

The Fundamentals of Democratic Reform: Part I

by Gordon Gibson

The Fraser Institute will hold a conference in Vancouver on November 22 in a policy area that is receiving increasing interest in Canada—democratic reform.

The time and place are particularly appropriate given that the new BC government is committed to act on some elements of democratic reform, especially in relation to the electoral system and direct democracy. In addition, a new law is already in place providing for fixed-term elections (assuming no defeat on a “confidence” motion in the meantime). This is landmark legislation which will be noted and perhaps replicated in other jurisdictions.

This first of a series of three articles (or perhaps more, depending upon conference developments) will outline a framework for thinking about the whole issue of democratic reform since the topic extends well beyond the usual technical (but important) questions of electoral, parliamentary, and direct democracy reforms.

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This article will deal with the usefulness of the democratic reform preoccupation in Canada at this time, and describe both the three levels of reform, and where Canadians might focus their attention. Future articles will tackle the role of decentralization and subsidiarity in democratic reform, along with the often overlooked but equally important area of constitutional restraints and requirements placed on governments.

“If it ain’t broke, don’t fix it!”

Why worry about such an esoteric subject as democratic reform? After all, Canada is reasonably free and prosperous. Surely we should concern ourselves with more urgent things, such as health care, or the value of the dollar, or threats to national unity. Well, it turns out that we might be far better off in all of these areas if our democratic system worked better.

Canada could be, in fact *should be*, the most harmonious and prosperous land in the world. We are not, by a considerable way. Our living standard is much lower than in the US, or in many other, smaller, countries. The public is broadly cynical and apathetic with respect to our political process. We have

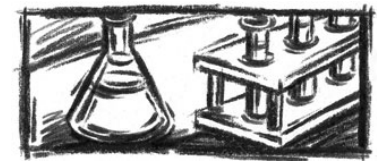
major regional alienation, of which the Quebec sovereigntist movement is the first but certainly not the only example. At the federal level, we have what is effectively a one-party government. This party (and the previous Conservative government in its day) is driven by perverse incentives which make political sense but are in other ways injurious. These include, as examples, the payoff for votes bought in the Atlantic region with economically damaging subsidies, and an immigration policy that ought to be for the advantage of Canada but is instead chiefly designed with Vancouver’s—and especially Toronto’s—ethnic voting patterns in mind.

The state of our democratic debate is such that tough-minded and realistic discussion in some areas is simply not allowed. The most enduring example is the ridiculous idea that health care ought to be provided only by public employees. The most recent example (as expressed by our government) is that it is in some way illegitimate for the United States to want to develop missile protection against rogue states. This latter absurdity has been decisively banished by tragedy, but the former—inefficiently supplied health care—is daily inflicting a less dramatic tragedy of its own kind.

Three levels of democracy

Canadian democracy can be much improved. My own analysis recognizes three “levels” of democracy. The first is one in which the voters get to choose the people who in turn decide who is the all-powerful boss. That person effectively runs the government as they see fit for the next four or so years, more or less as an elected dictatorship.

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unlikely to result in meaningful savings, there is another way that provincial drug benefit plans might increase savings through generic drugs.

Generic drugs are expensive in Canada, many priced even higher than in the US (Graham and Robson). Using data from 1994-1995, Anderson and Parent note that Ontario reimbursed generic drugs at prices between 61 percent and 79 percent of the brand-name price, while a private insurer paid between 45 percent and 67 percent of the brand name price. Generally, if there was only one generic copy of a drug, the discount was smaller, but if there were many generic copies, the discount was larger. Unfortunately, competition was generally weak. Of the 260 generic compounds on the Ontario formulary that were surveyed, 154 (59 percent) had only one or two generic versions (pp. 14-15).

Anderson and Parent also note that about 42 percent of Ontario's prescriptions in 1998 were for generic drugs (p. 14). Assuming these prescriptions were filled at 75 percent of the brand name price, Ontario would have spent 2/3 of its drug budget on branded drugs and 1/3 on generics. That is, of expenditures in 1998 of about \$1.6 billion (CIHI, p. 74), the branded share would have been just over \$1 billion and the generic share just under \$600 million.

Provinces could have saved money by paying the same generic prices as negotiated by private insurers.³ For example, if Ontario had lowered the price of generic drugs by 65 percent of the brand-name price, the savings (assuming no increase in volume) would have been \$74 million in that year alone, saving almost 5 percent of the budget. Indeed, Ontario has negotiated small reductions in generic prices since the period studied. However, this is just a beginning. The private insurer paid 45 percent of

branded prices for those compounds where there were five generic competitors, not just one or two. If Ontario had received this discount for all generics, the province would have reduced costs in 1998 by \$222 million, 14 percent of the annual budget!

Therefore, Anderson and Parent's analysis leads to quite different policy implications than those they develop. Lengthy regulatory approval and delays in provincial reimbursement of generic drugs are trivial to containing provincial drug costs. The real priorities are to

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Is this an over-statement? Hardly. The prime minister unilaterally and with no check appoints the heads of all government departments and all deputy heads, and they do what they are told. He or she appoints all senators, and more importantly, all of the judges of the Supreme Court which say what is legal in this country and adjudicates disputes with the provinces (who have no say in the tribunal).

