts, they retained a devotion to the logic of fiscal discipline and the subvention of private capital through the cultivation of a fertile investment climate (Evans, 2007). The government also continued the trend under the Harris/Eves government of using parliamentary instruments to remove its legislation from the parliamentary sphere. Despite making promises to restore democracy to the Legislative Chamber, the Liberals fell lure to the political expediency of using the parliamentary customs practiced by the Progressive Conservatives within a few short months of their election. What changed most profoundly during the McGuinty era was that while

previous governments had largely circumvented the parliamentary process while implementing a radical agenda or during periods of economic crisis, the Liberals began to make use of these techniques more indiscriminately than their predecessors. The Liberal era can largely be characterized by the customization of these anti-democratic parliamentary customs established under previous governments. Rather than overturn the approaches used to implement the CSR, then, the Liberal era marks a period consolidation, and legitimization of Harris-era revolutionary practices.

By continuing along the path blazed by the Tories, the Liberal government left in place a political apparatus that is ideally suited for future rounds of radical reforms similar to those pursued by the Harris government. This was evident in the years following the global financial crisis of 2008, when the government shifted from a policy of consolidation of the structural changes put in place by the Conservatives to a new round of neoliberal reform measures. This chapter will contend that the Liberal era can be divided in to two separate periods. The first phase, from 2003-2009, was a period of consolidation, in which the McGuinty-led Liberals sought to restore some of the cuts to essential public services long-starved after a decade of austerity in Ontario. During a period of relative prosperity and growth in the economy, the Liberal government was able to both make significant investments in public infrastructure as well as restore spending in core service areas such as health and education. The essential structural features of the Harris era cuts such as social assistance and tax rates were largely left in place. The second period, from 2010-2014, saw the re-emergence of demand for major structural reforms to the public service in order to bring public finances back into balance after several years of stimulus spending. Although the Liberal neoliberal phase was briefly interrupted as Kathleen Wynne sought to navigate the choppy of waters of Ontario's minority 40th Parliament,

her government returned to public sector restructuring after winning a majority in the spring of 2014. The customization of anti-democratic parliamentary practices during the early years of the Liberal era in the absence of a political or economic crisis, ensured that the ground was adequately prepared for the heightened use of these measures when the government turned back to austerity policy after the financial crisis.

This chapter will trace the Liberal government's use of such practices throughout its four terms in office. The evidence reveals that while the Liberals relaxed the use of governance through regulation during the period prior to the financial crisis, it remained an important tool for the implementation of its economic planning agenda. In the years following the government's shift to austerity, it became increasingly brazen in its use of the executive authority, notably including *The Putting Students First Act*, which forced the province's elementary school teachers back to the classrooms, banned strikes, and granted cabinet the authority to unilaterally impose public sector contracts. The same also proved true of the government's approach to parliamentary governance. Its continuation of the essential tactics employed by previous governments during its prosperous first several years in office, proved an indispensable tool to the passage of its signature restructuring legislation. Although the Liberals came to office on the promise of democratic reform, their approach to parliamentary governance exhibited many of the same features as the Harris government, and served to embed the approaches and practices of crisis management into the very fabric of the culture at Queen's Park.

Democratic Renewal at Queen's Park?

At the outset of its first mandate, the McGuinty government pledged to rehabilitate the role of the legislature in Ontario after eight years of neglect at the hands of the Progressive Conservatives. McGuinty appointed one of his senior cabinet ministers, Michael Bryant, to serve

as Minister of Democratic Renewal in addition to his responsibilities as Attorney General. In this role, Bryant would be accountable for implementing new procedures to re-establish the principle of the supremacy of parliament. Shortly after taking office, Bryant (2003) pledged in the legislature that the Liberals would, “treat our institutions with the respect they deserve,” by ensuring that the executive was accountable to parliament (Dec. 9). The most significant changes the government enacted to improve the responsiveness of the executive council to the legislature were enshrined in the *Executive Accountability Amendment Act*, introduced in December 2003. The bill required cabinet ministers to attend Question Period for at least two-thirds of the days the house was in session, with fines of up to \$500 per day for ministers who failed to attend for reasons deemed by the premier to be unacceptable (Bill 17, 2004). Furthermore, the bill required the premier to file a status report at the end of each session updating the public on ministers’ attendance records. Besides the obvious problem that the justifications for missing Question Period were to be left to the discretion of the premier, the bill did little to alter the essential relationship between the executive and legislative, since the procedural framework used by the Tories to subvert the legislative assembly was left in place. Without significant changes to the *Standing Orders* to outlaw the abuse of omnibus legislation, time allocation, and the exercise of the executive authority to curtail the use of governance by decree, changes to renew democracy in the legislative chamber would be mostly cosmetic. Despite the government’s haughty rhetoric on the issue of accountability, it failed to implement a counterforce to the executive’s power that would serve as a disincentive for it to circumvent the legislature in the years to follow.

Another central plank in the government’s plan to renew accountability was to improve budgetary and fiscal transparency after the Liberals discovered a \$5.6 billion deficit, despite claims from the Eves government during the election campaign that it had maintained a balanced

budget. As its first order of business in the new parliament, the government introduced the *Fiscal Transparency and Accountability Act*, which required increased transparency of its fiscal outlook by ensuring that information about the province's economic complexion was readily available to the public. However, the bill also included provisions that appeared strikingly similar to the neoliberal philosophy of the Harris/Eves era. It required the government to "maintain a prudent ratio of provincial debt to Ontario's gross domestic product," and to provide a recovery plan specifying a process for achieving fiscal equilibrium if in any year the government ran a deficit (Bill 2, 2004). The *Fiscal Accountability and Transparency Act* foreshadowed much of what was to come under the Liberal government; it promised accountability, but was simultaneously entrenching the language and logic of neoliberalism in the central nervous system of the province's Finance Ministry. Although the government promoted itself as having turned the page, much of what it was proposing was in fact a continuation of the practices of the Progressive Conservatives masquerading as a progressive reforms. Although the period of neoliberal revolution had come to its end, its institutional legacy remained.

The Use of the Executive Power in Liberal Ontario

Emergency Management Legislation

One of the most troubling trends to emerge during the McGuinty era was the government's willingness to strengthen the executive council's capacity to govern by decree during periods of crisis. This tendency was exemplified by the legislation it developed that granted cabinet martial law-like powers to manage "emergency circumstances." Bill 56, the *Emergency Management Statute Law Amendment Act*, authorized the government act quickly and decisively during a natural disaster or outbreak such as the SARS crisis by authorizing cabinet the power to appoint an emergency manager who would have the power to make

decisions without having to consult parliament. It permitted the premier or cabinet to declare a state of emergency if it was deemed that “the urgency of the situation requires an immediate order” (Bill 56, 2005). This authority was to be terminated after a period of 72 hours unless another order was passed, allowing the government to continue under such a state of emergency for no longer than 14 days. If after this period, the cabinet wished to continue to keep the state of emergency in place, it would have to return to the legislature to debate the matter.

During the state of emergency, the emergency manager would have the authority to arbitrarily evacuate individuals, remove personal property, authorize facilities for emergency use, regulate or prohibit travel or movement, fix prices, goods, services, and resources, direct and control the administration of the municipality in the emergency area, as well as, “other measures the Lieutenant Governor in Council considers necessary in order to prevent, respond or alleviate the effects of the emergency” (Bill 56, 2005). This final clause, to do what the government “considers necessary,” was intended to give cabinet the flexibility to address a variety of circumstances in the event of an unforeseen emergency, but it established a means through which any government would have czar-like authority to make sweeping policy changes without having to so much as debate the matter in the legislature.

The bill left the definition of what constituted an “emergency,” sufficiently broad so that it could be applied in the event of a variety of crisis situations. Under Bill 56 an emergency constituted “a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise” (Bill 56, 2005). While the intention of the bill is clearly designed to address matters of public health and safety, the definition is left deliberately vague in order that it could be

applied in all varieties of circumstances, including an economic or fiscal crisis. So long as the government could satisfy the necessary conditions—that the resources normally available during an economic crisis or a fiscal crisis of the state were insufficient—the government would be within its rights under the law to enact sweeping reforms to the structure of the state by order in council for a period of at least 14 days without having to so much as debate the matter in the legislature.

The government claimed these broad constructs of both the powers granted to cabinet and the definition of what constitutes an emergency were necessary in order to give the government powers to react to a variety of unknowable crises. Liberal MPP Liz Sandals (2006) explained that, “we don't know whether it's going to be a health crisis, a natural disaster, failure of infrastructure or a terrorist attack. We don't know what it is going to be, so we can't give a precise definition” (Apr. 6). Similarly, she claimed, the bill required that the situation be of sufficient gravity, “that the management of that emergency goes well beyond the normally existing legislative authorities; that is, you need to move outside the normal legislative authority” (Sandals, 2006, Apr. 6).

The opposition, however, claimed that the powers it granted to cabinet were far too sweeping and imprecise. New Democrat Michael Prue (2006) warned that the bill could be applied for commonplace occurrences affecting only minor segments of the population such as the bird flu, raccoon rabies, or the borer beetle. Similarly, Peter Kormos (2006) argued that the problem with the bill was that it granted “extraordinary powers” to an emergency manager who would be appointed by and responsible to cabinet (Jun. 7). A more democratic solution, Kormos argued, would be to transfer political power during an emergency to an independent officer of the

assembly such as the Ombudsman, who would govern in a manner that would be truly detached and autonomous from the government (Kormos, 2006, Apr. 6).

The opposition's skepticism in the McGuinty government's use of power during emergency circumstances was proven to be well-founded in 2010 when the government granted extraordinary powers to police during the G20 protests in Toronto. Cabinet enacted a clause from a long-forgotten 1939 bill designed to protect Ontario's critical infrastructure from enemy attack. Passed under by Hepburn government, the *Public Works Protection Act* was war measures legislation, granting extraordinary powers to cabinet to act quickly in the event of an attack on the province's infrastructure during the Second World War. The bill granted police special emergency powers, such as the ability to detain, question or arrest individuals they deemed to be threatening public property without being required to press charges. The little-known clause was activated under Regulation 233/10 in days leading up to the G20 without any debate in the legislature, and without so much as informing the public that their constitutionally protected right to protest had been undermined. Using the provision as a bludgeon to curtail protests, police arrested 1,105 protestors, of which only 278 were ever charged. Most had their charges dropped in the weeks and months after their arrests due to flimsy evidence regarding the circumstances of their arrest (Ferguson, 2011).

In a report on the government's use of a cabinet order to implement a provision from a 71 year old piece of legislation, Ombudsman Andre Marin issued a scathing criticism. He called the enactment of the procedure "illegal" and "likely unconstitutional," given that the original legislation's stated purpose was only to be used as a "war measure" against enemy threats during the Second World War (Marin as cited in Paperny, 2010, Dec. 8). Marin went so far as to call the government's activation of the provision under a cloak of secrecy, "the most massive

compromise of civil liberties in Canadian history,” which “amounted to martial law in Toronto.” He continued, “There was a premeditated, planned, conscious decision not to announce the existence of the legislation or the reviving of this act” (Marin as cited in Paperny, 2010, Dec. 8). Marin’s report also found that a so-called five foot law, which allowed police to arrest protestors for coming within five feet of the security fences surrounding the G20 zone in Toronto’s downtown, was illegal and constituted a deliberate misapplication of the law. In an impassioned speech to the legislature on the use of law enforcement tactics, Peter Kormos responded to reports that the government cowed to police requests for special powers during the G20 without considering the implications. He said,

That’s not how it’s supposed to work in a democratic country. It’s for government to enact the law; it’s for police to enforce it. It’s not for police to have a Premier sitting on their lap like a secretary taking dictation and dictating the sorts of laws that they want for a particular period of time (Kormos, 2010, Nov. 4).

In 2014, the Wynne government passed the *Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act*. The legislation was the outcome of the former Chief Justice Roy McMurtry’s report on the government’s use of emergency legislation during the G20 (Brennan, 2014a). The bill repealed the *Public Works Protection Act*, replacing it with specific security provisions for Ontario’s nuclear facilities and courthouses. It allowed security officers the right to ask for identification, search, and/or deny access to any individual seeking to enter either a nuclear facility or a courthouse in the province. Those individuals who refused such requests were subject to arrest and fines of up to \$2,000, and prison sentences not exceeding 60 days (Bill 35, 2014). The Liberals argued the bill was a reasonable compromise to protect public facilities while eliminating the more draconian elements of the *Public Works Protection Act*. Minister of Community Safety Yasir Naqvi, contended that the new law merely “formalizes the process that exists, which involves the local police working with the judiciary, with the lawyers, and with

those who work in court buildings, in determining what the right safety protocols should be” (Naqvi as cited in Leslie, 2014, Dec. 11). While the Tories supported the bill, the NDP opposed it on the grounds that inspections without probable cause constituted a violation of civil rights (Leslie, 2014).

The Resumption of Austerity and the Return to the use of the Executive Authority:

2008-2012

The conclusion of the era of major restructuring in Ontario brought with it a temporary end to the widespread abuse of the executive authority witnessed during Harris years. What is most striking about the Liberal record, however, is the extent to which the government began employing the tactics used by the Progressive Conservatives as it shifted to a policy of fiscal austerity in the years following the Global Recession of 2008. Under pressure to reduce the deficit, the government sought the shelter of its executive authority to enforce its decisions. By its third mandate, during which it was confronted by a highly fractured and obstructionist minority parliament, the government came to the realization that it required a political form that could insulate its restraint agenda from the political forces that sought to undermine it. The result was the most prodigious use of the executive authority since the Harris years, and the return of the authoritarian tendencies applied during that period in Ontario’s history.

Although Dalton McGuinty often proclaimed himself to be the “education premier,” it was in the education sector that his cabinet intervened most forcefully to restrain spending growth (Marchese, 2004, Mar. 29). In its 2012 budget, the government demanded a two year wage freeze from all public sector employees and threatened that if the public sector unions did not comply, it would use legislation to force compliance. McGuinty called upon public sector workers to support the wage freeze on the grounds that the fiscal crisis of the state required

collective action. The government adopted a policy of negotiating only within the parameters of what Education Minister Laurel Broten (2012) called “the province’s fiscal reality” (Aug. 28). In a different parlance, from this point onwards, no public sector salary increases would be forthcoming until the province managed to bring its budget back into balance. “We’re all in this together,” McGuinty said, while appealing to teachers to be “part of the solution,” by agreeing to the austerity measures without causing the government to recourse to legislation to enforce the pay freeze (McGuinty as cited in Howlett, 2012, Sep. 12). Education Minister Laurel Broten (2012) claimed that, “If Ontario does not take strong action, the deficit will grow, which would mean unsustainable levels of debt. We cannot allow that to happen. We will not allow that to happen” (Aug. 28). What Broten neglected to mention, however, was that the government’s 2010 Open Ontario plan slashed corporate tax rates from 14 percent to 11.5 percent, depriving the Treasury of crucial revenue in the midst of a recession. Following in the example of the Progressive Conservatives, the Liberals would seek to replace the revenue lost through tax cuts by forcing restraint upon civil servants.

The government’s first showdown over the wage freeze with the unions came at the end of August 2012, when the contracts of the province’s elementary school teachers were set to expire. Despite the fact that the unions reached out to the province during the summer, the government took a hard line on its request for a wage freeze. In response, the teachers threatened to strike upon the expiration of their contracts at the beginning of the school year if the government refused to change its demands. With both sides entrenched in their respective positions, Dalton McGuinty advised Lieutenant Governor David Onley to recall the legislature from summer recess during the last week of August to follow through with his threat to legislate contractual terms upon those unions that failed to comply with the wage freeze.

On August 27, the Liberals introduced Bill 115, the *Putting Students First Act*, which functioned as a preemptive piece of back-to-work legislation. However, the sweeping regulatory powers granted to the Minister of Education by the bill were comparable to the most extreme uses of the executive authority during the Mike Harris years. To wit, the bill placed an outright ban on teacher strikes in Ontario and imposed a 24 month “restraint period” for salaries, thus unilaterally undermining the right of unions to collectively bargain for their wages (Bill 115, 2012). Most significant, however, was the extraordinary discretionary authority granted to the Minister of Education by the bill. The minister was granted broad regulatory powers to impose new collective agreements upon teachers’ unions, require parties to negotiate new collective agreements, prohibit or end any strikes or lock-outs, and require employees to reimburse any money paid to them by a school board that acted in contravention with the wage restraint conditions (Bill 115, 2012).

The bill raised immediate and widespread concern that the power granted to cabinet to unilaterally impose contracts and end strikes violated the constitutionally protected right to free collective bargaining. Sam Hammond, President of the Elementary Teachers’ Federation of Ontario claimed that Bill 115 went, “far beyond any wage restraint or back-to-work legislation ever enacted in Ontario” (Hammond as cited by Leslie, 2012, Oct. 11).

Predicting that the response to the powers granted to the minister would be unpopular, the government included a provision under Section 9 in the bill that prohibited the Ontario Labour Relations Board, any arbitrator or arbitration board from holding an inquiry into the bill to determine whether it was constitutionally valid and/or in violation of the Ontario Human Rights Code (Bill 115, 2012). This unprecedented clause was included as a means of insulating

ministerial authority from the scrutiny of public institutions designed to protect citizens from the abuse of power.

In October 2012, four public sector unions filed legal action against the government for violating its collective bargaining rights. Perhaps most interestingly, the suit cited a case from 2002 in British Columbia where the government passed similar legislation. In 2011 parts of that legislation were overturned in large part because of the B.C. government's failure to adequately consult with public sector unions before passing similar powers for cabinet to restrict the rights of union workers (Nesbitt, 2012). Liberal MPP Dipika Damerla (2012) expressed confidence that the *Putting Students First Act* would hold up to a court challenge given that the British Columbia bill was overturned not on its merits, but rather because of the Campbell government's failure to carry out its duty to adequately consult with the province's teachers' unions. The Liberals on the other hand, had permitted unions to engage in negotiations over the course of the summer within the parameters of its mandated wage freeze. Premier Dalton McGuinty echoed this view, suggesting that his government had "a tremendous amount of confidence in the position that we have taken, and the law that we have adopted here in Ontario through working in concert with the opposition in the legislature" (McGuinty as cited in Leslie, 2012, Oct. 11). His view was not entirely accurate, however. While the Liberals did ultimately receive the support of the Progressive Conservatives, whose leader Tim Hudak had long pressured the Liberals to enact an across-the-board public sector wage freeze, the NDP were vehement in their opposition. Furthermore, the government was using the executive authority to shield its austerity measures from public institutions that might overturn them. By placing this power in the hands of the minister, the government could eliminate potential obstructions to their restraint program.