The prime minister must sign all significant legislation for it to have any chance of passage in the House of Commons. He or she (through agents) manages the business of the House, and allocates time, permission for foreign travel, and even office space.


The prime minister, with no hindrance, appoints the heads of the Bank of Canada, the CBC, the CRTC, the ethics commissioner (who reports to him!), all ambassadors, the head of the national police, the chief of staff of the military, and dozens of other significant jobs. He or she must approve of all tax and expenditure decisions. While in theory Parliament has the power to control some of this, it never does. "Four-year elected dictator" is an accurate description.

This is the first level of democracy, and the most primitive one. There Canada is firmly stuck, the most embarrassing (for true democrats) system in the developed western world.

The second level of democracy again sees the people elect the representatives (as in Canada) but those representatives then go on to make the laws and budgets acting independently of (or at least not fully controlled by) the executive branch. The fullest development of this second level is probably to be found in the United States, which for many Canadians unhappily is all the proof necessary that the system must be unsuitable for us. Canadians should look instead at quieter examples, such as Switzerland, where few people even know the president's name. (The job is rotated among members of a seven-person council of ministers, itself made up of members of several political parties.)

This "second level" is a reasonable aspiration for Canadians. After all, if my representative, the individual MP, the only person I get to vote for, is not important because the prime minister makes all the decisions, that means that I and my vote are not important either.

The third level of democracy is what we often call direct democracy, in which the voters themselves make the detailed decisions. Without further elaboration here (to be found in a future article) my view is that this third level, while essential, has a quite restricted applicability to our governance needs.

Some reform—indeed major reform—is worth considering; it is a subject to which we will return in future articles. 

The Fundamentals of Democratic Reform: Part II

by Gordon Gibson

This is the second of several articles setting out a context for thinking about democratic reform. The first article discussed the state of Canadian democracy, and why reflecting upon ways to improve it is a useful task. This article will discuss the most basic reality in the field, namely, that in many areas the real need is not for more democratic government, but much less. And it will caution that the task of reformers is tougher than usually admitted.

Two watchwords: “humility” and “restraint”

On humility: the American biologist, Garrett Hardin, coined the phrase (speaking of complex systems) that, “You can’t do just one thing.” What he meant was that any change you make will inevitably work through the system



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to make other changes. For example, in our field of democratic reform, you can’t just change the electoral system. At a very minimum, changing the electoral system will affect how Parliament works, the relationship between the executive and the legislative branches, the kinds of laws that get passed, and the relationship between the federal and provincial governments. Yet advocates of electoral reform are almost invariably silent on these downstream effects.

In any constitutional area, one of the most powerful rules at work is the Law of Unintended Consequences. Things may not work out as planned. Our most famous historical example is the “confederation” set up by Sir John A. Macdonald. Sir John A. didn’t really want even a federation, much less a looser *confederation*. An admirer of Britain, and deeply troubled by the horrible experience of the just-ended US Civil War, what he really wanted was a unitary state. Never mind, he would accept the Quebec and Maritime realities and

leave the provinces room for matters of a strictly local nature—or so he thought.

But no one had ever before married a federal system and the British Parliamentary System (BPS). The BPS tends to centralize power, above all in the executive branch. However, Sir John A. created not one, but (at the time) *five* executive branches, of which only one was resident in Ottawa. The provincial executives quickly took like ducks to water to the centralization of their own power, and in the process challenged that of Ottawa. The aggressive provincial governments of Mowat in Ontario and Mercier in Quebec, along with the sympathetic ear of the highest court for Canada at the time, the Privy Council in London, quickly turned Sir John’s plan on its head. Decentralization became the rule until the economic and military disasters of the Great Depression and the Second World War.

Recentralization flowed from those experiences; decentralization is again the tide of today, not just in Canada but in the world.

As a more recent, simpler example, many Canadian political parties thought they were bringing democracy to their own operations by adopting a “universal ballot” to choose their leaders, whereby every party member, of whatever duration, of whatever provenance, had one vote to cast. This was in marked distinction to previous practice where either the full-time professionals (the Caucus) or the engaged, long-time militants (as elected convention delegates) chose the leader.

No one thought at the time that the net result of this might be to create a new kind of leader who, with impunity, could ignore his or her caucus and the senior members of the party by claiming that he had a “mandate from the grassroots,” absolute and inviolate (meaning,

in effect, that he could do whatever he wanted). The universal ballot system, therefore, turned out to be the opposite (or, at the very best, a retrogression) of democracy.

But there is a second great force lurking in the constitutional thicket, and that is the Law of Equal and Opposite Reaction. While reformers may see great virtue in democratic reform, those benefiting from the current system—those I call the “gatekeepers to reform” because they have the power to say yea or nay—think that system is just fine. For a Prime Minister, any system that elected and then thrust him or her to an all-powerful top role is something that works pretty well. All of those who owe their influence, station, and jobs to the current system will normally support that system, fearful that more talented or vengeful successors might turf them out.

The gatekeepers may bend with the wind—may appoint an “Ethics Commissioner” as a current example—with no intention of supporting any real change. In other words, one sums up “humility” thus: change is very hard to make stick, and very unpredictable in its effect if you do. That is no reason not to try reform, but it is deep reason to do it thoughtfully and sincerely.

“Democracy” is not equal to “freedom”

Through the careless linguistics of a generation of politicians and commentators, most people talk as if “democracy” and “freedom” were synonymous. This is not true. Democracy is not the same as freedom. Indeed, democracy sometimes is the *enemy* of freedom.

One characterization of democracy is “government with the consent of the

governed.” For some of the governed some of the time, that is true. That is the fairer face. The darker face of democracy lies in this fact: democracy is the name given to the institutionalized oppression of minorities by the majority. Indeed, given that most governments in Canada are elected with a good deal less than 50 percent of those voting, let alone the total vote, it can even be the oppression of the majority by a minority! And since the rules of Parliament allow for an elected dictatorship between elections, that governing “minority” may be not much larger than the Prime Minister’s Office establishment.

So democracy is only, as Churchill famously put it, the least bad system of any that have been tried. But there is a better way of making most of the decisions in a free society.

We have two ways of making decisions in Canada. One does not involve democracy at all. It is the free market, where decisions are made in their millions on a daily, precise, context-specific basis by the voluntary interaction of individuals with each other and with voluntary private sector organizations.

Thanks to the work of economists and philosophers over the years, we know quite a lot about free markets, and what makes them work well or badly. We know that competition is good, as is maximum information for the consumer (transparency), accountability (standards, liability, contract, and the rule of law) and clear incentives. Full, true, and plain disclosure is the general rule, whether what is being marketed is a stepladder or stock in a company.

The essence of a free market is that it is voluntary. Every transaction is mutually agreed upon. Of course, there is not complete freedom. One needs to buy

food, but one can get the best buy through comparing the corner store, Safeway, Costco or the local farmers’ market. But there is a choice of supplier, and that keeps everyone reasonably honest.

But many decisions are not made in the free market but rather in the *political* market. That is where governance and democracy come in. The political market is where others make decisions for us, whether we agree or not. This is not a voluntary market; quite the contrary. It is based on coercion. The consumer has no choice as to what he will pay (i.e., taxes) and no choice as to what he will buy (i.e., the expenditures of government departments). Many of the choices forced upon consumers are not even easy to measure, not being denominated in dollars. This is the immense world of government regulation, which tells you what you can and cannot do in myriad ways. (Why can’t you legally pick up an American satellite for television entertainment, even if you pay for it? Why can’t you buy a can of soup with the information in only one language? Well, you can’t, that’s all. Don’t ask.)

The political, coercive market is unavoidable in some areas. We need a justice system, for example. Some things seem best done by government for practical reasons: the provision of national security, or a municipal road system. Other things, though probably fewer than usually believed, are arguably more efficiently done by government. Many scholars believe there is an “optimal size” for government, though there is much debate as to what this might be. It certainly varies with the size and technological sophistication of a society, as well as such things as general education of the public, especially literacy.



The political market is much less “efficient” than the free market, in terms of giving citizens something close to their preferred resource allocation and the “biggest bang for the buck.” This is to be expected for the following reasons:

- The political market is not competitive. It is a monopoly, and moreover, an inescapable monopoly. You not only have only a sole supplier at its price, but you are forced to buy (through taxation).
- The political market is not transparent. Any stockbroker who signed a prospectus requiring “full, true, and plain disclosure” based on the standards of an election platform or even routine government policy statements would be in jail for providing insufficient or deliberately misleading information. This is considered clever in the political market, rather than illegal.
- The political market is not accountable, except in the grossest sense at election time. The consumer has no way to say, “I’ll take this defence policy, but not that one.” Or, “You screwed up on providing hip replacements; I’m going down the road.”
- The political market is chock full of perverse incentives. In the free market, people are dealing with their own assets and liabilities, and treat them with respect. In the political market, politicians are dealing with other people’s money and power, and so don’t treat them with as much respect. Public resources are deployed in a quest for votes (the currency of democracy) rather than in a quest for efficiency or even equity.

Given the above, it is not surprising that the output of the political market is not


very satisfactory to most people. However, it is commonly believed that there is no alternative, which leads (and this is what leads to apathy) to the despair of, “What can you do?”

That is where size of government comes in. I recall as a young politician some 25 or so years ago being on a platform with Bob Stanfield, the great and wise leader of the Progressive Conservatives who was never able to out-politic the faster and flashier Pierre Trudeau. We were at the University of Victoria, and the subject was parliamentary reform. All of us, save Mr. Stanfield, were full of the latest, brightest, and best ideas on parliamentary reform (and I do not wish to disparage the importance of such ideas). But the former premier and federal Tory leader had another point to make. The best and fastest way to parliamentary reform, he said, was for Parliament to do less. What he meant by that was that Parliament should restrict itself to doing the things it really needed to do. It would have more time and resources to do those things better, and leave the rest to the private sector.

To conclude, the three major steps of democratic reform are pretty clear. In order, they are:


1. Minimize the size of the governmental/coercive sector to whatever is “optimal”—which in this author’s view is considerably smaller than at present, but that is a respectable debate.
2. Where one must have government control, reduce the monopoly aspect of government through decentralization and the concept of *subsidiarity*.
3. Reform what is left through the traditional tools of electoral and parliamentary reform, including aspects of direct democracy and constitutional constraints.

The next article in this series will deal with step 2, subsidiarity.