The day after the government brought forward Bill 115 in the legislature, Education Minister Laurel Broten also announced that it was appointing a financial supervisor to oversee the affairs of Windsor Essex Catholic District School Board. While the board posted a \$2.4 million surplus in its 2012 budget, a report by Deloitte and Touche LLP claimed that there could be a \$3 million variance in the board's accounting. Additionally, five of the last six budgets the Windsor-Essex Board ran a deficit. The report stated that the board had "an inability to meet its financial management obligations under the *Education Act*," because of a number of factors including "an inability to develop accurate budgets, inadequate financial management and an absence of budgetary control" (Lajoie, 2012, Aug. 28).

Appointed under the terms of the Harris-era austerity legislation Bill 160, the supervisor was authorized to suspend the authority of the democratically elected school board in Windsor-Essex in order to restructure its finances and bring it out of deficit by following the recommendations set out in the report by Deloitte and Touche. The supervisor was granted full power to make the cuts necessary for an indefinite period without interference from the school board, whose authority was effectively neutered until the minister declared the supervisor's tenure to be complete. Broten justified granting the supervisor such considerable powers on the grounds that "The board's actions have called into question their ability to manage their financial affairs...I want this board to have stability and solid financial controls in place so that it can focus on its main job of improving student achievement" (Lajoie, 2012, Aug. 28).

Fiscal Management Behind the Veil of the State: The Premiership of Kathleen Wynne

While the *Putting Students First Act* was eventually repealed, and contract disputes between the province and the province's teachers' unions settled upon Kathleen Wynne's ascension to the Premier's Office in 2013, the government's obsession with deficit-reduction and

corporate tax competitiveness carried forward to the new Liberal regime. In her first year in office, the new premier advanced plans to expand the province's physical and social infrastructure through a new transit initiative, a commitment to invest as much as \$11.4 billion in hospital capital repair projects over the next decade, a retirement pension plan, and increases in funding for low income families through the Ontario Child Benefit. (Sousa, 2014). Doing so without significant tax increases, while remaining devoted to the orthodoxy of fiscal discipline, however, proved to be a delicate high wire act for a government that was already projecting a deficit of \$12.5 billion in 2014. Indeed, latent in the premier's efforts to outflank the NDP on the left during the 2014 campaign, was an implicit admission that restraint would be necessary to bridge the gap between her lofty spending proposals and a balanced budget. Wynne's solution to this problem was twofold. First, she centralized the management structure of cabinet, establishing the Treasury Board as the most powerful ministry in cabinet and giving it a veto over government spending in every department. Second, her government systematically built provisions into legislation allowing cabinet to shift money from certain priority areas to address the deficit behind the veil of the state.

In the wake of its 2014 election victory, the Wynne government signified its shift from its temporary embrace of Keynesianism during their 16-month tenure in a minority parliament, to a policy of restraint through a reorganization of cabinet roles and responsibilities. Wynne made good on a promise to NDP leader Andrea Horwath during 2013 budget negotiations to appoint a Minister of Savings and Accountability by splitting the Treasury Board Secretariat from the Ministry of Finance, and placing her closest political ally and leadership campaign chair, Deb Matthews, in the position. The NDP was primarily concerned with establishing a ministry that could be held accountable for ensuring the government made efficient use of public money.

Instead, Wynne established the newly empowered Secretariat of the Treasury as the most powerful position in cabinet, functioning as the financial czar of her commitment to balance the budget by 2017-2018.

The new Treasury Secretariat followed in the example of the federal Conservatives who had empowered the Treasury with a veto to control departmental spending. The new ministry took responsibility for managing the complex negotiations with the public service as well as developing a plan for the privatization of public assets and services. Although it had been the case since the days of the Davis government that the Treasury Board functioned as an appendage of the Ministry of Finance, as a standalone ministry it would set the government's restraint agenda by holding the right to veto expenses from any department that exceeded its broader fiscal strategy to achieve a balanced budget (Morrow, 2014, Jun. 23). In this respect, the Treasury Secretariat differed little from the authority granted to Finance under the traditional scheme of organization, but whereas Finance was responsible for establishing spending priorities in all areas of government, the new Treasury Secretariat was exclusively designed to enforce the development and actualization of an austerity program to which all departments were required to conform.

Premier Wynne confirmed the Treasury Secretariat's role as austerity gatekeeper when she took the unusual step of releasing the mandate letters given to each of the government's ministers upon assuming their positions. In her letter to Treasury Secretary Deb Matthews, Wynne made it clear that the new ministry's primary objective was to provide leadership to cabinet on the government's broad fiscal targets. Wynne wrote that the new ministry would be asked to "drive efficiencies and reduce costs to achieve our commitment to eliminate the deficit by 2017-18" (Wynne, 2014, Sep. 25). Furthermore, Wynne reminded Matthews that "Reducing

the deficit is not only financially prudent — but managing our resources responsibly also demonstrates our government’s commitment to fund the priorities of Ontarians” (Wynne, 2014, Sep. 25). Much as Bill Davis and Bob Rae had done as premier, Kathleen Wynne's turn towards fiscal restraint began with a reshuffling of cabinet designed to centralize power in the hands of a fiscal czar, who was empowered to set priorities and veto spending for each department.

The need for the flexibility to transfer funds from the government’s transit initiative to meet its commitment for a balanced budget led it to build a clause into its 2014 *Budget Measures Act* that granted the President of the Treasury Board the authority to designate “the amount of net proceeds of a disposition of a qualifying asset that is to be credited to the Trillium Trust” (Bill 14, 2014). This clause authorized the Treasury Board to reallocate funds from the Trillium Trust, a fund devoted for financing transit infrastructure, at its discretion. The inclusion of this provision in the budget bill led to accusations from the opposition that the government left the President of the Treasury Board sufficient flexibility to secretly redistribute funds from its transit plan to finance the deficit at some later stage. Progressive Conservative MPP Vic Fedeli observed that “The law is certainly not open and transparent... It’s going to be very tempting for them to use asset sales to balance the budget” (Fedeli as cited in Morrow, 2014, Jun. 23). NDP MPP Catherine Fife criticized the government for failing to live up to its commitment to openness in government. Fife argued that “the government talks about transparency and accountability, and yet there’s a whole grey area here around...where that money’s going to go” (Fife as cited in Morrow, 2014, Jun. 23). The tendency to leave significant powers to the executive to arbitrarily change course on financial decisions would become a hallmark of much of the Wynne government's key financial legislation.

The Wynne government similarly signaled its intention in late 2014 to sell off a 60 percent stake in Hydro One, purportedly to redistribute the funds to the government's mass transit initiative. Wynne argued that the imposition of private sector discipline into Hydro One would also improve the efficiency with which it was managed: "Part of this initiative is that it will get us a better company because it will be more efficient, it will be run professionally and we will see improved service — that's part of the mandate of the new board" (Wynne as cited in Fox, 2015, Dec. 20).

The resulting reforms to enable the sale of the government's assets were buried in its omnibus 2015 *Budget Measures Act*. The legislation amended both the *Electricity Act* and the *Financial Accountability and Transparency Act* to grant the Minister of Finance the discretionary authority to sell Hydro One assets and transfer the revenue received to the government's consolidated revenue fund (Bill 144, 2015). While this money was purportedly to be transferred to the government's mass transit initiative, there would be no way to tell whether the government used the money to service the deficit, since the Minister of Finance had full discretionary authority to determine how the money should be used. This power to transfer money from the sale of Hydro One assets, however, creates a potential conflict with the terms of the *Electricity Act*, which requires that any surplus revenue derived from Hydro One be redistributed to the Ontario Electricity Financial Corporation to service the debt retirement fund (Brown, 2015). The secrecy surrounding the government's use of the money derived from the sale, however, means that it may be several years before the public is able to determine how it has been allocated.

In a further demonstration of the secretive nature of fiscal policy under the Wynne government, on April 30th Deb Matthews (2015) announced in the legislature that the government had reached a tentative agreement with Hydro One workers to purchase shares in the

new corporation. The trouble with this, however, was that the government had entered into private negotiations to facilitate the sale of Hydro One without having first received the approval of the legislature to divest itself of its assets. The following week, Gilles Bisson (2015) argued that the privilege of members had been violated by the government's decision to reach agreement while the legislation authorizing the sale of its electricity assets, the *Budget Measures Act*, remained before the house. He said,

It is our assertion that this action represents a breach of privilege and constitutes a contempt of Parliament. Clearly the government has given the go-ahead for hydro to negotiate this without the authorization of this Legislature. Information regarding the tentative deal reached by the government with Ontario Power Generation and Hydro One workers involving the distribution of shares that have yet to be approved by this assembly has been made publicly available and has been reported in the Globe and Mail, the Financial Post, the Toronto Star, Metro news and Newstalk 1010, amongst others. By pre-empting the bill's progression through the House, the government has acted in a fashion that signals that the appropriate parliamentary processes are unnecessary for the completion of any deal (Bisson, 2015, May 5).

Ultimately, the Speaker ruled that a *prima facie* violation of privilege had not been established. However, the issues Bisson raised spoke to a deep concern among the opposition parties that the government, in its efforts to give itself the necessary flexibility to meet its deficit targets, had increasingly transferred discretion over significant questions of supply to the executive council. Although at the time of this writing the final chapters of the Wynne government's tenure in office have yet to be composed, there appears to be little doubt that one of its legacies will be the propensity it has shown to shield the chaos of its deficit reduction juggling act by granting the executive considerable power to make these decisions arbitrarily and out of the public view.

Liberals' Use of Omnibus Legislation

On December 6, 1999, at the height of the controversy over the Harris government's Bill 25, then leader of Her Majesty's Loyal Opposition Dalton McGuinty (1999) told the legislature:

This omnibus, Megabill approach to legislation makes for bad legislation....We will not buy into that sort of approach by supporting this bill. We will not set a precedent that gives the government the green light to continue to ram omnibus bills down our throats. We want the bill split to allow separate votes on each piece of legislation (Dec. 6).

As opposition leader, McGuinty was clear that the mechanism of omnibus legislation corrupted the parliamentary process. However, once in government, he followed the trail blazed by the NDP and the Progressive Conservatives, using omnibus legislation on several important initiatives throughout his nine years as premier. While the Liberals largely steered clear of the enormous bills involving several seminal reforms that characterized the Harris era, the omnibus bill was no less an important tactic for the Liberals as a procedural tool than it had been for the previous government.

Liberal omnibus bills have tended to take two forms. First, following the example set by the Tories, the Liberals passed a number of bills with broad, disconnected themes dealing with government efficiency. While the Liberals did not call these “red tape reduction” bills as the Progressive Conservatives had, they were similar in their form and content. During their eight years in power, the Progressive Conservatives habitually passed red tape reduction legislation, which packaged together a number of mostly minor, loosely associated reforms designed to reduce regulatory burdens on business and improve government efficiency. Although the Liberals avoided the use of the term “red tape,” preferring more politically neutral phrases such as “regulatory modernization,” the bills it passed were virtually indistinguishable from the majority of the Tories’ red tape reduction legislation.

The first of these bills, the *Ministry of Consumer and Business Services Act*, was an attempt by the government to roll back regulations in areas long lobbied for by business, but that the Tories had failed to address before losing the 2003 election. Passed in November 2004, the

bill amended 24 different statutes, making mostly minor changes to regulatory provisions. Peter Kormos (2004) summarized the omnibus bill's central purpose to reduce regulations as,

a dusty old piece, a hodgepodge of dusty old Tory amendments that have been sitting on the shelf for Lord knows how long, well past their expiration date. In a stricter regime around consumer protection, this expired date, shelved item would have been discarded (Jun. 22).

The most significant red tape bill brought forward by the Liberals was the *Open for Business Act*, a signature piece of legislation passed during the government's turn to neoliberalism during the spring of 2010. The *Open for Business Act* made changes to 10 different ministries, amending legislation to streamline registration and review processes, eliminating excessive regulations, as well establishing processes to reduce bureaucratic backlogs. The bill granted discretionary power to employment officers to clear up a backlog of more than 14,000 employment standards claims. It also attempted to address a labour shortage of engineers in the province by eliminating the citizenship requirement to work as an engineer in Ontario (Bill 68, 2010). Although members of the opposition argued that the bill should be split into several different pieces of legislation given that it dealt with a variety of important changes to the law in Ontario that warranted debate and public hearings independent from the omnibus legislation, it was time allocated and received Royal Assent in the fall of 2010.

Secondly, the Liberal government made a habit of packaging dozens of its reforms into its budget implementation bills. It has often been the case that the initiatives written into omnibus legislation have nothing to do with the budget or fiscal policy, but are included as part of the government's desire hasten their implementation and reduce their exposure to debate. While there was long-standing history at Queen's Park of governments passing large budget implementation bills, such instances had traditionally been the product of all-party agreements. For the McGuinty Liberals, however, budgetary implementation bills proved useful as a political

tool to expedite their agenda, since they offered a convenient justification to pass several initiatives, while devoting time for debate to only a single bill.

The first important omnibus bill, Bill 149, was passed in the fall of 2004. A budget measures legislation, Bill 149 made amendments to 40 pieces of legislation and regulations. Among the changes made by the bill were reforms to the *Employer Health Tax Act* and *Income Tax Act*, which implemented the controversial Ontario Health Premium (Bill 149, 2004). The bill shaved \$3.9 billion off of the deficit by shifting the debts of the province's hydro properties around so as to reduce the size of the overall deficit. It also reduced money granted to the province's 15 ministries by nearly 12 percent, and delisted several health services such as chiropractic care, physiotherapy, and optometry from the province's universal health care plan with the exception of certain qualifying groups. Given that the imposition of the Ontario Health Premium was highly controversial in accord with the government's commitment to not raise taxes only months early during the election campaign, there was considerable political gain to be had for the Liberals to pass the bill through the legislature as quickly as possible (Bill 149, 2004). The omnibus bill provided political cover for the Liberals in that it forced the opposition parties to choose between debating other matters contained in the bill, or ignoring these issues entirely to devote their full attention to the new tax. Furthermore, it also allowed the Liberals to deflect attention from the Health Premium by focusing on other significant budgetary reforms included in the bill.

The government gave the opposition only one week to digest its multifold dimensions before bringing it forward for second reading. NDP MPP Michael Prue (2004) explained his own difficulties with comprehending the complex bill:

We have here a bill which is changing some 40 different government acts, which is thick, which is ponderous, which is difficult to understand. I must admit, even though I had a

one-hour briefing, I was not much more enlightened after the one hour than when I went into it, because there are so many bills and so many changes being contemplated, some of which are minuscule, some of which are meaningless to the average person, some of which I think even a tax lawyer would have difficulty in understanding (Nov. 29).

Bill 149 ultimately received Royal Assent less than a month after its introduction in the house without public consultations or committee hearings after the Liberals introduced time allocation to expedite its passage through the legislature.

The most comprehensive bill during the McGuinty era was Bill 55, the *Strong Action for Ontario Act*. The 2012 budget measures bill enacted a variety of austerity measures announced by Finance Minister Dwight Duncan in his spring budget speech. The bill was, in part, a product of the unique political circumstances of the spring of 2012. The Liberal minority government found itself in the difficult situation of trying to navigate restraint measures through a legislature in which the Progressive Conservatives, led by Tim Hudak, held an unofficial policy to oppose virtually all Liberal initiatives regardless of their content, while the New Democrats remained naturally opposed to a policy of austerity. As a consequence, the Liberals made support for their budget implementation bill a necessary condition for agreeing to NDP Leader Andrea Horwath's demands during budget negotiations. Once it secured the support of the New Democrats, the government recognized it had been presented with an opportunity to pass several of its legislative initiatives that had been stalled in the minority legislature under the canopy of its budget measures bill.

The outcome of this political deadlock was a bill that was the province's largest since the Harris era. The *Strong Action for Ontario Act* amended 50 different pieces of legislation, including 69 schedules, totaling 327 pages. It included a commitment to implement a two year wage freeze on public sector employees, mechanisms to ensure restrictions on public sector executive salaries, tax increases on the wealthiest Ontarians, a plan to sell off parts of Ontario

Northland, an expansion of the mandate of the Minister of Natural Resources to delegate certain responsibilities to the private sector, an allowance for the self-regulation of a number of industrial activities, and procedures for the amalgamation of smaller school boards across the province, among other numerous other reforms.

Michael Prue (2012) claimed the bill was “Harperesque,” referencing the federal Conservative government’s tendency to use large omnibus bills to hide unpopular measures (May 7). For Prue, the government’s intent with Bill 55 was to bury a number of its less publicized austerity measures in the text of a 327-page bill in order to give members as little time as possible to digest their implications. He told the legislature that even the NDP’s research team had trouble getting through the bill before it was brought forward for second reading:

It’s taken a while for them to get through the tome—this is a tome; it’s at least an inch thick of little tiny minutiae and details. But if you get into the environment, what you’re going to see is that the laws to amend the environment and all the administration by the Ministry of Natural Resources—it’s all in there—are all being amended without discussion, being hidden in a type of omnibus bill (Prue, 2012, May 7).

The opposition argued that Bill 55 ought to be split into several distinct pieces of legislation, however by 2012 omnibus bills had become a well-established procedural mechanism of the legislature. While they considered the use of such omnibus legislation lamentable, only a few made more than a passing reference to the omnibus nature of the bill during their debate time, preferring instead to focus on discussing the merits of its content. To underscore this point, despite their opposition to the largest omnibus bill in more than a decade in the legislature, the NDP would ultimately abstain from the vote on the bill, allowing it to pass before summer recess.