[Note: Gordon Gibson will chair the conference *Finally, Reforming Politics: The BC Blueprint* on Thursday, November 22 in Vancouver. For more details, please see the ad on the inside front cover of this issue, or call 1-800-665-3558, ext. 578.] 

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therefore taxes. What needs to be done, and incidentally what The Fraser Institute has been recommending for years, is that government spending be re-prioritized. That is, governments should get back to doing those things we actually need them to do, such as national defence, and get out of areas they shouldn’t be involved in to begin with, such as subsidizing businesses.

Let us assume that the new spending will amount to roughly \$5 billion per year—a middle-of-the-road estimate. The federal government could find these funds within the current spending limits by eliminating transfers to Crown corporations, subsidies to business, and regional development spending, to name just a few. A portion of the savings from these measures could be reallocated to defence and security-related programs. This would enable the federal government to meet its tax reduction commitments announced in 2000 while fulfilling its core responsibility to protect persons and property. 

The Fundamentals of Democratic Reform— *Part III, Subsidiarity*

by *Gordon Gibson*

This is the third in a series of articles on democratic reform. The first two made several fundamental points. The most important is this: Democracy is not equal to freedom, though the words are often used interchangeably in sloppy speech. Democracy, which is really the institutionalized coercion of minorities, may indeed work against freedom. It is, nonetheless, if carefully constrained, the best control system we have where government activity is required.

The articles pointed out that because of this inherent tension between democracy and freedom, a first principle of democratic reform is minimizing the size of government. And they argued that where reform is required to the institutions of democracy, as is surely the case in Canada, the watchwords

must be humility, caution, and clarity of intent. The Law of Unintended Consequences is nowhere more powerful than in constitutional matters, and yet the Law of Equal and Opposite Reaction acts to guard the status quo, and must be overcome for true reform.

This article will deal with the design principle of *subsidiarity* and the distribution and division of governmental powers among various power centres. Future articles will deal with checks and balances *within* power centres, but as with the first principle of keeping government activity overall as small as possible, this second principle of division of power immensely simplifies the control of government by building in limits, and competition, and minimizing the size of mistake any single power centre can make.

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"Subsidiarity" is a word much used by the architects of the European Union, though curiously the principle is often violated there. Subsidiarity is the concept that decisions should be taken by the smallest decision-making authority with the information, resources, and enforcement ability to take them. A basic rule of subsidiarity is that the onus of proof is on those who would move any given power "upstairs."

The more familiar concepts of "decentralization" and "federalism" are encompassed by the idea of subsidiarity, but it is a broader way of thinking about things. "Decentralization" is a one-way street of downward devolution, but sometimes centralization instead may be the right way to go. (It is ridiculous, for example, that our federal government does not have the required power to enforce interprovincial free trade in Canada.)

"Federalism," as we use the word, is restricted to the federal and provincial orders of government, but in fact other actors—towns and cities, or regional districts, or even international agencies—may be the better decision makers in particular areas.

Subsidiarity is an idea that is philosophically harmonious with liberty and freedom, unlike, for example, the legal foundation of Canadian authority, which is that sovereignty resides in the Crown or the state. Subsidiarity, properly understood, sees the individual as the sovereign, as the fundamental decision-making unit, with all "higher" authorities drawing their legitimacy only from upward delegation.

Thus the fundamental unit is the citizen. He or she may delegate powers upward to the family, the community, the city, the regional district, the province, the central government, NAFTA, the WTO





or even the United Nations, but the legitimacy that underpins those powers is always on sufferance, with the ultimate sovereigns—individual citizens—always free to withdraw powers, or change the levels or executives exercising them.

Of course, this is theory. In practice, power, once ceded, is extremely difficult to retrieve, and power centres, once created, invariably act to extend their powers and the domain in which they may be exercised. In practice, individuals have almost no chance of changing things, except by one of two devices.

One is the ability to act in common with other like-minded individuals. The other is to balance the great forces in play so that the individual may play off one force against another, whether by “voice”—direct influence—or “exit”—the ability to go somewhere else more congenial.

Thus, a major consideration in the actual design of subsidiarity systems is to enhance the opportunity of individual power whereby people can act in common with each other, or use the balance of power, or, *in extremis* simply “vote with their feet.” In practical terms, that means a bias in favour of smaller decision-making units, for one has much more clout with City Hall, say, than with Ottawa. One also has a better chance of acting with “like-minded people” in a smaller jurisdiction, where one can actually know and communicate with a significant fraction of the citizenry. Thus, one might often decide that while a concentration and centralization of power might be more “efficient” in other ways, citizen control considerations over-rule such arguments in favour of a smaller, less “efficient” local rule.

In practical terms that also means a proliferation of units of the same hierarchical level—lots of cities rather than “megacities,” lots of provinces rather than a few large provinces, so that mobility, or the “exit” option, has real meaning.

But to demonstrate again that things are never simple, a regime of too many, too small provinces inevitably escalates the power of the central authority. The United States central government has no giants (in relative terms) such as Ontario and Quebec to deal with, and thus Washington, DC finds centralization to be an easier thing than does Ottawa, notwithstanding the fact that the Canadian constitution was explicitly designed to be centralist, and the American version to be decentralist. Through an irony of history, the framers of the US version could not have guessed that the electorate would force a constitutional amendment removing the power to appoint senators from state governments (and thus significantly weakening the control of the states over Washington), nor did Sir John A. and his colleagues foresee that the growth in party discipline in the provinces, and the rulings of the British Privy Council (Canada’s highest court until 1950) would give premiers considerably more power.