Like the Tories before them, the Liberals found the instrument of omnibus legislation simply too convenient a political tool to discount when attempting to pass controversial

legislation. In so doing, however, they maintained the practice of the previous government, entrenching it as a procedural custom. Peter Kormos (2006), summarized the menace of the Liberal omnibus strategy in his usual colourful way:

It's not a healthy, not a good way to pass legislation. What inevitably happens is that it's like peeling back the layers of an onion: You think you've found the bad spot and sure enough, sure as God made little apples, you dig a little deeper and something else jumps out at you (Apr. 4).

The attitude of the Liberal government towards omnibus legislation was perhaps best encapsulated by Liberal Member David Zimmer (2006), who explained to the legislature that omnibus bills had been a part of the Legislative tradition since 1994, and had become established as a parliamentary custom in the intervening period. Indeed, he argued that omnibus bill had, “become a regular feature of the Ontario Legislature, and this approach has become a model for several other Canadian jurisdictions as well. In short, they are a necessary element of good government” (Zimmer, 2006, Apr. 4). The Liberal era, then, can be characterized as a period of continuity in the use of the omnibus bill as a method of “greasing the skids” for the government’s parliamentary agenda at Queen’s Park.

The Continuation of Harris-era Practices: Parliamentary Governance under Liberal Rule

The Use of Time Allocation 2003-2014

By the time the Liberals came to office, time allocation had been long established as a custom of the legislature. Despite this fact, Dalton McGuinty devoted tremendous energy both as opposition leader and during the election campaign, to opposing the Conservatives’ autocratic approach to parliament. In a 1997 speech to the legislature opposing the Harris government’s continued use of the executive authority at the expense of parliament, McGuinty (1997) pleaded with members to remember the importance of their roles. He said,

The premier and the cabinet do not make the laws; we do, all of us here do I say very directly to the backbenchers of the government: Don't let the train drivers in the Premier's office railroad you into going against the best interests of the people you were elected to represent. Don't forget those who sent you, and don't forget what you were sent to do (McGuinty, 1997, Jan. 23).

Given his fierce criticism of the practices of the Harris/Eves governments, there was considerable optimism that the Liberals would institute significant changes to parliament to restore democracy to the legislative chamber. Indeed, in their inaugural Speech from the Throne, the Liberals pledged to “bring an open, honest, and transparent approach to government,” and to “give all members an opportunity to do more on behalf of their constituents” by enhancing the roles that backbench and opposition members of government play in the daily proceedings of the legislature (Bartleman, 2003, Nov. 20). However, after a short attempt at conciliation with the opposition, McGuinty adopted an approach to house governance that, by the end of his tenure as premier, placed him alongside Mike Harris and Ernie Eves as one of the most anti-democratic leaders in the legislature’s history.

Time allocation was designed to break deadlock in an era during which there were no constraints on the opposition’s ability to hold up house business. However, the reforms to the *Standing Orders* made during the Rae and Harris governments had rendered time allocation unexceptional, since clear time limits were set out for debate at each stage of a bill’s expedition through the legislature. Under the Progressive Conservatives and Liberals, time allocation had become an oppressive force by which majority governments exerted their authority to restrict debate. In a 2008 speech to the Legislature, Peter Kormos (2008), who had opposed every single time allocation motion upon which he had voted since being elected in 1988, argued that time allocation had primarily become about the use of

brute majority to terminate debate, notwithstanding how many members haven't had an opportunity to make a contribution to that discussion here in this chamber. It's not based

on whether there's been a thorough discussion. It's not based on whether the public is satisfied that there has been adequate consideration. It's not based on whether or not the seriousness of the matter is one that should warrant it receiving, yes, indeed, sometimes ponderous and thoughtful consideration. It's based on the will of a government that wants to accelerate its agenda (Kormos, 2008 Apr. 30).

Time allocation was, Kormos (2009) said, the “last refuge of scoundrels,” a maneuver for those who

don't give a tinker's damn about the opposition; that don't give a tinker's damn about due process when it comes to bills going through the process; don't give a tinker's damn about committee work, as long as they've got a majority on the committee so they can hammer anything through that they want (Oct. 5).

The Liberals initially tried to avoid using time allocation altogether. They hoped to bring back the custom of setting the parliamentary calendar collaboratively with the support of the opposition house leaders (McGuinty, 1997). With hindsight, it is easy to see that such an agreement, given the Liberal government's commitment to distance itself from the policies of the Tory government, made achieving consensus on a legislative timetable nearly impossible. Once talks failed, the Liberal government was presented with a choice: it could take the time necessary to debate each of its primary legislative, or it could expedite the process significantly by breaking its promise to restore principle to the procedure of the legislature, and invoke time allocation. Ultimately, following the same path as the NDP and Progressive Conservatives before them, the Liberals would find the shelter of time allocation too useful a political tool to pass up.

So it was that less than a month after its Speech from the Throne pledging to restore democracy to the legislative Chambers, the McGuinty government passed a massive time allocation motion, encompassing three of the new government's signature pieces of legislation, Bills 2, 4 and 5, two government motions, and a motion by the official opposition. In an unprecedented maneuver, the government brought forward the time allocation motion without using standing order 46, which dealt with time allocation in the legislature. Citing a precedent

from the British House of Commons, it simply proceeded with a regular house motion to impose time restrictions on these initiatives. Doing so allowed the government to limit debate without having to publicly admit that it was breaking a promise by resorting to time allocation so early in its mandate.

House Leader Dwight Duncan (2003) argued that the motion was “not time allocation or what used to be called a guillotine motion” (Dec. 2) Rather, he explained,

This is a motion to program a bill or, in the case of this, a series of bills and motions and special debates for the remainder of the fall sittings. It's designed to move the legislature forward in a way that allows all members a full opportunity to participate in the important work in front of us (Duncan, 2003 Dec. 2).

Instead of the, “draconian and heavy-handed nature of time allocation,” Duncan (2003) said, this motion was the product of more than three weeks of consultation with the opposition, and merely set out a “program” for the remainder of the current sitting of parliament (Dec. 2). The opposition argued that while the motion did reflect the outcome of several weeks of discussions, negotiations had reached an impasse. While there was precedent for proceeding in such a manner through unanimous consent, the opposition did not consent to the motion. As such, it functioned in effectively the same manner as a time allocation motion by establishing limits for debate through the bludgeon of majority rule (Kormos, 2003, Dec. 2).

From the opposition's perspective, the government's motion was merely a time allocation ploy masquerading as a housekeeping matter. Peter Kormos (2003) argued that the motion was “designed to curtail debate” (Dec. 2). The government was using the guise of consultation with opposition parties to use a heavy-handed tactic that Kormos (2003) argued, “quite frankly makes Standing Order 46 redundant” (Dec. 2). While time allocation corrupted the essential foundations of parliamentary supremacy, circumventing the legislature’s *Standing Orders* was an even more dangerous precedent to set. In his speech during debate on the motion, Kormos issued a

foreboding warning to neophyte members of the Liberal government. He claimed that new members should understand that real decision making authority is not located in the legislative chambers, but rather in the executive. Regardless of the government's lofty rhetoric during its first few weeks in power, he claimed, the McGuinty Liberals were demonstrating themselves to be no different from any government over the last two decades in Ontario. He said,

Parliament is not about government; Parliament is where government comes to have its policies and its positions challenged and tested. Government occurs in the Premier's office, in cabinet office, not in Parliament... I have no hesitation in telling you that I think I understand why the deputy government house leader would support this motion, why these sorts of pacts are not uncommon in history. I mean this style of governing is entirely consistent and in tune with what the Tories did for eight years. I admonish you, don't take any real pleasure in the fact that the Conservatives support you enthusiastically in your efforts. It, in and of itself, is not a good sign of anything. As a matter of fact, it should be the red warning flag; it should cause you to hesitate, step back and reflect (Kormos, 2003, Dec. 2).

Kormos's warning would prove prophetic. By 2004, time allocation had become a routine government tactic to limit debate and advance its legislation through the house.

The Liberals would again use time allocation on June 10, 2004 as a means of passing their 2004 budget measures bill. This bill was particularly controversial since it implemented matters related to the government's Ontario Health Premium, an increase on income taxes to deal with the \$5.6 billion deficit left by the Tories. On this occasion, the government used Standing Order 46 as opposed to the programming motion it passed during the fall sitting. From this point forward, the time allocation threshold having already been crossed, the government would only use Standing Order 46 to expedite the passage of a bill. Rather than justify the decision on moral grounds, Dwight Duncan (2004) went on the attack, accusing the opposition of having been the harbingers of time allocation. He pointed out that this was the first of the ten bills passed by the government for which Standing Order 46 had been invoked, while the Harris/Eves government of 1999-2003 had used time allocation for 61 percent of the total legislation it passed. He also

made a point to recall that the NDP, “lest they think they are as pure as the driven snow...set the trend for the use of time allocation motions” (Duncan, 2004, Jun. 10). Given that the McGuinty government was using Standing Order 46 for the first time, Duncan (2004) claimed his party had the lowest percentage of bills time allocated “since way back in the Bill Davis government. We’re very proud of that” (Jun. 10).

During the 2004 fall sitting, the government began to customize the use of time allocation. They again demonstrated a propensity to use time allocation on more than one piece of legislation at one time when they introduced a motion to restrict debate on Bills 106 and 149 in December 2004. This trend would become a hallmark of the Liberal government both under premiers Dalton McGuinty and Kathleen Wynne. During debate on the motion, Michael Prue argued that the government was breaking its promise to enhance the role of parliament by restricting debate on an omnibus budget measures bill and another bill which made significant changes to the allocation of forestry licenses in the province:

I would tell you, the minister's interest and the government's interest at present is getting through two very controversial bills today. They have invoked closure for one of the first times in this legislative session and one of the first times in this new government's mandate. I am saddened, because these two bills are without a doubt the most controversial bills that have been brought forward in this parliament (Prue, 2004, Dec. 7).

Minister of Public Infrastructure Renewal David Caplan (2004) acknowledged that Bills 106 and 149 were “very important” budget bills, but again resorted to attacking the opposition parties for their records on time allocation when in power. He told the legislature that, “our government will not treat this house with the disrespect that the previous government did. Time allocation will be used, but it will be used sparingly; only on major legislation that is time-sensitive” (Caplan, 2004, Dec. 7).

Among the most flagrant uses of time allocation to this point in the province's history was the government's decision to use it to restrict all debate on the Report of the Integrity Commissioner of Ontario in February 2006. The report made accusations against the Minister of Transportation, Harinder Takhar, for an alleged conflict of interest by failing to maintain an arms-length relationship with a family business while serving as a Minister of the Crown. However, when the Integrity Commissioner's report was due to be adopted in the house, the government passed a time allocation motion to dispose of the routine procedure that members debate the adoption of any report by an independent officer of the legislature in order to avoid further debate on Takhar's actions. Government order 9 was tantamount to the invocation of closure:

pursuant to standing order 46 and notwithstanding any other standing order or special order of the house relating to government order 9, when government order 9 is next called, the Speaker shall put every question necessary to dispose of the motion without further debate or amendment; and That there shall be no deferral of any vote allowed pursuant to standing order 28(h); and That, in the case of any division, the members shall be called in once, all divisions taken in succession, and the division bell shall be limited to 10 minutes (Caplan, 2006, Mar. 1).

Progressive Conservative MPP Toby Barrett (2006) told the legislature he was "disappointed" with the premier's "lack of action with respect to the reckless behaviour of his appointed Minister of Transportation" (Mar. 1). He continued his condemnation of the government's actions:

Rather than choking off debate and compromising the integrity of this legislature, I'm convinced that the premier should be seeking his minister's resignation. I'm concerned that the members opposite are forced to sully their own reputations defending the transgressions of their colleague, defending the transgressions of their premier. This Takhar mess, this scandal, is contributing to our democratic decline. This time allocation motion, coupled with last night's time allocation motion and this scandal of which we speak, is recklessly destroying democratic debate and the sense of honour and the sense of principle that should exist within this chamber. This is a price that I'm not willing to pay and in fact none of us should pay (Barrett, 2006, Mar. 1).

Two months later, Premier McGuinty quietly shuffled Takhar out of the higher profile transportation ministry, and into a junior portfolio as Minister of Small Business and Entrepreneurship. While the Takhar issue was ultimately a minor scandal, it was emblematic of the McGuinty government's approach to centralize decision making in the Premier's Office at the expense of parliament's function as the primary forum of political accountability.

While the government's use of time allocation in the first session of the 38th Parliament reflected its efforts to restore democracy to the legislative chamber, by the second session of its first mandate it began to use time allocation at a rate that rivalled the Harris/Eves governments (See Table 8.1).

Table 8.1: Time Allocation Motions Passed by the McGuinty/Wynne Governments

Session	Date	Total Government Bills Passed	Total Bills or Motions Passed Using Time Allocation	Percentage of Time Allocation Motions to Government Bills Passed
38th Parliament, 1st Session	(2003-11-19 - 2005-09-19)	51	8	15.7 percent
38th Parliament, 2nd Session	(2005-10-11 - 2007-09-10)	55	25	45.5 percent
39th Parliament, 1st Session	(2007-11-28 - 2010-03-04)	57	25	43.9 percent
39th Parliament, 2nd Session	(2010-03-30 - 2011-06-01)	38	20	52.6 percent
40th Parliament, 1st Session	(2011-11-21 - 2012-10-15)	9	2	22.2 percent
40th Parliament, 2nd Session	(2013-02-19 - 2014-05-02)	15	4	26.7 percent
41st Parliament, 1st Session	2014-07-02 -	9	7	77.8 percent

The 2011 general election, which returned the McGuinty Liberals to power with a minority government, brought a temporary chill in in the routinization of time allocation, since the government was no longer able to command a majority of votes in the legislature. To underscore this point, during the first session of the minority parliament, the government passed time

allocation on just two occasions in the nearly 11 months before the house was prorogued. On the first occasion, the government passed a motion with all-party support to fast-track a bill to restrict bullying in the province's schools. It was one of the rare instances of collegiality in an otherwise fragmented parliament. On the second occasion, the government applied time allocation to the *Putting Students First Act*. Government House Leader John Milloy brought forward the motion after eight and a half hours of debate on second reading, citing a need to move the bill to third reading since the school year had already begun. Milloy (2012) assured the house that he recognized the "seriousness" of resorting to time allocation on such an important legislation, but argued that, "there is urgency that's associated with this" (Sep. 4). The motion ultimately passed with the unanimous support of the Progressive Conservative caucus, which had long advocated for public sector austerity.

The significant decline in the incidences of time allocation during the minority period of 2011-2014 was primarily the consequence of the political dynamics of the 40th Parliament. Throughout the first session, both the Progressive Conservatives and the NDP demonstrated an unwillingness to support the government's agenda. This is perhaps best reflected by the fact that the Liberals were only able to pass nine bills in the 11 months the legislature sat during the first session. In short, the decline in its usage was not so much reflective of a reluctance on the part of the government to employ it, as it was a symptom of its inability to acquire the necessary support from the opposition. The ascendancy of Kathleen Wynne to the leadership of the Liberal Party had little tangible impact on the parliamentary impasse that plagued the final year of Dalton McGuinty's tenure as premier. Despite her effort to make overtures to the opposition, both the NDP and the Progressive Conservatives continued to oppose the majority of the government's legislative initiatives.

The Wynne government passed time allocation for the first time on its budget measures bill, the *Prosperous and Fair Ontario Act*. Introduced as a routine programming motion, the bill passed with the approval of the NDP as a condition for the deal their leader Andrea Horwath struck with the government on its spring budget. Progressive Conservative MPP Randy Hillier expressed disappointment that the NDP would support time allocation after fiercely opposing it for nearly two decades since leaving office. In reference to the NDP's position, Hillier (2013) said,

They've been a very, very vigorous defender against time allocations and closures. I find it disappointing that the NDP are now throwing away that history, throwing away that commitment when, really, in time of minority Parliament there is no greater time and more important time to uphold that scrutiny of public policy and that demand and expectation for full and wholesome discussion and debate of the government (May 29).

New Democrats justified the decision as a necessary evil to ensure the premier made good on her promise to appoint an Independent Accountability Officer as she promised Horwath during budget negotiations.

In the fall of 2013, the Liberals struck an agreement with the Progressive Conservatives to pass a massive time allocation that allowed the government to usher several of its bills through the legislature before winter recess. The motion restricted the time provided for debate and committee hearings on eight of the government's signature bills. In exchange, the government pledged its support for a Progressive Conservative private members' bill sponsored by MPP Monte McNaughton that proposed to repeal a 55 year old law requiring one the province's largest construction companies, Ellis Don, to exclusively hire unionized workers. When the NDP opposed the enormous motion, the government intervened after six and a half hours to invoke time allocation on the debate over the original time allocation motion. The NDP argued that they

could not support the government's package of bills because of the "poison pill" inclusion of the Ellis Don anti-union legislation (Di Novo, 2013, Oct. 2).

The Wynne government ultimately passed a time allocation motion just one more time during its 15 months in power. It did so on the *School Boards Collective Bargaining Act*, legislation designed to establish a two-tiered system for collective bargaining with the province's teachers. The NDP supported the government on the time allocation motion by abstaining from the vote, and allowing it to pass despite opposition from the Progressive Conservatives. When the massive time allocation package of eight bills is taken in to consideration, the record shows that the Wynne government applied time allocation to ten separate bills and one motion, despite passing only fifteen bills throughout the entire second session. Ultimately, the minority 40th Parliament featured far fewer time allocation motions than during the two Liberal majorities that preceded it. This trend, however, was more reflective of a dysfunctional minority legislature than any kind of shift towards a more decentralized style of parliamentary governance.

Soon after winning a majority government in June 2014, the Wynne government returned to the time allocation patterns employed during the McGuinty regime. During its first five months in office, the Liberals used time allocation seven times relative to only nine government bills that received Royal Assent during this period. Although the percentages are exaggerated by the small sample size, the subjection of 77.8 percent of total government bills to time allocation is a larger number than even the final years of the Ernie Eves government. While Kathleen Wynne has considerable time left in office to write a different script, early indications are that she will likely continue to walk the path that was blazed for her by the last three decades of procedural history at the Queen's Park.