But the complexity does not detract from the overall lesson—division of power enhances freedoms.


The other matter to be addressed in designing subsidiarity systems is that of inherent economies of scale versus the locus of knowledge. Readers of this journal will be familiar with the Hayekian thesis that knowledge is essen-

tially local and distributed, which is why the voluntary market is more efficient than a centrally-planned system. On the other hand, large governments are likely to be much more efficient at extractive things like collecting taxes, and scalar things like buying national defense. World-wide organizations are likely to be best at restraining individual governments from interfering with global rights like the freedom to trade.

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Detailed considerations for the division of power are beyond the scope of this article, though (for Canadian purposes) I have addressed them in The Fraser Institute book, *Thirty Million Musketeers*.

As important as power distribution are issues of communication and coordination among governing agencies, and issues of accountability and transparency vis à vis the citizenry. These and other issues will be addressed in future articles.

For current purposes the message is this: subsidiarity is one of the most powerful organizing concepts for those concerned with maximal freedom and efficiency at any given level of governmental activity, and thus one of the matters always to be kept in mind when considering proposals for democratic reform. 

The Fundamentals of Democratic Reform— Part IV

by Gordon Gibson

As outlined in earlier articles, the best way to control governments is to keep them small, to have them active only in areas where such activity is a demonstrable net benefit. This quest is for the *optimal size* of government.

The next best means of control is to *diffuse and decentralize* power among different governments and levels of government according to the principles of subsidiarity. But once one has defined the total optimal role of government, and diffused and decentralized as much as makes sense, the challenge remains of mandating, controlling, constraining, and overseeing those governmental entities that pass the above tests.

For this task, the Western world has a settled consensus that the proper means is democracy—government “of the people, by the people, for the people,” as Lincoln said. Democracy is often defined as government with the consent of the governed, though in truth the support is usually better described as

sufferance rather than consent. (No one much likes government, except those who see it as an instrument for shaping the world as their superior wisdom suggests.)

In its rawest form, democracy means that the majority prevail on any given topic. It is a measure of the problems inherent in the democratic idea that this raw form does not exist anywhere. As an ethical matter, such democracy would routinely trample minorities. As a practical matter, the majority desires of any polity tend to be in perpetual conflict—full and free health care coupled with low taxes, for example. So a great many devices have been invented to refine the raw idea.

All modern democracies are constitutional democracies, that is, they are ultimately governed by a set of rules to which every person and every government body is subservient. (Not all of these rules must be written, but they must all be clearly understood and followed).

Moreover, all successful modern democracies are subject to the rule of law, not just of the constitution, but of general law in force from time to time. Agreement on these two things is absolutely fundamental to the implied social contract underlying democratic societies, and to the order and predictability which are pre-conditions of modern life and economies.

Beyond these fundamentals the paths of societies vary. The first branch point is how much decision-making is done by way of direct democracy, and how much by way of representative democracy.

Direct democracy describes the procedure whereby citizens choose policies jointly and directly through voting in a referendum or other means of expressing preferences. Direct democracy has many tools, but the hallmark is direct action by each citizen, unmediated by any representative. What can certainly be said about direct democracy at this point is that it is essential for some things (electing representatives, for example, is the most common act of direct democracy), desirable in others (approval of constitutional amendments, for example) and a useful safety valve within limits in other areas.

It can also be said with certainty that even though it is technically possible today (with remote electronic balloting and so on) to try to decide all questions of governance by direct democracy, this would be utterly impractical. The inconsistency of majority wishes and the tyranny of the majority alluded to above are only two of the reasons. The tolerance of citizens would certainly not extend to such a huge call on their time. The Swiss practice where citizens can vote in a couple of dozen referendums per year may be near the upper limit of direct democracy usage, and democracy



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in that country is still overwhelmingly representative, not direct.

But if, as a practical matter, direct democracy is little used and even little discussed in the Canadian context, it has a small but essential place in our system. Beyond the election of representatives directly, the direct approval of constitutional amendments is required by law in BC and Alberta, and by quite strong precedent elsewhere. The nation-wide vote on the Charlottetown Accord (which of course rejected that constitutional plan notwithstanding its support by the federal government, every provincial government, most local governments and essentially the entire “establishment” of the country from business through unions, churches, and the media) has probably set a pattern which governments will be unable to ignore in the future.¹

Less established in Canada, but equally essential, is the “safety valve” aspect. This does not include referendums proposed by governments, though these have their useful place. Rather, the “safety valve” consists of machinery that can be activated by an outraged public against government action or refusal to act. The two main instruments here are the “Initiative” and the “Recall.” The Initiative allows a group of citizens of a stipulated minimum size to force a vote on any given proposition of public policy. The Recall provides for a vote than can potentially prematurely end the term of the local representative.

While Canadians are familiar with these instruments, largely through reading about their frequent usage in many of the American states, both of these measures are in fact available in British Columbia. They were instituted by the NDP government of Mike Harcourt in reluctant recognition of an overwhelming vote in favour of such machinery in

a referendum proposed by the losing Social Credit government in 1991. The Socreds lost the election to the NDP, but their referendum on instituting the Initiative and Recall was so popular—over 80 percent in each case—that the result could not be ignored.

The NDP government hated the idea, but managed to live with it by bringing in the machinery in formal terms, but effectively making it impossible to use. To effect a recall of an elected member, one must obtain the signatures of 40 percent of the total voters list at the time of the previous election, *even if that list was flawed by containing dead people and the like*—and notwithstanding that the recall cannot be triggered for a minimum period of 18 months by which time many voters have moved elsewhere.

The Initiative can only be activated by obtaining 10 percent of the voters list signatures on a petition in *every* single constituency.

Even against the much disliked (as they came to be) NDP, the Recall was never successfully employed, though its probable success against a Liberal MLA who had written phoney letters to the editor did cause him to resign. And the Initiative option has never come remotely close to being implemented. British Columbia’s new Liberal government was elected on a platform that specifically promised easier activation of these two tools. We have not yet had any specifics; this matter may be one that is assigned to the promised Citizens’ Assembly on electoral reform. That would be a useful way of dealing with the issue for, of course, the output of the Citizens’ Assembly will itself be put to a referendum.

In the opinion of this writer, each of these safety valves should be available to discipline governments or representatives that get too far out of line or fail for too long to address problems, but the machinery should be difficult to use, though not effectively impossible as at present. In addition, legislation passed as a result of an initiative directive from the voters would, of course, need protection from immediate repeal by a hostile legislature, but should also contain mandatory “sunset” provisions for review. Direct democracy is not the voice of God, merely a mass opinion on one issue at one point in time.

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Our society is unused to the tools of direct democracy, and given the awesome power of these tools and the ample possibilities for their misuse, the implementation of them should be undertaken cautiously. But the process should begin. Governments need checks and balances. Direct democracy provides some options.

The next article in this series will turn to the far more commonly-used tools of *representative* (i.e. indirect) democracy.

Note

¹It is interesting that those who claim that “third-party” election expenditure must be restricted on the grounds that money can buy votes ignore the fact that virtually *all* of the advertising money was on the side that lost the vote on the Accord. 📖

The Fundamentals of Democratic Reform— Part V

by *Gordon Gibson*

As discussed in previous articles in this series, once government has been constrained to the smallest optimal size, power has been diffused among levels, and the tools of direct democracy have been put in place as a check to egregious error, what remains for control is still immense. Government spending still totals some 40.7 percent of GDP, actual government resource allocation is some 28.8 percent of GDP,¹ and laws and regulations have enormous monetary and non-monetary impacts on our everyday lives.

The point for the moment is not whether this situation is right or wrong, but rather that government is awesomely important to us. Why, then, do most of us pay so little attention to government, seeing it more as a plague sent to be endured rather than an instrument to be used and controlled?

The problem lies with our main control mechanism, which is representative



democracy. Almost all government decisions are made by our representatives, and, as argued earlier in this series, necessarily so. Our representatives are paid to spend their time gathering information and making decisions on our behalf. Ideally (and this seems obvious but is seldom said) we would like our representatives to make the same decisions in any given case as we ourselves would, were we there and similarly well informed.

That means that representatives should be, well, representative of the whole community, which is a tall order given the diversity of our land. Ideally, therefore, if 10 percent of the population prefer the colour black, 17 percent prefer green, and so on, our legislatures should reflect those preference proportions.

But that is not enough. Our representatives should also have similar incentives to the rest of us. If some of us worry in a very personal way about rising unemployment, or inadequate pensions, or inferior schools, or neighbourhood crime, or high taxes, so, ideally, should

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they. Customarily, of course, our representatives do everything they can to insulate themselves from the harsher incentives of life.

Our system in fact tends to fail these tests of representativeness and incentives in six ways.

- 1) As Nick Loenen has detailed, our current electoral system (so-called "first past the post," or more technically, "single member plurality") makes certain that much of the electorate is not represented in the Legislature in any way at all,² because only the votes for the winner count, and the winner in our system can often take as little as 40 percent of the vote, or even less.
- 2) Entire regions may be very incompletely represented. Only half of Ontarians voted for the Liberals in the last federal election, but (with one exception) only Liberals were elected. The same phenomenon, if less dramatically, benefited the Alliance in the West.
- 3) Once a Legislature is elected, only those on the government side have any power. All constituencies foolish enough to support an opposition person are frozen out.
- 4) Even among the government members, only a few get close to real power, which is to say, into the Cabinet.
- 5) The way Cabinet government works in our system, only the First Minister and a very few close advisors wield all real power—and most of those advisors are not even elected! In other words, our real government is by a minority of a minority of a minority.
- 6) In the matter of incentives and as alluded to above, elected people's in-



centives quickly become very different from those of the people they represent. The money the representatives are spending is other people's money, not their own. Their chief incentive is to obtain good media and get re-elected, not to ensure good government.³ Fortunately there is some correlation between good media, getting re-elected, and good government. However, it is rather weak, and is made even more so by lack of information and government secrecy, the latter being a nigh universal problem in our system.

Indeed, when matters are put so baldly, it is a wonder that our governance is even as marginally adequate as it is at present. That it is not worse is a tribute to the many fine elected men and women who really do want to make the world a better place in spite of the perverse system, and, to some extent depending upon the jurisdiction, a tribute as well to a reasonably professional civil service.