The McGuinty/Wynne Liberals cannot be held solely accountable for the proliferation of the use of time allocation at Queen's Park. The practice had been in use for more than twenty years by the time they came to office, and became commonplace under the Harris/Eves governments. However, it was arguably under their watch that the practice became institutionalized as a customary aspect of house scheduling. While it might have been possible to suggest that the abuse of time allocation during the 1990s and 2000s was a consequence of the Tories' radicalism, the continuation of this practice by the Liberals with a frequency that mirrored their predecessors, embedded it the institutional fabric of the legislature. As we near the twenty year anniversary of the election of the Harris government, it seems unlikely that the abuse of process used to hasten the implementation of government initiatives will decline any time soon. In the nearly two decades since the Harris revolutionaries took control of the parliamentary process with the single-minded aim of applying their agenda in the shortest possible timeframe, the role of the opposition has been increasingly marginalized by governments that have placed their own political objectives over the legislature's pivotal role as a forum of public debate. The Liberals did not invent time allocation, but they have institutionalized its expanded use as a pillar of the institutional culture at Queen's Park.

The Turbulent 40th Parliament of Ontario: New Procedural Tactics Emerge

The 40th Parliament was the first minority government in Ontario in nearly thirty years. Given the increased marginalization of parliament under successive majority governments, many observers of Queen's Park watched with interest to see whether the legislative branch would take on a more active role in the governance of the province. The circumstances surrounding the 40th Parliament, however, were complicated by two important political variables that would preclude the opposition from working in tandem to influence government policy. First, the NDP and

Progressive Conservatives were far from natural political allies, holding opposite ideological positions. While NDP leader Andrea Horwath moved her party towards the centre in order to better position the party to win disaffected Liberal votes, the Progressive Conservatives shifted to the far right under the stewardship of Tim Hudak, eliminating any prospect that the parties could plausibly work together. Second, both parties took the view that the Liberals had lost the moral authority to govern as a result of a series of scandals, which ruled out the possibility that either party would forge a lasting alliance with the governing Liberals. The result was a parliament that became Balkanized into an intensely partisan political environment in which the three parties were primarily concerned with positioning themselves for the next election. Liberals, meanwhile, were left to seek out temporary and transient alliances in order to pursue their legislative agenda. While the 40th Parliament did produce a handful of bills that were the product of inter-party negotiations, the inability of the parties to cooperate created a hostile environment in which the Liberals sought out new procedural tactics to circumvent the legislature and protect their political interests.

By the spring of 2012, the McGuinty government recognized that while it could not reach common ground with the opposition to pass much of its signature legislation, it could potentially do so by passing its budget under the cover of a confidence motion. The Liberals calculated that data which showed Ontarians had little appetite for another election mere months after the October 2011 campaign, and the poor record of political parties seen as provoking early elections would cause at least one of the opposition parties to support their budget. On this gamble, the government moved forward with an aggressive austerity agenda based upon the Drummond Report, and took the stance that the principal features of the budget would be non-negotiable. In an intensely political move designed to absolve itself of any blame for the Liberal government's

record in the next campaign, the Hudak Conservatives rejected the Liberal budget almost immediately after it was introduced in the legislature, placing the New Democrats in the untenable position of having to either support the most severe austerity budget since the Harris era, or defeat the government and force an election. After two weeks of negotiations, the NDP struck a deal with the Liberals on a series of demands that saw the government include a tax on individuals earning more than \$500,000, \$242 million for childcare over three years, a one percent increase in social assistance rates, and \$20 million for hospitals in Northern Ontario (Benzie & Ferguson, 2012).

Ultimately, the Liberals were forced to concede very little. Despite negotiating with a social democratic party, the government was able to use the bludgeon of confidence, and the prospect of an election that a defeat on the budget would have triggered, to pass its budget with its overall purpose and essential features intact. Additionally, it was able to include in the deal an agreement with the NDP to agree to pass its omnibus budget implementation bill and the eventual time allocation motion associated with it. In so doing, the Liberals had returned to the tactics of the Davis minorities from 1975-1981, by using the wedge of the confidence motion to strong-arm the New Democrats into compliance with their austerity agenda on the threat of electoral peril if they were to defeat the government. The leveraging of the confidence motion to pass omnibus budget bills is a practice the Liberals would turn to again during the 40th Parliament under Kathleen Wynne.

Contempt of Parliament: The use of Prorogation as an Escape Hatch

The most pervasive issue to arise during the 40th Parliament was the inquest into the government's role in the cancellation of planned gas power plants in Mississauga and Oakville during the 2011 election campaign. As an election loomed in late 2010, both Tim Hudak and

Andrea Horwath promised to cancel the plants if they were elected as the province's next government. They undoubtedly sensed the Liberals' vulnerability on this important local issue, and recognized the importance of making gains in the crucial 905 belt surrounding Toronto, an area that observers anticipated would likely determine the outcome of the province's 40th general election. The Liberals initially refused to cancel the construction of the gas plants, citing the costs associated with ending a project that was already well underway. However, during the middle of a tight 2011 election, with polls showing that Liberal seats in Mississauga and Etobicoke were in jeopardy, McGuinty shifted course, and announced that his government intended to cancel the plants effective immediately. While the government surely understood that the cost of ending the proposed gas plant projects, which some projections suggested could be in the hundreds of millions of dollars, would have long-term political consequences, the Liberals determined that their immediate interests were of primary importance in the midst of a close election campaign.

Predictably, after the election, questions about whether the government was involved in a potential conflict-of-interest by making expensive policy decisions for purposes of political opportunism were abound. While government members denied the decision was made for partisan reasons, the opposition continued to press for an admission of guilt from senior members of the McGuinty cabinet. The closest any member of the government came to making such an admission occurred during Finance Minister Dwight Duncan's annual summer appearance before the Committee on Estimates. When pressed by NDP MPP Gilles Bisson on the nature of the decision, Duncan (2012) replied that it was, "a campaign undertaking... at a time when I think we were still behind in the polls, so it required a government decision, which occurred after the election" (Jul. 19). Duncan stopped short of an admission that the Liberal

Party had cancelled the plant for deliberately partisan reasons, but by revealing that the decision was made by the campaign team and then implemented by the government after the election, Duncan had implied political influence on the policy making process.

In search of answers, the opposition used its majority in committee to force the government to release all of the documents related to its decision to cancel the gas plants. In May 2012, the Standing Committee on Estimates passed a motion directing

The Minister of Energy as well as the Ministry of Energy and Ontario Power Authority to produce, within a fortnight, all correspondence, in any form, electronic or otherwise, that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant as well as all correspondence, in any form, electronic or otherwise, that occurred between August 1, 2011, and December 31, 2011, related to the cancellation of the Mississauga power plant (Leone, 2012, May 16).

In July 2012, the government released 500 pages of emails, letters, and power point files related to the cancelation of the gas plants. Numerous documents were missing and those that had been filed appeared to have been edited by government staff (Green, 2013). The opposition was incredulous that the government would fail to comply with an order of a standing committee of the legislature, and demanded that it hand over the remaining documents. When the legislature returned on August 27, Progressive Conservative MPP Rob Leone argued that his privilege as a member had been breached by the government's failure to produce all of the information related to the gas plants. The government argued that the Minister of Energy was placed in a difficult position by the committee's request, since the matter contained sensitive solicitor-client information that was presently before the courts. Leone (2012), however, argued this excuse could create a problematic precedent:

If we accept the government's central arguments against the release of these documents, namely the sub judice argument, the commercially sensitive argument and the solicitor-client privilege argument, the government could use such arguments to restrict virtually all information from the legislature's committees. This would be a precedent that would

run against the spirit of openness, accountability and transparency in our democratic institutions (Aug. 27).

On September 13, Speaker Dave Levac (2012) ruled on Leone's point of privilege. He determined that the Estimates Committee was "unquestionably entitled" to request the documents related to the cancellation of the gas plants and, "in the end the minister had an obligation to comply with the committee's call for those documents" (Sep. 13). In light of the fact that "the committee did not accept the minister's reasons for withholding the document and persisted in its demand during an extended period of time," Levac (2012) ruled that a *prima facie* case of privilege had indeed been established (Sep. 13). Rather than find the government in contempt of parliament, Levac gave the three house leaders 10 days to convene to find a solution to the situation that would satisfy the Estimates Committee. If no such agreement could be arrived at, he ruled that Leone would be within his rights to file a contempt motion against the Minister of Energy.

It was later alleged by the opposition that members of the Premier's Office attempted to intimidate Levac into changing his decision in the days that followed his finding of a breach of privilege. In an email which became public in 2013, senior McGuinty insider Don Guy allegedly wrote, the "Speaker needs to follow up his *prima facie* finding and change his mind" (Guy as cited in Ferguson, 2013, Jul. 30). He further warned that Liberal staffer Dave Gene was, "putting the member from Brant on notice that we need better here" (Guy as cited in Ferguson, 2013, Jul. 30). Levac downplayed the allegations claiming that, "I have never felt unable to make an informed, objective and procedurally sound decision, free of political interference. The fact that the ruling did stand should also speak for itself" (Levac as cited in Ferguson, 2013, Jul. 30).

On September 24, the Liberals released 36,000 pages of documents that they claimed were a full disclosure of evidence related to the gas plants. Still unsatisfied that the government

was providing everything at its disposal, and after the house leaders were unable to reach an agreement to satisfy the Estimates Committee, Rob Leone brought forward a motion requesting the release of the remainder of the documents and finding the Minister of Energy in contempt of parliament. The debate on the contempt motion consumed house business for the balance of the next week as 66 members spoke to the motion. On October 2, the house voted 53 to 50 to adopt Leone's motion for contempt. The Estimates Committee would now convene over the coming weeks to determine Minister Bentley's fate. If it reported back to the house that Minister Bentley had indeed acted in contempt, and the report was adopted by the legislature, Bentley faced a number of penalties including the possibility of being disbarred from the Law Society of Upper Canada and/or prison time. In the event of such a scenario, it would be the first time in the history of any Canadian assembly that a minister had been found in contempt (Ferguson, 2012).

During Question Period, Premier McGuinty (2012) excoriated the opposition for the contempt motion:

when you use the full force of the Ontario Legislature, a legislature representing 13 million Ontarians, against one individual member in pursuit of a contempt motion as a matter of petty, partisan, shallow, self-interested, mean-spirited politics that is fundamentally wrong. That is not in keeping with our jobs (McGuinty, 2012, Oct. 2).

After spending more than a week debating the contempt motion in the legislature, the opposition moved closure to bring about a vote on the matter. McGuinty (2012), no doubt sensing that he had now been cornered, told Andrea Horwath that her party's support for closure was "a departure of 20 years of principled history" (Oct. 2). He continued,

It is remarkable, it is noteworthy and, frankly, it is unprincipled of that member to have supported that closure motion, which cut off debate, which would have permitted more members of the government here to speak to a very important motion. I ask her to look at herself in the mirror and understand why she led that departure (McGuinty, 2012, Oct. 2).

There was more than a good deal of contradiction in these comments from a premier who had used his majorities to pass more than 100 time allocation motions since 2003.

As the committee began its investigation into the contempt charges against Bentley, the Ministry of Energy released an additional 20,000 pages that it claimed the bureaucracy had not accounted for in its initial release in September. In a press conference, Bentley told the media: “I deeply regret that this happened, very disappointed. I am the minister, I am responsible. I had thought when the 36,000 documents went over that they were all there” (Bentley as cited in Spears & Benzie, 2012, Oct. 13). Any hope that the Liberals may have had that the opposition parties would be satisfied with the release of these new documents, however, was short-lived. Almost immediately, they claimed it was further evidence of the Liberals’ contemptuous attitude towards parliament. (Spears & Benzie, 2012).

Confronted with the inevitability of one of his ministers being found in contempt, on October 15, Dalton McGuinty made the surprising decision to resign as premier and advise Lieutenant Governor David Onley to prorogue the Legislature. Prorogation accomplished two central objectives. First, it brought to an end the investigation into the issue of contempt against Bentley, since committees require the authorization of the legislative assembly to sit while the house is prorogued. While the committee could resume its investigation once the assembly was recalled, prorogation gave Bentley the time to gracefully exit politics on his own terms. With the minister responsible for the affair removed from his portfolio, McGuinty hoped the opposition would drop their contempt motion against him personally. Secondly, prorogation gave the Liberals time to hold a leadership convention and find another leader without having to endure opposition incriminations in a minority parliament. Progressive Conservative MPP Jim Wilson

(2013) argued that the premier resigned, “with his tail between his legs to save what was left of his party and his own reputation” (May 28). He said,

There’s nothing in the annals of the history of this place to indicate that that ever happened before. To do such a selfish act, to close this place down so the party could, as he said, lower the conversation, lower the tone, to run away, scared to face the accountability of this legislature, is shameful (Wilson, 2013, May 28).

While the premier justified his decision to prorogue on the grounds that political gamesmanship by the opposition parties had made it impossible for parliament to function, his decision to evade the investigation of a parliamentary committee was an unheard of circumvention of parliamentary authority in modern Ontario (Ontario premier has no good reason, 2012). There was a deep irony in the fact that a premier who had exercised total control over the legislative body during his two majority governments made the decision to withdraw at the very moment the opposition was presented opportunity to express a lack of confidence in his government.

The Use of the Confidence Motion as a Bludgeon: Minority Government Parliamentary Tactics

When the legislature returned in February, Rob Leone re-introduced his motion of contempt against the government for withholding documents from the Estimates Committee. While the issue had lost the object of its inquiry with Chris Bentley’s predictable resignation from the assembly, the opposition remained committed to expressing its lack of confidence in the government. On April 29, 2013, Progressive Conservative MPP Jim Wilson introduced a motion of non-confidence in the government for a series of scandals the Liberals had been responsible for dating back to the 39th Parliament. The opposition claimed that it was in the spirit of democratic governance that the premier bring the motion forward for a vote so that it may give an expression of confidence. Indeed, in 1975 when the opposition parties resisted a vote for interim supply, Premier Davis considered the action an expression of non-confidence in the

legislature and called a snap election. Wilson (2013) argued that to expect the minority government to return after the government acted in contempt, and then prorogued the legislature and “just blanketly say yes to everything you ask for and vote on everything you ask for,” would constitute a further degradation of parliament (May 28). Wynne (2013) claimed it would be superfluous to have a confidence vote on Wilson’s motion when

the members in this house will be confronting a budget in the next very short period of time, and they will have an opportunity to express confidence or not in the government. That is the confidence motion that I think we need to focus on (Apr. 25).

However, Wynne used the budget as an opportunity to leverage the New Democrats into a difficult position among their own political base if they were to oppose it. The 2013 budget provided millions of dollars for increases to social assistance, a youth jobs program, extra money for home care, and a promise to reduce automobile insurance rates by 15 percent. In short, for the NDP to oppose such a budget despite their opposition to the government’s ethics, would be to alienate elements of its own political constituency. The NDP ultimately did support the budget, averting the prospect of an election. However, Wynne’s decision to avoid bringing forward Wilson’s motion of non-confidence denied the majority of members in the legislature the opportunity to express their collective will on an issue of contempt by the government against the assembly itself.

While the minority 40th Parliament will not likely be remembered for its legislative achievements, the contempt saga was without question the most important expression of power from an opposition since the 1985 Liberal/NDP Accord ended four decades of Tory rule. The opposition’s use of its majority to demand compliance from the government and to ultimately bring down the premier was, despite its intensely partisan objectives, an important expression of the rights of the assembly to act as a censor on the executive. The minority parliament also

established new precedents for the evasion of the assembly. The McGuinty government's prorogation of the legislature established a precedent for the usurpation of an investigation into allegedly corrupt activities, and Wynne's failure to bring forward the time allocation motion on the contempt issue broke with a long-standing tradition to allow the house the opportunity to express its will when its confidence in the government was in clear question.

Conclusion

In the epilogue to his 2015 autobiography *Making a Difference*, Dalton McGuinty (2015) proclaims that true leaders govern with a healthy dose of idealism, which he calls "a shining beacon that draws us forward and illuminates our way" (p. 227). However, while McGuinty was elected to office on promises to repair the damage done by the CSR and to bring the principle of democracy back to the legislative chamber, his record is decidedly mixed on both accounts. Instead, the Liberal era can be described as a period of consolidation in which the government marked a departure in its first several years in office from the continued implementation of large-scale restructuring, but did little to overturn the radical institutional structures left in place by its reformist predecessors. Similar to Mike Harris and Ernie Eves in their respective tenures in office, the Liberals implemented a highly centralized cabinet model, which granted primary authority to the Premier's Office and a select few influential cabinet ministers who held the confidence of the premier. They also demonstrated a general disregard for parliamentary institutions, continuing the use of precedents such as the brazen application of time allocation as a regular feature of parliamentary business, governance by regulation rather than through consultation with the assembly, and a continued reliance upon omnibus legislation. Later in their mandate, the Liberals introduced new tactics, including the use of prorogation to evade a parliamentary committee that was investigating whether the government should be found in

contempt of parliament. Far from replacing the revolutionary parliamentary apparatus that the Tories forged at Queen's Park during the implementation of the CSR, then, the Liberal era can be characterized by a continuation of most of these practices, anchoring them in the tradition at the legislature.

What separated the Liberals from the patterns established by previous governments was that they were the first to make such abuses of procedure a routine part of their approach to parliament without appeal to an economic or fiscal crisis. Although previous governments had been able to claim the need to circumvent the parliamentary process due to "extenuating circumstances," the Liberals came to office during a time of relative political and economic stability in Ontario. Indeed, it seems that the government avoided the legislature when it was politically expedient for them to do so, rather than for any dignified cause. This distinction is crucial because it highlights a transition at Queen's Park from the use of these tactics as an emergency measure reserved for crisis management, to a vehicle of radical restructuring, to a tool of political convenience under the Liberals. Stripped bare of any overarching ideological or communal purpose, those approaches became a customary part of house business at the Ontario Legislature.

When the government's agenda turned back towards austerity in 2010, it suffered little criticism for cutting debate short and packaging the majority of its measures into large omnibus bills, largely because it had been using these strategies since taking office in 2003. By 2010, then, the political apparatus of the state in Ontario had reached a stage where it was able to accommodate the introduction of a new neoliberal restructuring program without stirring commotion among either the opposition parties or the public. Under the Liberal government, the restriction of parliamentary debate had become so normalized that the crisis state had become the

permanent form of the political apparatus in Ontario. While the Progressive Conservatives and New Democrats had charted the course for the Liberals during the 1990s, it took the customization of this process under the Liberals for it to become established as more than a temporary, revolutionary instrument.

As Frye understood, although the flavour of a revolution is originally determined by the break from tradition, its true historical character is shaped by the ability of its ideas to carry forward beyond the revolutionary moment. By taking up the administrative and parliamentary approaches of the Progressive Conservative government during a period of relative prosperity, the Liberals fortified the legitimacy of the neoliberal state apparatus left in place by the Common Sense Revolution. The centralized political form of government at Queen's Park is thus well-equipped to carry these changes forward, and to accommodate new rounds of restructuring in the future.

CHAPTER NINE

THE EMERGENCE OF A PERMANENT CRISIS CONFIGURATION AT QUEEN'S PARK:

CONCLUSIONS

As war broke out across Europe in the summer of 1914, Prime Minister Robert Borden advised Governor General Prince Arthur to recall the House of Commons for an emergency wartime session of parliament. The government declared the early recall of parliament to be an important symbolic gesture, demonstrating that Canada held no reservations in coming to the defence of the Empire and her allies. However, its more precise purpose was to suspend the customary laws of parliamentary democracy in order to establish a temporary regime of martial law for the duration of the war. In its Speech from the Throne introducing the special session, Prince Arthur (1914) declared that the outbreak of war made it “immediately imperative for my ministers to take extraordinary measures for the defence of Canada and for the maintenance of the honour and integrity of our Europe” (p. 1). The first order of business was to pass a number of motions suspending several of the rules of the house for the duration of the parliamentary session to ensure that nothing would deter the government’s efforts to prepare Canada for the conditions of war. Second, the government introduced the *War Measures Act*, sweeping legislation designed to grant cabinet the authority to govern through its executive authority in all matters related to: arrests, detainments and deportations; borders, ports and harbours; immigration policy; and the expropriation of private property and assets for the duration of the war.

The Borden government readily admitted that it would likely be possible to return to parliament to pass necessary legislation as circumstances unfolded, but pleaded to the house that

they were a necessary response to the conflict that confronted them. Minister of Justice Charles Doherty (1914) appealed to his fellow members:

It is necessary for the people of Canada to place their confidence in us for the time being, and when we come forward and ask them to do so, we assure them that we realize how heavy is the burden of responsibility that it carries with it; and further give them the assurance that, while the powers to be conferred on us are large, in their exercise we shall endeavour to bear in mind the desirability of departing as little as may be possible, in view of the interests and the necessities of the country today, from the rule of the ordinary laws under which our country is governed under normal conditions (p. 21).

Two important conclusions may be drawn from the Borden government's response to the war.

First, it reflected a recognition among the members that periods of crisis require a temporary reconfiguration of the political apparatus to provide the executive with dexterity and flexibility to respond to changing circumstances with speed and decisiveness. Second, it demonstrated the contradiction between the need to quickly adapt during crises and the slow, deliberate nature of the parliamentary process, which is designed for sober consideration rather than as a revolutionary force.

It was taken as self-evident by the central political actors during debate on the *War Measures Act* that the external event of war necessitated a wholesale, albeit temporary, transformation of the political apparatus in order to give the government the power to respond to crisis by granting it the ability to govern using its executive authority, and to suspend certain laws of parliament at the expense of democratic deliberation. Several decades after the special wartime reforms, parliamentary democracies throughout the western world began to witness the reapplication of many of these emergency procedures during times of relative peace. The result has been a permanent reconfiguration of the parliamentary branch towards a form that most closely mirrors the legislative reforms during the two great wars. Just as neoliberalism has required a new state form to accommodate it, so too has it required a more highly centralized

parliamentary apparatus to facilitate the large-scale, politically contentious state restructuring it demands. Although the effects of the transition to the neoliberal state form on the public administration have been studied comprehensively, it is argued here that the literature has largely ignored the equally important role of the parliamentary branch in facilitating this transition.

This project has sought to address this gap in the literature through an intensive examination of the case model of the Ontario Legislature. It has found that the emergence of a parliamentary apparatus configured for a permanent state of war-like crisis conditions, has been an indispensable tool to the application and consolidation of neoliberal economic policy in Ontario by insulating politically contentious reforms from political or public interference. Similar to the wartime restrictions of the 20th century, which, although temporary, were both motivated by, and given legitimacy because of the outbreak of a crisis external to parliament that required its intervention to re-establish order and political equilibrium, the evidence in the Ontario case shows there existed an important and complimentary relationship between the demand to respond to the economic crisis that surfaced in the province during the 1970s and the government's determination to implement highly controversial fiscal adjustment policies. The evidence points to the fact that the emergence of an increasingly authoritarian state structure has provided the necessary conditions for both the actualization of revolutionary neoliberal reforms, but also to their sustenance through the cultivation of centralized managerial structures that are directly accountable to the executive.

It is in many ways surprising that the relationship between these two variables has received so little study within the academic scholarship. At a theoretical level, the critical school has recognized the existence of the need for a state apparatus that can accommodate the often harsh policies of fiscal discipline on the public without creating social and political instability.

For Negri (1988), the acquiescence of policy makers to the essential conditions of the neoliberal consensus described by Fukuyama came about due to the contradictions of Keynesian public policy, providing the foundation for the growth of the post-war, social democratic state. The emergence of the crisis state, Negri argued, was necessary to curtail the long-term decline of the post-war economy by mobilizing the state apparatus and its resources to ensure that governments passed pro-accumulation policies that could augment a fall in the average profit rate (p. 71). As the long downturn of the capitalist economy in the west deepens, the state has sought to undermine the social, political, and legal rights of increasingly large segments of the general population in attainment of this goal. This was a position first advanced by critical theorist James O'Connor (1973), who observed that the state's dual role under capitalist relations to both maintain social cohesion while also acting to augment the accumulation of capital was inherently contradictory. Contemporary neoliberal policy has witnessed the subordination of the legitimization function to the accumulation function. The fundamental question becomes to what extent such a balance of forces within the state can shift without bringing about a crisis of legitimacy for modern institutions.

For Negri (1988), the tension between these two roles has ultimately resulted in the state having to resort to increasingly more authoritarian models in order to maintain social order and the legitimacy of the dominant class interests. This is constituted by a "decisive shift to a new relation of power, which is demonstrably on the side of capital" (Negri, 1988, p. 94). The emergence of the crisis state has witnessed the withering away, and increased obsolescence, of traditional liberal political institutions, as the social contract from which they drew legitimacy is undermined and replaced with a more repressive state apparatus. With the historical basis for the establishment of liberal institutions stripped away, these institutions are reduced to instruments

of the dominant interests in society. The vestiges of the old order remain in place as a formal means of legitimizing state power, however, they are deprived of their democratic substance, and come to serve in a largely ceremonial role, as the real exercise of power is increasingly centralized at the heart of the state executive and the “basis of modern democracy is torn away” (Negri, 1988, p. 94). What emerges instead is an authoritarian political form brought about by a, “rupture between capitalist development and working-class struggles, and the use of crisis as the institutional form of capitalist command” (Negri, 1988, p. 94). Due to the contradiction between the state’s interest to serve the accumulation function on behalf of capital and its legitimation function, then, the crisis state demands a new reformed parliamentary apparatus that reduces the capacity of legislators to obstruct or undermine the policies of the executive.

This project has sought to provide an alternate model for the comprehension of the changing role of parliament. It begins by accepting the views of the critical school that the state is not merely a vessel that can be manipulated by rational and independent actors, but rather the articulation of a complex struggle between various classes and other social forces. The state provides a forum through which such disputes can be settled, but the concrete policy outcomes it produces are ultimately an expression of this continually shifting power dynamic among the various competing interests in society. This being the case, it follows that any analysis of the state must understand not only how the actors internal to political institutions behave, but also how those institutions interact with the social relations that determine their shape. The evidence reveals that the erosion of parliamentary supremacy during the period from 1973-2014 was attributable to both the interplay of dynamics internal to the Ontario Legislature’s own unique political culture, as well as the challenges associated with governing during a long downturn in Ontario’s economic fortunes.

The Ontario example clearly shows that an important reason for the use of anti-democratic parliamentary tactics by governments of all party affiliations was due in large part to the demands placed upon them by the emergence of crisis conditions from the early 1970s, onwards. As economic circumstances in the province worsened and governments began adopting the essential principles of neoliberalism, they increasingly made use of restrictive parliamentary tactics to provide the executive with the flexibility to implement controversial policy initiatives by expediting their passage through the legislature. This tendency, to insulate major neoliberal reforms from the reach of parliamentary authority, is central to the story of the implementation of neoliberalism in the province of Ontario.

The evolution of parliamentary reform in Ontario, however, is surprisingly nuanced. Its patterns of development often overlap existing governments and shift with the changing political dynamics of the legislature. Indeed, the major eras of reform are broken up by an interregnum period in which the opposition parties re-assert themselves as a formidable part of the parliamentary process. The trajectory of parliamentary reform in Ontario may be divided crudely into three separate periods. The first, which spanned from the early 1970s until 1985, may be defined as a period of crisis management in Ontario politics. In the early 1980s, the Davis government undertook a number of major neoliberal reforms designed to bring the inflation crisis under control by freezing the wages of government workers, restricting collective bargaining rights, and mandating financial supervision for public sector institutions such as school boards and universities. To implement these measures, the government resorted to the unprecedented use of its executive authority, making sweeping reforms without public consultation, placing authority to make several of these reforms outside the jurisdiction of the

legislature, and rushing changes through the assembly by passing the first time allocation motions in the modern history of the legislature.

The second era, which is referred to here as an interregnum period, lasted from 1985 to approximately 1992. During this period, the opposition parties began to push back against the government, beginning with the accord between the opposition Liberals and the NDP to end the 43 year rule of the governing Tories, and culminating with a series of lengthy obstructions to house proceedings that caused the government to amend the legislature's *Standing Orders*. This period, which encompasses both Peterson governments as well as the first years of the Rae government, was also characterized by a return to the principles of Keynesianism as a temporary economic upswing in conjunction with a series of tax increases, gave the government a considerable revenue base from which to draw. While the practice of time allocation, for example, was continued during this period, it was largely used as a means of overcoming the parliamentary deadlock that resulted out of an increasingly partisan and divided house.

The final period, lasting from 1992 to 2014, is the period of the neoliberal restructuring and consolidation. This era encompasses the period from the beginning of the major public sector restructuring under the Rae government, through the Common Sense Revolution, to the Liberal era, during which much of the infrastructure and strategies put in place during the Harris-era were continued and locked into the province's political fabric. This final era is characterized by the use of extreme measures to circumvent parliament during the large-scale neoliberal restructuring by the Harris government, and the consolidation of these trends in the years to follow under the Liberals. The result has been to make permanent the conditions of the crisis state in the Ontario Legislature, and to ensure that its parliamentary apparatus is appropriately configured to accommodate future rounds of reforms.

Although parliamentary reform during the both the crisis management and neoliberal restructuring and consolidation periods took on different complexions unique to the degree of ambition each government had to transform the structure of the state, each shared a common theme: every major piece of neoliberal legislation between 1971 to 2014 witnessed the application of at least one of the restrictive tactics used to circumvent the house. The section to follow will attempt to tell a part of the story that has been missing from the Canadian public policy literature by highlighting the role played by parliamentary reforms in the implementation of neoliberalism in Ontario.

Crisis Management Era (1971-1985)

When Bill Davis ascended to the premiership, he took the helm of a Progressive Conservative Party that had both created and nurtured the Keynesian consensus under Frost and Robarts. By the middle of the 1970s, however, the problem of galloping inflation and a decline in the rate of investment impelled governments throughout the western democracies to begin intervening in the economy at a frenzied pace to restore price and interest rate stability as a means of increasing the average profit rate. The inflation crisis marked a turning point in the trajectory of public policy in Ontario, since it demanded that the state intervene by privileging its accumulation function over its legitimation function. This took the form of adopting supply-side interventions including wage restraint, the privatization of public assets, deregulation, and trade liberalization.

This conflict has been metabolized over the last forty years in the province's legislature, where at least one of the opposition parties, and often both, have functioned as the political voice of the subordinate classes by rejecting the neoliberal reforms proposed by the government of the day. This expression of the social relation playing itself out at the institutional level has meant

that Ontario's governments have been unable to rely upon consensus within the assembly in order to pass their legislation. Instead, they have been forced to make their reforms in a highly politicized and hostile environment, which has resulted in delays and amendments being made to their attempts to manage the economy. The result has been the emergence of a trend, beginning in the middle of the 1970s with the Davis government's approach to the problem of inflation, to shelter the province's most important interventions during times of economic or political crisis from the legislative process by centralizing decision making authority in the state executive. This has been coupled with efforts to resort to procedural mechanisms such as time allocation and closure to restrict legislative debate.

Centralizing Power in Finance

The origins of the transition from the Keynesian regime of accumulation to a neoliberal paradigm in Ontario can arguably be traced back to the work of the blue ribbon Committee on Government Productivity that was commissioned by John Robarts with a view to improving the management design of the executive council. The Committee recommended giving the Minister of Finance a central role on both committees to ensure that all policies were in alignment with the government's fiscal agenda. According to this vision, the Minister of Finance would function as the nerve centre of government, providing coordination and management functions. Premier Robarts's intention when he struck the COPG in 1969 was to introduce some of the principles of the burgeoning field of business management and organizational behaviour theory to the public sector, since the more centralized approach to decision making and priority setting would provide an ideal model for the era of fiscal discipline that lay ahead. Despite the fact that in 1969 the Keynesian theory of expansionism was very much still the governing philosophy in most jurisdictions by the early 1970s, the Ontario government managed to have in place a cabinet

model which provided for the central oversight of departmental spending and a policy agenda driven by the Ministry of Finance.

It is impossible to know whether the government would have pursued a more aggressive strategy in its efforts to curtail inflation earlier had it not been restricted by minority parties. Cabinet documents demonstrate that the government began to take more concrete steps towards the issue of restraint by the late 1970s when it imposed a public sector hiring freeze. Regardless, the two Davis minority governments will be best remembered for reflecting the spirit of relative collegiality that had become part of the culture at Queen's Park during the long tenure in power of the Ontario Progressive Conservatives.

Managing the Inflation Crisis

The Davis government's first extensive effort at addressing the crisis of inflation occurred in liaison with the federal government, which had established a Wage and Price Control Board with the authority to restrict the growth in labour costs and the prices of goods and services, subject to no control from either the Ontario government or federal parliament. The board was to be both appointed by and fully accountable to the federal cabinet. Confronted with a minority government that was unlikely to approve granting authority to curtail wages and prices to a federally appointed board, the Davis government simply validated the federal *Anti-Inflation Act* through regulation, denying parliament the right to either debate or vote upon the bestowal of considerable economic power to an unaccountable board. The Supreme Court ultimately ruled that the province had no authority to pass such an order without first consulting parliament, but Davis had set an important precedent; in times of economic crisis, the government was willing to circumvent the parliamentary process to intervene where necessary and manage economic relations.

A similar effort at containing inflation gave rise to the *Farm Income Stabilization Act* in 1976, which granted the cabinet-appointed Farm Income Stabilization Commission the authority to set food prices throughout the province. The commission functioned as veil behind which the government could declare a degree of separation from the process while retaining ultimate control over its decisions. This trend, to appoint commissions that were accountable to cabinet to carry out its management objectives, was a hallmark of the Davis government throughout its four mandates in office.

In 1982, rather than engage in collective bargaining with the province's public sector unions, the government passed the *Inflation Restraint Act*, suspending collective bargaining for a year and establishing a cabinet-appointed Inflation Restraint Board with the authority to determine the extent of salary increases without recourse to parliament. Confronted with vehement opposition to the bill in the house, the government also resorted to the use of time allocation for the first time in the modern history of the legislature to ensure it would pass. The inflation crisis, the government argued, required drastic measures in order to curtail government spending.

The *Inflation Restraint Act* signified an important turning point in the trajectory of Ontario public policy. First, it marked the first large-scale effort to restrict the growth of public sector salaries. Second, by imposing a mandatory cap on wage increases at 5 percent and granting the authority to impose contractual terms to an unaccountable board, the government had again demonstrated that its strategy to address economic crisis was to place decision making authority beyond the reach of the legislature. This was further emphasized by the government's unprecedented decision to refuse to negotiate either the terms or the powers conferred in the bill, and resorting to the exceptional use of time allocation to secure its passage.

The Davis government's attempts at structural reform were chiefly devoted to imposing restraint upon self-governing provincial institutions that it had previously exhibited little control over. One may observe in these early attempts at restraint in Ontario the emergence of the trend towards the centralized control that characterized the more radical version of these reforms in the 1990s. This tendency, to suffocate local decision making powers by granting cabinet the authority to either intervene directly, or to appoint someone on its behalf to do so, would become a preferred tactic of demanding compliance from provincial institutions.

Curtailling Municipal Powers

The government also used its constitutional authority over municipalities to compel local governments to adopt the province's restraint efforts. One of the first such examples, the *Property Tax Stabilization Grant Act*, passed in 1974. Under the bill, the government promised funds to municipalities in order to keep property tax rates from escalating out of control in an inflationary economic environment. However, funding to municipalities was not to be based upon demonstration of need, but rather their overall spending growth. The legislation stipulated that municipalities that were able to keep their spending growth under eight percent were eligible for six percent funding the following year, whereas those that went over 12 percent in spending growth were only eligible for two percent increases. While the legislation was designed to help municipalities to deal with the problem of galloping inflation, it was also created as an instrument to coerce them into spending restraint. While this somewhat indirect form of coercion paled in comparison with some of the direct forms of control exercised by cabinet, it serves as one of the first attempts by the province to use its authority to enforce compliance with a restraint program, and offered a model that other governments would follow in the decades to come.