From this viewpoint, the requirements for reform are pretty simple. First of all, the electoral system should be modified to make the Legislature more reflective of the community as a whole. Thereafter, the rules of the Legislature should be changed to ensure that each representative has a real voice. Finally, the incentive package should be changed to ensure a greater concordance between the rulers and the ruled.⁴

The first of these tasks, electoral reform, has been the subject of an enormous amount of study over the years, and a great deal of experimentation around the world. There is no single "right" system, for communities and countries differ greatly in their circumstances. Our Canadian system, for example, is well suited for a primitive society that is

advanced enough for minimal democracy but still needs a "strong man" form of government. We no longer fit that profile.

Appropriate electoral systems will vary according to the relative homogeneity of a society, both locally and across its regions. The best choice will also depend upon not only the education and sophistication of the electorate, but also on the quality of communication links. Most importantly, the rules of election and the rules of the ensuing government structure are very inter-related. Parliamentary democracies where the executive branch requires continuous parliamentary support will have different electoral considerations than republican systems enjoying a separation of powers.

With all of these caveats it is my opinion—and, I believe, a generally shared one—that our system needs to be changed to deliver more representativeness, or "proportionality," as this is often called.

This does *not* necessarily mean what is usually referred to as "proportional representation," or "PR." As Nick Loenen's paper points out, there is a whole family of systems that deliver more or less proportionality, giving greater or less voter control over exactly which personalities are to rule them. These systems also offer greater or less direct geographical (i.e. constituency) representation, as opposed to, say, a nation-wide "list" system.

There are literally dozens of variations. Faced with this complex and important challenge, the government of British Columbia has proposed a promising approach to the question of electoral reform. According to the *New Era* document, there is to be a Citizen's Assembly on electoral reform charged with not

just studying the various options in light of the needs of British Columbia, but then recommending appropriate change, if any. In line with the logic that an electoral system is the proper concern of the citizenry, not the government, the recommendations are then to be put to the people in a referendum, and subsequently implemented if approved.

Thus, there are grounds for believing that the electoral system, at least, is on its way to reform in British Columbia—a reform that may spread to other parts of the country.

But there is another, private electoral system that also cries out for attention, namely, the internal democracy of political parties in choosing leaders and candidates. That will be the subject of the next article in this series.

Notes

¹The difference between these two concepts is transfer payments to persons and organizations. In such cases the actual expenditure decisions of the transferred funds are made by non-government actors. However the government has still raised the money by taxation in the first instance, which has its own distorting effects.

²See Nick Loenen's excellent paper "Selecting Representatives," presented at The Fraser Institute Conference on democratic reform on November 22, 2001, and available at www.fraserinstitute.ca.

³This discordance in incentives is at the heart of public choice theory. A good primer is to be found in Mitchell and Simmons, *Beyond Politics*, Boulder, Colorado: The Independent Institute.

⁴Note that this is in reference to *legislators*. Judges are quite a different thing. They are interpreters, not makers of the law—or at least, that is what they should be—and therefore they need a degree of isolation from ordinary incentives. This is why they have well-paid jobs for life, and are expected to refrain from most ordinary partisan and business activities. ☞

Democratic Reform—Part VI: *Internal Party Governance*

by *Gordon Gibson*

In this part we turn briefly from the constitutional and public dimensions of democratic reform to an examination of the political parties in the system. While of immense importance, they are but lightly governed by the law. Their checks and balances exist largely in their own, private rules.

The important question for our purposes is the internal governance system of the party. Why should this be a public concern? After all, these are private organizations in competition with others, and we might expect that those with the most successful governance mechanisms would be those that endure.

The reality is that competition is very imperfect among parties (for various reasons of linguistic and regional redoubts, voter inertia, media imperfections, vote splitting, bundling of unrelated policies and so on) and such competition as there is comes only at roughly four-year electoral intervals.



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Obviously, such imperfect competition allows party organizations with their hands firmly on the levers of power to do an enormous amount of harm in one or two mandates. In between elections, the only realistic checks on majority governments (with the exception of the tools of direct democracy—see part IV of this series—plus whatever embarrassment can be caused by the media) are their own memberships and political professionals.

While political parties are private organizations, they have an enormous effect on the public interest. In addition, directly (at election time) and indirectly (through unusually large tax credits and funding used for political purposes by politicians in office) the public pays most of the operating cost of these “private organizations.”

That does not mean that the public, acting through the government, should control internal party governance. While an argument can be made for certain minimal conditions of disclosure, this should not be taken too far. Since

governments invariably act in their own interest, much government control over private political parties would quickly come to work to the advantage of the government party of the day, thereby further reducing political competition. But outsiders certainly have a legitimate interest in how parties operate, and what follow are some benchmarks for deciding which parties have internal processes worthy of support.

The first issue is *membership*, which is to parties as citizenship is to nation states. It is absolutely fundamental. Most parties impose trivial conditions of membership. Pay a few dollars, wait a few days, and all the privileges are yours. Even Canadian citizenship or voting age is not normally required in order to join a party. Little specific knowledge or commitment to principle is normally necessary.