Another area where the Davis government had some modest success in permanently altering in the state architecture to demand more financial accountability and centralized control over the long-run, was through its restructuring of the Toronto school board system. Passed in an atmosphere of much controversy in late 1983, the *Metro Toronto Amendment Act* reorganized the financing and negotiating schemes of the Toronto school system, by enforcing joint collective bargaining in order to exercise more control over the terms of collective agreements. Provisions to grant additional authority to the Metro Toronto Board to grant transfers to the local boards gave the provincially controlled regional body far greater control over education spending in Toronto by enforcing caps on hiring and issuing penalties for running deficits, for example. The central purpose of the Metro Board, then, was to function as an appendage of the province in order to demand more budgetary accountability. This approach, to establish boards under the supervision of the province to enforce a regime of fiscal accountability directed by the centre of government, would become a crucial element of restructuring in its final mandate. The methods chosen by the government revealed its acceptance of the neoliberal logic that public sector organizations should mirror executive-driven management structures, in which real decision making power is concentrated in the hands of a small group who are responsible for the entire organization.

During the early 1980s the Davis government brought forward amendments to the *Colleges and Universities Act* on three separate occasions to compel universities to keep their budgets under control. Using a tactic that would become commonplace during and after the Harris regime, the bill granted authority to cabinet to appoint a supervisor to take control of any post-secondary institution that incurred a deficit of more than two percent of its total revenue in a given year. The supervisor would be accountable to the minister and would have czar-like

authority to control the financial decision making powers of the post-secondary institution in order to restructure it in such a way that would be solvent going forward (Bill 213, 1982). The bill, in its three separate incarnations, however, never advanced beyond second reading. It achieved its purpose merely through its introduction, however, by serving as a warning to provincial institutions that the government had the power to demand conformity to its restraint program, and was willing to use it if necessary.

Circumventing Parliament

Where conflict arose with efforts to curb inflation, the Davis minority governments often resorted to the use of the confidence motion, and the subsequent threat of triggering an election, as leverage to gain opposition support. The most significant example is the 1976 *Farm Income Stabilization Act*, which the government assured the opposition would be treated as a confidence motion. Davis's ultimatum was simple: accept the terms of the bill as the government had written them, or risk an election. For the government, the threat of an election was the only reliable way to pass legislation to tackle the inflation crisis free from opposition intervention. The third-party Liberals, who had been vocal in their opposition to significant parts of the *Farm Income Stabilization Act*, ultimately supported the bill, and allowed the 30th Legislative Assembly of Ontario to continue for another day. Yet, this was a threat the government made good on in 1977, when Premier Bill Davis advised the Lieutenant Governor to dissolve the legislature after the opposition made several amendments to a government bill designed to impose rent controls on landlords. The opposition's failure to cooperate provided the premier justification for an early election campaign that Davis had been eager to wage in pursuit of a majority mandate. While the government preferred to make decisions in conjunction with the opposition parties at house leaders' meetings, the minority parliament functioned as something of a counterforce against

aggressive austerity during the late 1970s. The impressive stability of the 31st Parliament may indeed be attributed to the fact that Davis governed from the pragmatic centre, and largely avoided the large-scale reforms that, as the records show, the party had begun to accept as necessary to rescue the province's economy.

After winning a majority mandate, the government would make up for lost time. Davis reminded the opposition that the "Realities of March 19th" were such that the government would begin operating with or without the opposition's support, and take measures it deemed necessary to cut government spending. The extent of the Davis government's aggression on the restraint file was most evident through its approach to legislative governance. Its decision to pass a motion of time allocation to close debate on the *Inflation Restraint Act*, forgoing public consultations, was without precedent in the province's history. In passing the motion, the government departed from the custom of avoiding the use of closure to settle disputes.

While it is impossible to know whether Ontario's economic complexion would have further deteriorated had the government spent an extra few months in consultation with the public before passing its landmark bill, the large-scale changes it determined necessary to restore interest rates to moderate levels would hardly have been possible without employing time allocation. So opposed were the NDP to the bill that it would in all likelihood have been held up even longer if the government had allowed for full committee hearings and public consultations. Time allocation, then, represented a measure of leverage for the government that it could use to ensure that it was able to implement its legislation free from interference or opposition amendments. Ultimately, the time allocation motion on Bill 179 was one of the most important events in the history of Queen's Park for the effect it would have on future parliaments. It marked a significant rupture from the long-standing deliberative tradition at Queen's Park,

setting in motion a state of mistrust between the government and the opposition, which has remained to this day.

The Davis Conservatives passed time allocation again two additional times during its fourth and final mandate. First, the government used it to usher the *Metro Toronto Amendment Act* through the legislature. Similar to the circumstances surrounding the *Inflation Restraint Act*, the government recognized that opposition sentiment towards the bill was such that it would likely resort to obstructionist tactics if it did not force the bill through the assembly using the hammer of time allocation. Once again, the Tories argued that tumultuous economic circumstances required extraordinary measures. The Davis government used time allocation a final time in 1984 just before summer recess to ensure the passage of the *Barrie-Vespra Annexation Act*. This bill, which was a matter of mostly local concern, reflected the changing atmosphere of the legislature. Although local opposition to the bill was stiff, had the atmosphere at the legislature not been so poisoned by the circumstances surrounding the government's austerity program, it is likely it would have passed without difficulty. By using the guillotine motion for a third time in under three years, however, the government had firmly set in place a precedent that other parties would follow when it was their turn in power.

This approach to emergency management would ultimately become the hallmark of the Progressive Conservatives' approach to the economy during the Davis era. Decisions would have to be taken immediately in the general interest and with the greatest degree of control over the decision making process through the executive, in order to ensure that the government could respond swiftly and decisively when necessary. The province's gradual acceptance of neoliberal orthodoxy would require a different form of governance, one which by its very nature rejected compromise and deliberation. Since the types of changes the government was convinced were

required to rescue the economy were highly controversial and would come into direct conflict with the interests of large segments of the province's population, the government recognized that it was improbable the opposition would have the stomach to support these changes unless forced to do so. The legacy of the Davis government will be that it was the first in the modern history of the province to aggressively seek to circumvent the parliamentary process. A government focused on making hard political choices and administering tough medicine to a skeptical populace could no longer afford a brokerage model of politics. Instead, it required a political apparatus that could adjust quickly and avoid allowing entrenched interests to extract concessions or delay its implementation.

Interregnum Era (1985-1992)

The period from 1985 to 1992, including the first year and a half of the Rae government, brought about a relaxation in the highly restrictive parliamentary practices exhibited during the final years of the Davis era. This was most clearly witnessed by a reduction of the use of governance through regulation to implement significant policy changes. Although the tendency to shield the policy implementation process from the legislature did not end completely, its magnitude and scope was greatly reduced relative to the periods immediately before and after this interregnum period. The governance of parliament during this period was characterized chiefly by the display of a renewed fortitude from the opposition parties, which began to use their leverage to obstruct house proceedings.

In the years following the brief two year pact between the Liberals and the New Democrats forged by the Accord, Queen's Park became a much more partisan and oppositional environment despite Liberal attempts to reach across the floor to broker consensus. The old paradigm of provincial politics had been shattered by the defeat of the Progressive Conservatives

as a new competitive dynamic developed among the three parties. With the old regime having finally come to an end, it was now conceivable to all three parties that winning government was possible. This new partisan atmosphere resulted in a coming of age for the opposition in the legislature under the watch of the Peterson Liberals.

The first significant example of this obstructionism came in 1986 when the Progressive Conservatives' vehement opposition to the government's efforts to ban extra billing by the province's doctors, led it to obstruct the passage of key legislation, prompting the Liberals to use time allocation to allow it to move on to other business. The significance of this time allocation motion is that it was supported by the third party New Democrats as a condition of their alliance with the Liberals, and out of its desire to see one of its signature policies implemented. For the first time, an opposition party had voted in support of a motion to allocate the time provided to debate a bill. Perhaps more importantly, all three parties had now supported time allocation when it suited their interests to do so, thus giving it further legitimacy in the legislature's procedures.

During the second Peterson mandate, the NDP engaged in a series of obstructionist tactics to delay the proceedings of the house, the longest of which stalled the government's agenda for more than a month and a half. The first occurred in April 1988, when the New Democrats, in protest of the government's legislation to allow Sunday shopping in Ontario, exploited a loophole in the *Standing Orders* by refusing to stand down when the allotted time for petitions was complete. Instead, they read petitions onto the record until the end of the sessional day, disallowing the government to carry on with further debate on its Sunday shopping legislation. During the filibuster, which lasted a week and a half, the assembly witnessed the spectacle of Treasurer Bob Nixon being forced to introduce the budget without giving the budget speech, as the NDP refused to allow the house to move beyond petitions. These obstructionist tactics led to

the longest sessional day in the legislature's history until that point. The NDP, however, had managed to use its leverage as an opposition party in a sizeable majority government to extract additional public consultations and debate time on the legislation. Despite creating chaos in the assembly, the opposition had begun to assert itself in ways that would have been inconceivable during the Davis era.

Seeking to bring an end to opposition obstructionist tactics that had interfered with its ability to move its agenda forward, the government made a number of changes to the *Standing Orders*. In May 1989, the Liberals introduced a motion for the adoption of reforms to the *Standing Orders* to close the loopholes allowing the opposition to delay proceedings by placing finite time limits on petitions as well as restricting the length of time division bells could ring before a mandatory vote would be held. While the opposition took issue with the government's failure to adequately consult the house leaders, all three parties recognized that change was necessary to improve decorum in the legislature. Although the new *Standing Orders* standardized the times scheduled for each aspect of the sessional day, they also attempted to improve the access opposition parties had to controlling the legislative agenda by implementing a mandatory requirement that each opposition party be granted five opposition days a year during which they would control the entirety of the house agenda, including the ability to bring forward their own bills and bring forward their own motions.

In the fall of 1989, however, the opposition managed to find yet another technicality in the *Standing Orders*. Seeking to force the government to hold longer public and committee consultations on its controversial plan to create a mandatory no-fault insurance scheme to be administered by the private sector, NDP MPP Peter Kormos noted that the government had failed to establish time limits on Orders of the Day. As such, Kormos theorized that so long as he could

continue to hold the floor when Orders of the Day were called, the government would not be able to move its automobile insurance bill to the next stage until he stood down. Kormos determined that it would be possible to hold the floor perpetuity so long as he continued to speak to the legislation in question. He did so, rising at the beginning of the Orders of the Day, for a month and a half. In order to break the filibuster, the Liberals passed a motion extending the sessional day through the evening to force Kormos to stand down from exhaustion. After speaking through the entire night, Kormos eventually stood down, ending the longest filibuster in Ontario's history. While the Liberals ultimately passed their automobile insurance as planned, Kormos's filibuster exemplified the increasingly partisan and contentious atmosphere that had become part of the culture at Queen's Park in the post-Big Blue Machine era.

Despite the NDP's surprise electoral victory in September 1990, little of substance actually changed from the Peterson era in the way Ontario was managed during the Rae government's first year in office. The government had hardly completed its Speech from the Throne by the time talk of an economic downturn revealed itself as the worst recession to grip the province since the 1930s. Undeterred, however, the New Democrats vowed to soldier on with their agenda to govern as social democrats. Although the Rae government abandoned this approach by the beginning of 1992, during their first 15 months in office, they remained publicly committed to the essential principles of Keynesianism.

Similar to the Peterson Liberals five years earlier, the Rae government vowed to improve democracy in Ontario by functioning as a government of the people. Given the NDP's history as the moral conscience of the legislature, there was considerable optimism among observers of Queen's Park that they would follow through on their promises. The realities of governing the province during the deepest recession in a half century, however, soon caused the NDP to act

contrary to the high standard they held governments to while they were in opposition. After an initial honeymoon phase, the government encountered significant opposition from the Mike Harris-led Progressive Conservatives when the legislature resumed sitting in the spring of 1991. Taking a page from the NDP strategy book, the Tories began to obstruct the passage some of the government's signature progressive legislative initiatives.

In the spring of 1991, the Progressive Conservatives used several different parliamentary tactics to obstruct the passage of Bill 4, the *Residential Rental Regulation Amendment Act*, a piece of legislation designed to improve protections for the province's tenants. When the opposition was unable to come to an agreement with the Progressive Conservatives, it chose to bring in a time allocation motion to move forward with other elements of its agenda. With this decision, the precedent was set: all three parties had now introduced and supported time allocation motions to shut down debate on signature legislation. As the party most aggrieved by the use of time allocation in the past, it would not be a stretch to suggest that the NDP's use of time allocation was the moment at which its use became entrenched as a customary practice at Queen's Park. As the New Democrats would soon discover, it could also serve as an effective method of fast-tracking controversial bills through the house so as to steer clear of scrutiny from the press and the opposition parties.

Later that spring, the Progressive Conservatives also initiated a filibuster against the NDP government's budget, which ran a record \$9.7 billion deficit, and increased public spending. At first, the Tories displayed their opposition to the budget by moving continuous motions for adjournment, which although defeated, absorbed considerable time that could have otherwise been used to debate legislation. Soon after, Mike Harris introduced the *Zebra Mussels Act* to the house, a bill that has now entered Queen's Park lore for its ingenuity. Exploiting the lack of time

limits on the introduction of bills, Harris included the name of every lake, river, and stream in the province in the title of the bill to ensure that he would need several hours to introduce it.

It may have been known to only a few at the time, but when members returned from holiday adjournment in early 1992, they entered an entirely new political environment. Over the holidays, Premier Rae had experienced a shift in thinking that would cause him to lead the government towards a strategy of deficit reduction and government restructuring. He would also lose patience with an obstructionist opposition, abandoning efforts at collaboration by establishing new highly restrictive *Standing Orders* to enable his government to make up for lost time by rushing legislation through the assembly (Rae, 1997).

The period from 1985 to 1992 reflects something of a transition period for politics in Ontario. It represented a last gasp of air for the Keynesian model that had governed Ontario through the majority of the post-war era. It was also a period of immense transition and adjustment for the province. As it began to settle into a post-industrial economic model, it also witnessed the end of a 43 year dynasty, which gave way to Liberal and NDP majority governments. As an extension of this, the new competitive dynamic that emerged as the Conservative hegemony was shattered by the Liberal/NDP Accord ushered in a new era of highly partisan and contentious politics in Ontario.

While this period was free of the reformist tendencies of the years to follow, the complexion of its parliamentary culture underwent a profound cultural change that required governments to use instruments such as time allocation to break partisan stalemates. It was also a period of adjustment to the new realities of Ontario politics. It took the Peterson government, for example, nearly two years after the first major NDP efforts to interfere with passage of government legislation to make changes in the *Standing Orders* to address this obstacle. When

time allocation was used during this period, it was typically not designed to smash the bill through the house like a battering ram, but rather to bring an end to the partisan stalemate that was holding up the government's entire agenda. In short, whereas during the crisis management phase (1971-1985) and the neoliberal restructuring and consolidation phase (1992-2014) changes to parliamentary procedure were driven by an activist government seeking to use a more centralized power structure to implement its agenda, during this period governments were more reactionary than proactive.

Neoliberal Restructuring and Consolidation Era (1992-2014)

The NDP Shift (1992-1995)

In his memoir *From Protest to Power*, Bob Rae recounts that by the time he returned from the winter recess in January 1992, he had decided that the NDP would change course, abandoning his party's long-standing commitment to the logic of Keynesianism to focus on deficit reduction (Rae 1997). In so doing, Rae set in motion the first significant effort to undertake extensive reform of the province's public administration. While cabinet documents from the Davis and Peterson eras reveal that both governments had contemplated implementing some of the principles of the New Public Management, neither had thought it worth the political capital that widespread resistance within the public sector would incur. For both Davis and Peterson, the pragmatic centre was both politically safe and ideologically comfortable. While such changes were ultimately implemented with a bludgeon by the Harris government, a close examination of the legislative history of Ontario reveals that this rupture first occurred under the New Democrats; the Rae government sowed the seeds for the CSR by providing a crucial testing ground for many of the policies later implemented by the Harris Tories.

The NDP policy shift in 1992 demarcates the end of the interregnum period and the beginning of the final phase, neoliberal restructuring and consolidation, which has lasted until the present. This era can be subdivided into three separate periods: early NDP reforms (1992-1995); the sudden and radical restructuring of the public sector under the Harris government (1995-2002); and the period of consolidation under both the Eves government as well as the McGuinty/Wynne Liberal governments (2002-2014).

When the legislature resumed sitting in the spring of 1992, the New Democrats sought to establish a different tone by taking a much harsher stance towards the governance of parliament than it had in its first 14 months in office. There are arguably two primary reasons for this approach. The first and most obvious is that the situation in the legislature had become untenable given the Tories' steadfast refusal to support any parliamentary calendar to permit the New Democrats to pass their signature legislative initiatives. Second, the government, having now changed policy course, sought to make up for lost time in their implementation of fiscal discipline. Already starting in a large deficit hole because of its attempt to stimulate the economy in its 1991 budget, the government, if it was to achieve its goals, it required a parliamentary system that could provide it both speed and dexterity. With the 1990 election now far off in the rear-view mirror, and considering increasingly urgent economic circumstances, Rae understood that he had little time to spare in order to implement the massive changes to the public sector that he now thought were necessary to save the province from hitting the debt wall.

As a consequence, one of the government's first objectives in 1992 was to establish new parliamentary rules that could facilitate its ambitious new plans. If it is possible to identify a moment at which the transition from the interregnum to the neoliberal restructuring and consolidation era at Queen's Park occurred, the government's introduction of new *Standing*

Orders in the assembly in June 1992 is the most obvious candidate. Through new *Standing Orders*, the government sought to close the provisions in the *Standing Orders* that facilitated opposition obstructionist tactics by placing a 30 minute time limit on any speech unless otherwise determined by consent of the house, thus establishing time limits for all elements of the sessional day. Perhaps most importantly, the reforms entrenched the concept of time allocation in the *Standing Orders* by establishing rules surrounding its use.

The New Democrats would use the *Standing Orders* reforms to ensure the timely passage of controversial legislation by making extensive use of time allocation. In 1992 alone, the government passed motions for time allocation four times, as many as during the entire Peterson government's two mandates. In 1993, it invoked time allocation on an unprecedented eight different bills including the highly controversial Social Contract, which was rammed through the parliamentary process without public consultations and with insubstantial examination at committee. By the middle of 1994, the beleaguered New Democrats, headed towards certain defeat in the following election, seemingly lost whatever crumbs of idealism may have remained from their stunning electoral win in 1990. In the Rae government's final year in office, the legislature sat for only 20 days, during which time the government imposed time allocation on three separate occasions.

The new *Standing Orders* had served a dual purpose for the Rae government. First, they successfully facilitated the passage of politically explosive neoliberal reform legislation through the legislature at a pace commensurate with the government's objectives. Second, they functioned as a political shelter for a New Democratic Party that was criticized from the right for profligate spending, and from its traumatized base, still reeling from the party's profound ideological shift. Seeing little benefit in allowing the opposition to take liberties with it while the

legislature was sitting, the New Democrats simply closed the assembly down save for three short weeks in the fall of 1994. It used time allocation to tie up loose ends before proroguing the legislature in preparation for an election that would not come until June 1995. By the time the Harris government met the legislature in September 1995, the house had only sat for 20 total days in the 14 months since June 1994.

The NDP shift was also accompanied by a return to legislation with highly centralizing clauses designed to allow cabinet to organize and manage the restructuring process through regulation. Mimicking the practices of Bill Davis during the furor over his government's *Inflation Restraint Act*, the NDP's signature piece of legislation also sought to impose contractual conditions upon the public sector without recourse to public consultation or further negotiation with union leaders. Similar to the *Inflation Restraint Act*, the *Social Contract Act* empowered cabinet to impose a wage freeze of up to three years, and granted it regulatory powers to enact new restrictions to achieve the \$2 billion in savings across all ministries promised by the government (Bill 48, 1993). In addition, it used time allocation to restrict legislative debate on the issue, and to ensure that it would receive Royal Assent before the house left for break in the summer of 1993. The government argued that such measures were necessary due to the urgent need to respond to the province's deficit crisis to appease the credit rating agencies that were threatening to increase interest rates charged to the province on its debt.

Perhaps the NDP's most important contribution to the restructuring process, however, was the mechanism it developed to help reform bills to circumvent the legislative process. The omnibus bill would become the Harris government's primary vehicle for state restructuring, but it was first introduced as a deliberate strategy to evade the opposition by the New Democrats in their race to balance the budget before the next election. While omnibus bills had existed in the

past in Ontario, they had almost always been the result of an all-party consensus that allowed the government to package similar, often minor changes to legislation together as a single bill in order to save the legislature from the superfluous task of having to debate each individually. The NDP recognized that omnibus bills could be used for more than just housekeeping, namely to rush certain significant, unrelated bills through parliament in the time usually allotted for a single piece of legislation. So desperate had the New Democrats' situation become, that they made the decision to throw one of the final remaining vestiges of governance by consensus to the wind in an effort to expedite its public sector reforms.

Perhaps the most important legacy of the Rae government is that in the final years of its mandate, it introduced and embedded in the practices of the Ontario Legislature a number of methods that the Harris government used to carry out their radical reforms. Despite coming to office on the promise to democratize Ontario's institutions, by the end of their term in office, they left in place a parliamentary apparatus that was ideally configured for a more aggressive government to make radical changes.

Radicalism Takes Hold of Queen's Park: The Common Sense Revolution (1995-2002)

Although the Ontario economy was in recovery before the Harris Progressive Conservatives came to office in 1995, they used the cloak of crisis conditions to rationalize their plans to make severe cuts to social services and to set in motion a plan to restructure the state apparatus in Ontario. They claimed that the fiscal crisis necessitated immediate action that required extreme measures to be taken. The urgency of the situation, the Tories argued, required that all of its reforms be fast-tracked through the legislature to ensure their timely implementation to ward off the credit rating agencies. It was on these grounds that the Progressive Conservatives were able to legitimize the abuse of the parliamentary process to carry

out their radical reforms within the first three years of their mandate. Despite living in times of relative peace and prosperity, the government managed to make use of the deficit as an instrument to rationalize the use of restrictive parliamentary measures.

Parliamentary Governance during the Harris Era

The first indication that the government intended to use whatever means were at its disposal to ensure the swift implementation of the agenda, was also one of the most important. First, the *Savings and Restructuring Act* set an important precedent in that it was the most extensive omnibus bill in the history of the province. While omnibus bills were popularized under the New Democrats, never in the province's history had so many significant, sweeping and generally disconnected reforms been introduced as a part of the same bill. Second, the *Savings and Restructuring Act* constituted the first bold step by the Harris government to address the deficit crisis. It granted cabinet sweeping powers to begin the restructuring process in the largest ministries: health, education and municipal affairs. While more significant reforms were to come, the "ominous bill," as opposition members derisively termed it, was a watershed moment for the way parliament in Ontario would function going forward as the Harris Conservatives threw caution to the wind in their first meaningful attempt to restructure the province's finances (Colle, 1995, Nov. 5).

With the use of time allocation on the bill to force its passage through the legislature after only a short debate, the bill unapologetically brought together all of the recent practices governments had utilized to circumvent the legislative process. The Harris Conservatives were reformists in a hurry, and made it clear with Bill 26 that they had every intention of granting themselves the power to enact the reforms that governments before them had failed to. Unlike precedent-setting legislation from the 'crisis management' era, the Tories governed as though the

state was in a permanent state of crisis, refusing to return to customary parliamentary practices once it had enacted its initial emergency bills. Instead, the Harris government continued the pattern displayed with the *Savings and Restructuring Act*, seeking to accelerate the process through which it could pass its signature legislation.

In the early years, the opposition won some important symbolic victories over the government, requiring them to allow more time for debate, committee hearings, or public consultations on important bills. This was illustrated by the opposition's efforts to delay the passage of Bill 26 when Liberal member Alvin Curling refused to leave his seat in the legislature, causing proceedings to be delayed for two full days after staging a night-long sit-in in the chamber. The threat that the opposition might use their power to further interfere with the government's agenda was enough to prompt it to compromise with the opposition parties. In exchange for allowing the bill to be passed at the end of January 1996, the government agreed to allow for committee hearings. While the government compromised, it had only lost a month from the very ambitious target it had set when it introduced the bill in early November. While the opposition could use their rights to delay proceedings, the government had made it apparent that they were prepared to ruthlessly apply the parliamentary tactics at their disposal to break any bottlenecks and carry on with their agenda.

The collaboration between the house leaders to resolve the stalemate established the foundation for an all-party agreement on the parliamentary calendar for 1996, a rare moment of tripartisan cooperation in the 36th Parliament of Ontario. This agreement allowed the government to pursue its agenda without having to resort to time allocation at all during 1996. This quickly changed, however, when the legislature was recalled earlier than anticipated in what became colloquially known as Megaweek. In the span of four days, the government announced

plans for the most significant structural changes to the balance of responsibilities between the province and its municipalities in several decades, at the same time as it brought forward second reading on its highly controversial strategy to amalgamate the various communities comprising Metro Toronto into a single City of Toronto. The intention of the Megaweek announcements, the corresponding legislation for which would be subject to severe restrictions by way of time allocation, were clearly to inundate the public with such an overabundance of controversial information that they would be unable to hinge their sensibilities to one single change that stood out above the rest. The Conservatives were half-right in this assessment. While the furor created over the government's plans to amalgamate Toronto without a referendum was more extreme than might have been anticipated, it overshadowed the somewhat abstract, although fundamental changes being made to the provincial funding structure over education and a variety of social services.

It was over the government's *City of Toronto Act* that the opposition staged what would become its final act of defiance against a legislative process that had become increasingly designed to bring about a quick resolution. In a last-gasp effort to try to get the Harris government to allow for public consultations and to respect the results of the referenda from the various affected communities, the NDP initiated a filibuster to hold up the business of the house for as long as was necessary. In early April, the NDP announced plans to introduce more than 13,000 amendments—a separate amendment for each street, road, lane, and boulevard affected to receive public consultations—that would take months to fully get through. Although the government initially refused to budge, expecting that the small NDP caucus would be unable to sustain around-the-clock sessions, after nearly two weeks of continuous sitting, the house leaders agreed to delay the passage of the bill and to allow for some public consultations at the Standing

Committee on General Government. The filibuster was at an end, but the relationship between the government and the opposition had been irreparably damaged. Convinced that it would be impossible to work with the opposition to establish a calendar that would allow them to accomplish their objectives, the government decided to make further changes to the *Standing Orders*, this time to restrict any opportunity for obstructionist tactics that could hold up government business.

On June 2, 1997, the day of a federal election, junior minister John Baird announced a series of changes to the *Standing Orders* that further marginalized the role of the opposition by establishing finite time limits on all aspects of house business. Using the date of a federal election, while the public was distracted with other matters, was exemplary of the government's effort to make controversial announcements in such a way so as to distract from the issue that might be most damaging to its political prospects. So it was, that with most of the country focused upon watching the Chretien government win its second consecutive majority government, the most restrictive *Standing Orders* in the province's history passed without fanfare. From this point forward, however, with its leverage to delay house proceedings essentially eliminated, the role of the opposition was considerably weakened as governments used time allocation with increased regularity to pass their legislation.

If the 1992 changes to the *Standing Orders* were the turning point in the opposition's decline in recent years, it may be said that the 1997 reforms marked its end as an effective counterforce to majority governments. While it still held a public pulpit from which to batter the government, it had lost the crucial procedural mechanisms by which it was able to force the government into making concessions such as amendments or public committee hearings on

controversial bills. With little ability to stop the government from using it, time allocation would prove the catalyst that enabled the government to accelerate its implementation of the CSR.

As the chart below illustrates, with the passing of time, the Harris government became ever more reliant upon time allocation as a political tool. After it passed its new *Standing Orders* in 1997, there would be approximately one time allocation motion for every two government bills passed by the legislature (See Table 9.1).

Table 9.1: Time Allocation Motions Passed by Harris Government (1995-2002)

Session	Date	Total Government Bills Passed	Total Bills or Motions Passed Using Time Allocation	Percentage of Time Allocation Motions to Government Bills Passed
36th Parliament, 1st Session	(1996-09-26 – 1997-12-18)	79	17	21.5 percent
36th Parliament, 2nd Session	(1998-04-23- 1998-12-17)	38	17	44.7 percent
36th Parliament, 3rd Session	(1999-04-02 – 1999-05-05)	4	2	50 percent
37th Parliament, 1st Session	(1999-10-20 – 2001-01-02)	49	22	44.9 percent
37th Parliament, 2nd Session	(2001-04-19 - 2002-03-01)	21	15	71.4 percent

Insulating the Policy Implementation Process through the Executive Power

The Harris government would continue the pattern they established with Bill 26 by granting cabinet unprecedented powers to undertake reforms to every major sector of the government. Increasingly, the government's primary interaction with the legislature became to grant itself new powers to govern by edict. Bill 142, which gave cabinet considerable authority to reform the province's welfare system, granted the executive an extraordinary 43 new regulatory powers. The government also demonstrated a disregard for local democratic processes, routinely using its provincial authority to make changes to the structures of local

organizations. The *Fewer School Boards Act* gave the Minister of Education the authority to reform the composition, decision making processes, and boundaries of any school board without extending the right of communities to appeal his or her arbitrary determination. The bill also granted considerable authority to a cabinet appointed and directed Education Improvement Commission to replace local decision makers and implement the changes planned by government.

It used similar approaches when amalgamating municipalities and hospitals, granting authority to a commission to take control over management of the restructuring process. With the amalgamations of Toronto, Hamilton, Sudbury, Ottawa-Carleton, and Haldimand-Norfolk, residents witnessed the extraordinary scene of an unelected, cabinet-appointed transition commission taking full control over the financial affairs of these municipalities for several months. Under these conditions, both democratically elected municipal councils and school boards were effectively stripped of their powers, while the government appointed commissions directly responsible to cabinet to implement the changes it deemed necessary. Under the provisions of the transition, municipalities lost control over their own financial affairs while an unelected committee sold off public assets and reconfigured community management structures by filling senior positions with executives sympathetic to the government's austerity agenda. The Harris government also passed legislation granting the province the discretionary authority to appoint an economic supervisor to oversee the restructuring of a school board's finances.

In both its municipal and education restructuring legislation, the government included an extraordinary provision, known as a Henry VIII clause, which stipulated that if the regulatory powers granted to cabinet in the bill were to come in to conflict with any other regulation that the regulations set out by the legislation were to prevail. The Henry VIII clause granted the

Education Restructuring Commission and the Municipal Transition Committees full jurisdiction to make the changes it deemed as necessary to establish fiscal accountability. Where they ran up against legal impediments, the minister could simply pass a regulation to carry out the recommendation of the committee without having to so much as inform parliament until well after such a change had been made. While the Henry VIII clauses were ultimately removed due to the probability of their unconstitutionality, their inclusion spoke to the lengths it was willing to go to insulate its reform agenda from democratic interference.

Following the precedent set by the New Democrats, the Harris government also came to rely heavily on the use of omnibus legislation to pass a number of Red Tape Reduction bills. Most of these bills were enormous tomes masquerading as housekeeping measures, which in some cases amended dozens of different, usually unrelated statutes. Although many of the amendments were minor, some repealed existing regulations, or granted authority to industry to self-regulate. While the government passed a number of omnibus bills during its time in office, it is worthwhile to note that almost every major red tape initiative was ushered through the house using time allocation to truncate debate on bills that were both voluminous and complex.

The Harris government managed to achieve the majority of its reform agenda in only a few short years largely because it was willing to exploit provisions in the *Standing Orders* that had ostensibly been put in place to give governments the capacity to fast-track legislation during periods of immense crisis such as a war or famine. For the Harris reformists however, the state was in a permanent crisis, which necessitated a parliamentary apparatus that would be deferential to the executive. In lieu of cooperation from the opposition parties, the government took increasingly monumental steps to centralize power in the executive at the expense of the legislature. By the time Harris resigned in the fall of 2001, the use of these emergency

mechanisms had become customized as a part of regular house business, leaving the culture and rules of the legislature well-groomed to accommodate future radical reforms.

Consolidation and Customization (2002-2014)

The Progressive Conservatives' two mandates can be divided into two parts. During their first mandate they governed as a revolutionary force, aggressively reshaping the architecture of the state, and permanently altering its administrative and legislative culture. By the middle of their second mandate however, with the central tenets of the CSR already implemented and public support for the government quickly eroding, Mike Harris announced his resignation as premier. Aware that public opinion polls showed Ontarians had grown weary of the government's tone, Harris's eventual successor Ernie Eves ran for leader on the promise to moderate the party's image by softening its stance on a number of policy files. By pulling the party back towards the centre, however, the ascension of Eves to the Premier's Office marks a clear demarcation point from the radicalism exhibited under Harris. During this second phase of Conservative rule, the Eves government focused instead upon the consolidation of the reforms put in place during the party's first six years in office. This also marked the beginning of a new period in Ontario politics, during which time governments, although publicly rejecting practices of the Harris government, have left in place its essential procedures and practices. The result has been the entrenchment of a parliamentary apparatus that has a permanent crisis configuration.

Part of the reason that the Eves government cannot be considered a pure extension of the CSR is because in the year and half in which it held power, it managed to accomplish very little of substance. While the government earned credit for its handling of the SARS crisis and the 2003 power outage that affected much of the eastern coast of North America, it was heavily criticized for its aborted plan to privatize the province's hydroelectric system as well as its

unconventional decision to prorogue the legislature only to announce its 2003 budget at a Magna automotive training facility a few weeks later. In all, the Eves government only managed to pass a few dozen bills during its mandate, the majority of which did little to continue the process of re-engineering the state set in motion by Harris.

Although the Eves era can lay claim to few signature policy achievements, one of its signature achievements was to embed the radical parliamentary apparatus established during the previous government in the bedrock of the culture at Queen's Park. This development was crucial, since the Harris government had justified its decision to undermine the opposition as a necessary medicine to ensure that the government could fulfill its promise to end the deficit crisis left behind by the New Democrats. Despite balancing budget, and indicating a willingness to end the aggressive reformist policies of the recent past, the Eves government left in place the radical parliamentary apparatus adopted under Harris. This marked the beginning of a period, continued by the Liberals, in which the governing party used restrictive parliamentary instruments primarily for reasons of pure political opportunism.

Rather than use the turn towards moderate governance in a time of relative prosperity to end the practice of restricting debate, the Progressive Conservatives increased the use of time allocation, subjecting nearly two-thirds of the total bills it passed to the measure (See Table 9.2).

Table 9.2: Time Allocation Motions Passed by Harris/Eves Government Second Term

Session	Date	Total Government Bills Passed	Total Bills or Motions Passed Using Time Allocation	Percentage of Time Allocation Motions to Government Bills Passed
37th Parliament, 3rd Session	(2002-05-09 -2003-03-12)	33	21	63.6 percent
37th Parliament, 4th Session	(2003-04-30 -2003-09-02)	8	5	62.5 percent

In so doing, the Eves government lent further legitimacy to the use of this practice, applying it indiscriminately, without establishing any kind of discernible pattern. Instead, it appears the Eves government saw time allocation to be a routine part of house business handed down by the previous government, and a method of accelerating the passage of its legislative agenda before an inevitable election call. What is significant about this, however, is that it symbolized the beginning of a period in which anti-democratic approaches had become so commonplace that they were stripped of their emergency gloss, and simply accepted as a custom of the legislature. The result was to entrench a parliamentary model arranged to allow for the speedy resolution of matters before the house, as the enduring form of legislative governance in Ontario.

Continuation and Consolidation under the Liberals

The election of the Liberals under Dalton McGuinty in the fall of 2003 resulted in the continuation of the restrictive parliamentary approaches left in place by the Progressive Conservatives. Although the Liberals had the benefit of governing during a period of expansionary revenues throughout its first mandate, the global economic tide began to abruptly shift as its second began. After initially providing stimulus after the global financial crash of 2008, the government began to markedly shift its tone towards a strategy of deficit reduction. While its early efforts at austerity were tepid at best, the government's approach from the 2009 budget onwards would be to focus on restraint in order to finance billions of dollars of cuts in the corporate tax rate as Ontario declared itself open for business.

The government's retrenchment program began in earnest with the introduction of its 2012 budget, based upon the recommendation of the Commission on the Reform of Ontario's Public Services, chaired by former chief economist at TD Bank, Don Drummond. The report painted a bleak picture of the province's economic future. It warned that the province could,

no longer assume a resumption of Ontario's traditional strong economic growth and the continued prosperity on which the province has built its public services. Nor can we count on steady, dependable revenue growth to finance government programs. Unless policy makers act swiftly and boldly to prevent such an outcome, Ontario faces a series of deficits that would undermine the province's economic and social future (Commission on the Reform of Ontario's Public Services, 2012, p. 1).

The report made numerous controversial recommendations, ranging from eliminating full day kindergarten to capping spending on healthcare. Ultimately, the province would only adopt some of the report's recommendations, one of which was a total freeze on public sector salaries. The 2012 Ontario Budget requested all public sector employees to accept a two year wage freeze when their existing contracts expired, but warned that those unions unwilling to accept the government terms would have it forced upon them through legislation.

The first confrontation loomed between the government and the province's public elementary school teachers whose contracts expired at the end of August 2012. When it failed to reach an agreement before the end of August, the McGuinty government recalled the legislature back from summer recess to pass the *Putting Students First Act*, which authorized the government to force new contracts upon teachers. The bill also included an unprecedented provision granting the Minister of Education exclusive powers to reject strike action by union members, as well as to impose or revise the terms of a collective agreement. Furthermore, in a maneuver that revived memories of Harris era policy, the government included a clause in the bill to restrict the Ontario Labour Relations Board or any arbitration panel from determining whether it was in violation of the constitution, and restricted any court from reviewing whether the terms of the contracts imposed by the minister were legal.

While the narrative surrounding the *Putting Students First Act* was largely concerned with the primary school teachers whose contracts were due to expire, the bill was designed as a mechanism through which the government could restrict contracts in the education sector

without having to gain the approval of the minority legislature or negotiate agreements with public sector employees. The unprecedented powers given to the minister to ban strikes arbitrarily without needing to pass back-to-work legislation through the house was illustrative of the government's desire to place the authority to control public sector salaries beyond the control of anyone outside of the executive. In order to understand the significance of the *Putting Students First Act*, then, it must be viewed as part of the government's overall strategy to adjust to the changes brought on by the Great Recession. Austerity was the crucial second stage of the government's recession management strategy, and the *Putting Students First Act* served as its warning shot to the rest of the Ontario Public Service that it was serious about reform and would grant itself the power to make changes if the unions did not comply.

Although new Premier Kathleen Wynne initially distanced herself from McGuinty's austerity program upon taking office, mere weeks after winning a majority government in 2014 she made changes to the structure of cabinet that hinted at a resumption of a policy of fiscal restraint. Wynne made the decision to change the structure of cabinet by detaching the Treasury Board from the Ministry of Finance and giving the position to her deputy premier, and most trusted minister Deb Matthews. In her mandate letter, Matthews was charged with the task of coordinating and managing program spending across all departments to ensure that the government achieved a balanced budget by 2017-2018. Dubbed by the press as Wynne's "austerity minister," Matthews was responsible for negotiating contracts with public sector employees in every ministry (Benzie, 2015). The decision to give the Treasury Board, previously under the heel of the Minister of Finance, a position of such importance in Wynne's majority adds a new chapter to the evolution of cabinet governance in Ontario. While the trend in Ontario since the early 1970s had been to centralize cabinet authority in Finance, the Wynne government

took the next step, removing the intermediary of the Ministry of Finance, which must balance numerous interests, by simply establishing a singular, omnipotent ministry with the authority to approve all government spending.

In the period following implementation of the *Inflation Restraint Act* in 1982, successive governments have followed in the path set out by the Davis Tories to respond to periodic economic crises by implementing policies of fiscal restraint in the public sector. In the case of both the Social Contract and the *Putting Students First Act*, the government's primary policy solution was to achieve savings by restricting the rights of public sector employees to collectively bargain for their wages. It is revealing, then, over a span of three decades, and despite the reality that each downturn was characterized by unique circumstances, the management and implementation strategies of each government bear striking similarities. In each case, the government sought to impose restraint measures, and did so by sheltering the decision making process from parliament, rushing each bill through the legislative process with the use of time allocation on the grounds that the crisis conditions confronting the province necessitated immediate and decisive action. To allow decisions play out through the legislative process would risk undermining the capacity of the expert technocrats internal to the state executive to carry out the often highly controversial decisions associated with the neoliberal policy solutions governments have opted for under these circumstances. The underlying message in this logic, however, is that the parliamentary model is limited in its ability to address economic crises.

Parliamentary Governance during the Liberal Era

The Liberal government's approach to parliament closely mirrored that of the Progressive Conservatives before them. In early 2004, negotiations between house leaders failed to result in a parliamentary schedule that satisfied the Liberal agenda. Government House Leader Dwight

Duncan (2003) attempted to pass numerous time allocation motions at the same time under the auspices of what he called a programming motion (Dec. 2). The opposition, which had already agreed to the schedule in principle during house leaders' negotiations, saw the move as a betrayal of their trust, and opposed it. While the motion ultimately passed on account of the government's majority, it demonstrated that Liberal election promises to restore the sanctity of parliament were little more than words in the air.

As a consequence of the opposition's negative response to its programming motion, the government simply reverted back to the now customary practice of introducing time allocation motions when it was unable to reach agreement with the other two parties in the legislature. As the chart below illustrates, while the government did attempt to scale down its application of time allocation during its first two years in office, by the second half of its first mandate it had already begun to apply it with a regularity that rivalled the Progressive Conservatives before them. Between October 2005 and June 2011, the Liberals passed a staggering 70 motions for time allocation, or one for nearly every two government bills the government passed. Despite this, no discernible pattern emerges over time. Instead, it appears the government resorted to time allocation when it was politically expedient for them to do so, or when they were unable to reach agreement with the opposition. The result has been to reinforce and strengthen the use of time allocation as a custom at Queen's Park (See Table 9.3).

Table 9.3: Total Time Allocation Motions Passed by McGuinty/Wynne Governments

Session	Date	Total Government Bills Passed	Total Bills or Motions Passed Using Time Allocation	Percentage of Time Allocation Motions to Government Bills Passed
38th Parliament, 1st Session	(2003-11-19 -2005-09-19)	51	8	15.7 percent
38th Parliament, 2nd Session	(2005-10-11 -2007-09-10)	55	25	45.5 percent

39th Parliament, 1st Session	2007-11-28 - 2010-03-04)	57	25	43.9 percent
39th Parliament, 2nd Session	2010-03-30 - 2011-06-01)	38	20	52.6 percent
40th Parliament, 1st Session	2011-11-21 - 2012-10-15)	9	2	22.2 percent
40th Parliament, 2nd Session	2013-02-19 - 2014-05-02)	15	4	26.7 percent
41st Parliament, 1st Session	(2014-07-02 – 2015-01- 01)	9	7	77.8 percent

The incidences of time allocation decline significantly during the minority 40th Parliament, since the government had to rely upon opposition support in order to pass such motions. The approach to house governance taken during the 40th Parliament to time allocation was revealing in two respects. First, it demonstrated that time allocation had become so customary to the proceedings of the house, that the opposition hardly quibbled over its usage. At no point did the opposition party negotiating with the government make a public display about being required to accept time allocation. Instead, it appears to have been a fairly minor component of the 2012-2013 budget negotiations, and support for the government's omnibus time allocation motion from the notoriously partisan and obstructionist Hudak-led Tories came at a fairly modest price, especially when one considers that the Liberals later rescinded their promise to change the Ellis Don legislation. Second, however, it demonstrated how dependent the government had become upon time allocation to move their legislation through the assembly. While the *Standing Orders* provided for a general time limit for the implementation of legislation, the actual deliberative process proved too time-consuming for both the Wynne and McGuinty governments. Furthermore, years of abuse of process and increased partisanship led to a distrust between the opposition parties and the government that made informal arrangements between the house leaders much more difficult to achieve. Governing parties in Ontario had

grown accustomed to using time allocation as an escape hatch, through which they could avoid confrontation or excessive deliberation over contentious matters in the legislature, while still accomplishing their objectives.

Perhaps the most egregious abuse of parliament throughout the Liberal era occurred during the investigations into the cancelled gas plants in Mississauga and Oakville. Despite being ordered by a parliamentary committee investigating the matter to disclose all documents related to the matter, the government withheld potentially incriminating documents. Only later, when members of the opposition appealed to the Speaker to find the government in contempt of parliament, did it provide more than 30,000 documents that it had been withholding from the committee. The opposition pressed on with its effort to force the government to release all of the information it had involving the gas plants, claiming that its initial attempts to withhold these documents constituted contempt of parliament. The Speaker agreed with the opposition, placing the matter in their hands to determine whether to validate this decision and find the Minister of Energy, Chris Bentley, in contempt of the house.

Before the opposition could hold a vote, however, McGuinty sabotaged their efforts by taking the drastic step of resigning as premier and proroguing the legislature until the New Year, during which time neither the committee nor the house were permitted to sit. Given that parliament would not be in session, the opposition were unable to either hold their vote, demand additional documentation, or call witnesses. Ultimately, by using prorogation as a shield, McGuinty managed to salvage his Minister of Energy from being charged with the serious offence of contempt of parliament, and to bring an end to a parliamentary committee's investigation into a case of misconduct by the government. With his back firmly to the wall, McGuinty exited the political stage, but not before abusing the centuries old mechanism of

prorogation to evade an expression of contempt in his government. By the end of McGuinty's political career, scarcely few of parliament's procedural instruments remained sacred.

Conclusion

A close examination of the last four decades at Queen's Park reveals a clear pattern towards an increased use of parliamentary procedures designed to shield the executive from the interference of the legislative function in the policy making and implementation process. This process can be traced to the emergence of several variables internal to the political culture of Queen's Park itself, but also to a number of external factors that have conditioned the political process. Where the internal dynamics of Queen's Park are concerned, there can little doubt that the end of the Tory dynasty in 1985 had a profound impact on the dynamic between the three major parties in Ontario. As the allure of electoral victory became an increasingly realistic possibility for the Liberals and New Democrats, a deep partisanship developed that undermined the fragile pact between them that had previously allowed the house to function with little obstruction from the opposition parties. This deepened atmosphere of partisanship had, by the late 1980s, brought the legislature to a standstill as the opposition parties made use of technicalities in the *Standing Orders*. Governments, in turn, tightened the rules allowing for opposition obstructionist tactics and made use of precedents in house procedure to circumvent parliament entirely.

The driving purpose behind this project, however, has been to examine whether and to what extent the economic crisis conditions that have besieged Ontario since the early 1970s, and the neoliberal policy solutions adopted to address these circumstances, have had any meaningful impact on the decline of parliament during this same era. Put differently, it has sought to understand how changes to the state's form have necessitated a reconfiguration of the

parliamentary apparatus in order to accommodate this revolution in its character. While a confluence of intervening factors make it impossible to establish a direct causal link between an increasingly ambivalent attitude towards parliament among policy makers and the province's shift towards neoliberal reforms, the evidence points to an important interdependent relationship between their emergence in Ontario.

This is the case for three reasons. First, several major parliamentary precedents established during the 43 year period under examination occurred as a result of passing a piece of legislation enacting neoliberal policy solutions to address the economic crisis. While these mechanisms were subsequently used for a variety of measures once they became customary tools of house governance, their initial applications were in each case designed to implement controversial neoliberal measures. Second, just as many of the major precedent-setting parliamentary reforms were introduced as part of the neoliberal reorganization of the province, so too was every signature piece of neoliberal legislation subject to at least one, and often several of the parliamentary practices surveyed for this project. Third, the evidence suggests that during the most aggressive periods of neoliberal reform, the use of approaches designed to circumvent the legislature were indispensable variables in the implementation and application of the restructuring process.

The fact that the decline of the role of parliament emerged in companion with neoliberalism in the Ontario case, can be explained to a large extent by the province's unique pattern of historical development. Ontario underwent its radical transformation much later than most other jurisdictions. While the politics of Thatcherism gripped much of the western world during the 1980s, Ontario experienced a revival in social spending under the Peterson Liberals. Although the Davis Conservatives did implement some restraint measures in the 1970s and

1980s, these reforms stopped well short of the wholesale changes being undertaken elsewhere. Meaningful attempts at neoliberal restructuring would not be taken again until the final two and a half years of the Rae government, when the deficit weary New Democrats implemented a variety of different reforms. While the NDP were not able to see their agenda through before being reduced to third party status in the 1995 election, the initial steps taken during Bob Rae's mandate served to blaze a path for the radical restructuring process that was to follow during the Common Sense Revolution.

When one examines the legislation used to implement these reforms, one cannot help but notice the synergies between the trend towards the centralization of power in the executive to manage and direct the neoliberal restructuring process and the decline of parliament's role as a counter-force. This was true of the inflation strategies pursued by the Davis government during the late 1970s and early 1980s, when it used the shelter of cabinet-appointed commissions to implement its agenda. Later, its decision to resort to time allocation was central to the government's ability to pass controversial legislation without significant amendment or delay. These instruments were later used when the Rae government introduced the notion of the omnibus bill to make up for lost time during the first two years of its mandate by packaging multiple, unrelated reforms together under the canopy of a single bill, subjected only to the requirements for parliamentary debate provided for a single piece of legislation. Most profoundly, the aggressive restructuring plan of the Harris Conservatives in the middle of the 1990s relied extensively upon its ability to evade the parliamentary process, as the government used all varieties of measures to overcome institutional obstacles to the implementation of its radical agenda. Finally, during the McGuinty government's shift to fiscal restraint in 2010, the government granted sweeping powers to the executive in its *Putting Students First Act*, allowing

the Minister of Education to restrict labour action and unilaterally impose contractual terms upon the province's teachers through regulation.

The common refrain in each of the aforementioned examples was an appeal by the government of the day to suspend the rules of parliament in order to address a crisis or emergency fiscal situation. For the Davis government, the crisis involved a problem of galloping inflation; for Rae it was the deficit; for Harris it was the need for sweeping reforms to the architecture of the state; for McGuinty it was to trim the province's growing deficit in the years following the Great Recession of 2008. In each instance, the government of the day used the shadow of crisis circumstances to justify using parliamentary procedures designed to marginalize the legislature's role.

Given that for much of the post-war era, Queen's Park had been governed by an element of cooperation among the three major parties, with the opposition holding leverage through its ability to delay legislation, it is perhaps not surprising that radical reforms drawn across ideological and political boundaries would bring about a game of cat and mouse between the government and opposition that the government would ultimately win. But for a brief period during which the opposition began to re-assert itself during late 1980s and early 1990s, governments from all three parties charged ahead with neoliberal reforms by enthusiastically introducing all forms of new innovations to circumvent the legislature as its chief political instrument.

A consequence of more than 30 years of reforms to the practice of procedure in Ontario has been the evolution of a parliamentary apparatus that has many of characteristics of a continuous wartime apparatus of the state. The customization of the precedents surveyed in this dissertation have resulted in a parliamentary branch that is presently organized to accommodate

radicalism. As such, Negri's notion of a social order in a state of permanent crisis, has some relevance for the Ontario case. Although the complex interplay of numerous variables make it impossible to establish causality between the contemporaneous emergence of neoliberalism with the decline of parliament in Ontario, there is little question that there exists an important complimentary relationship between these phenomena. The implementation of neoliberalism in Ontario received critical support from the use of parliamentary mechanisms designed to undermine popular and political opposition by expediting the passage of legislation through the public chamber and by granting czar-like authority to the executive to render decisions without interference. These instruments functioned as the vehicle through which neoliberal reforms were implemented in Ontario, and proved an indispensable aid given the frantic pace at which they were imposed. The story of the implementation of neoliberalism in Ontario, then, as a sudden rupture from the Keynesianism that had characterized the entire post-war period, took on this shape in large part because the *Standing Orders* of Queen's Park were re-written to achieve them. It is impossible to know how this process might have occurred otherwise, but there can be little doubt that without the use of these instruments the process would have been much more protracted and tedious with less certain outcomes.

It is curious that the synergy between these two trends has previously received little attention in the academic literature given its implications for advancing our understanding of why neoliberalism has taken on different characteristics in different political jurisdictions. While it is hoped that this study will have some value in furthering our comprehension of the evolution of parliament over the last four decades at Queen's Park, important questions remain. There exists a need to test the findings in this project in a comparative context. What differences are there in the emergence of these patterns? Do the patterns themselves, or the ways in which they

emerge, differ from the Ontario case? Further to this point, would the same conclusions apply in a different jurisdiction or are they unique to the Ontario experience? Would these same conclusions apply outside of Canada or the Westminster system, or is there something unique about the political culture at Queen's Park that has seen these issues emerge in the shape that they have? Further studies might also approach this issue from a non-critical theory lens to determine to what extent other variables, such as the emergence of a 24/7 news cycle and the advent of cameras into the legislature, have influenced parliamentary procedure at Queen's Park. Such research might also seek to supplement the foundational work that this project has endeavored to provide by focusing on interviews with key political actors. While this methodological approach fell outside the scope of this study, such an analysis could well shed further light on the variables that have impacted the emergence of Ontario's parliamentary

While more work is necessary to validate that the findings in this study apply elsewhere, in the Ontario case it can be said without reservation that the shift in the state form from Keynesianism to neoliberalism was accompanied by the emergence of a more anti-democratic parliamentary configuration that proved indispensable as a means of facilitating the implementation of neoliberal reforms in the province. The simultaneous emergence of these two trends was more than a mere coincidence. Governments representing all three political parties aggressively shattered numerous precedents and pushed the limits of house procedure with efforts to address the long-term shroud of economic crisis plaguing the province. In the process, however, they re-shaped Ontario's parliamentary apparatus from one that was constructed to foster reciprocity and dialogue between political actors, to one that is designed to adapt to crisis quickly and resolutely.

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