By contrast, Canada says a voting citizen must either be born a Canadian and have attained the age of 18 years, or be a landed immigrant (and thus subject to security checks) and resident for at least three years, with the ability to answer some minimal skill-testing questions and a willingness to swear allegiance. Compare the far more stringent requirements for citizenship in Canada with the fact that party members, especially (for now) members of the Liberal Party of Canada, have far, far more influence on who will be the next Prime Minister than ordinary Canadian citizens who don't get to vote for Liberal leader.

In assessing parties, outsiders would do well to note how greatly or how little the parties themselves value membership, in terms of ease of acquisition. It is an observed fact that where adhesion to full membership is quick and easy, “instant” party members often decide who is to be the next candidate in a riding, or who is



to be leader (or prime minister, in the case of the government party). The qualities required to organize thousands of “instant” members do not necessarily relate to the qualities required to be a good leader. (Indeed, they may be the opposite.)

It is a curious fact that people who are long-time, hard-working party members have recently been prepared to give total newcomers the deciding role in the most important decisions a party can make, namely, who is to be candidate and leader. Recent debates indicate this could be changing. However “party bosses” (and there most certainly are such in every party) value the “instant membership” because as professionals inside the party, they can use that system expertly to trump the wishes of ordinary members, should that be expedient. In addition, many believe that large membership campaigns give evidence of party strength and vitality.

Another curious error of some parties is the modern trend toward “one member, one vote,” or the “universal ballot” in the selection of leaders. On the face of it, this sounds very democratic. Indeed it is very democratic, if you adopt the American system of primaries where every single citizen has such an opportunity. But as practised in Canada with controlled membership dominated by “instant” members, this is an invitation to party takeover by special interest groups. For example, people implacably opposed to abortion constitute, by most surveys, around 20 percent of the electorate. This fraction is not enough to win general elections, but *easily* enough to capture any political party with a universal ballot and “instant” membership.

By the same token, the universal ballot allows “swamping” by regions. In the Canadian Alliance for example, the vast majority of members are in the West,

and they elect the leader. But this system is not how votes are counted in a general election.

The question is, should parties count their own votes in a different way than does the legislative system they are attempting to capture? The federal Tories perhaps have a better system in assigning an equal weight to each riding in a leadership contest, irrespective of the number of Progressive Conservative members therein. Since the Chief Electoral Officer weights general votes that way, so perhaps should parties intent upon forming government, unless they can achieve their ends without caring about one or more regions.

*... effectively,
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leaders ...*

The third consideration is party control, if any, of its elected politicians and, above all, the leader. Remember that ordinary voters have essentially no control over politicians between elections. If there is to be any mid-term steering, it can only come from the parties. In fact, there is little party control either. In Canada, parties have almost no influence over their politicians between elections.

To examine first the case of the ordinary member—MP, MLA, or even Cabinet Minister—he or she is normally quite independent of the wishes of party members between elections. This lack of accountability is not necessarily a bad thing. Politicians are elected to serve *all* of their constituents, not simply party members. Indeed, special attention to

party members (policy or patronage favours) is rightly criticized. The wise politician will keep an ear close to the ground on party sentiment, but in practice he or she has a very wide latitude of conduct.

But if it is a good idea that ordinary members are in practice relatively independent of their electors *pro tem*, what about leaders? Ordinary members are subject to a degree of discipline by their colleagues (who can outweigh or out-argue them in caucus), and total control by the leaders, but in the Canadian system the leaders themselves are virtually out of the control of *anyone*. This applies in particular to a sitting prime minister with the immense patronage and other powers at his or her disposal, but it is also true most of the time for opposition leaders.

An attempt to depose a sitting leader is considered very serious in Canada, and the rule is, if the challengers don’t successfully kill the leader (politically) they will surely be destroyed themselves. This tradition has recently been buttressed by the mode of electing leaders. Unlike members, only a leader can claim election *by all of the party*. And if, as is increasingly the case, that election has come about by the so called “universal ballot” (one member, one vote, as discussed above), the leader is doubly impregnable. Who else has such a mandate?

So effectively, there are no party controls on leaders, except *in extremis*. That is how, in an avowedly “parliamentary system,” the prime minister can and increasingly does act with the imperial authority of an American president, but without that office’s checks and balances. This leads to the oft-cited situation of a “four-year elected dictatorship.”

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est companies harvesting timber grown from seedlings are able to undersell BC firms that are using timber grown at no expense to themselves. In the past decade, competitors have captured 25 percent of specialty markets in Japan previously dominated by coastal BC firms, again with the use of high-quality timber products grown from scratch.

Current Canadian forest policies, particularly those governing the use of Crown forests, do not provide the incentives required for private investment in forest management needed to increase the timber supply and to grow the quality of timber needed to remain competitive in global markets. Without the changes to these policies that will provide the property rights needed to encourage such investment, the industry will continue to shrink and, in some regions, eventually disappear altogether.

Much effort has been expended in recent years attempting to come up with new forms of tenure that will provide these rights. In most cases, the proposals have sought to avoid increasing the amount of private forest land in Canada. Proponents of increased private ownership are invariably told that the proposition is unacceptable to the Canadian people and politically unfeasible.

The Canadian public, of course, has never been given the opportunity to engage in an informed debate on the subject. An insight into the public's views on this matter was inadvertently provided by Chief Forester Orchard before a Royal Commission on forestry in 1955. By this point, Orchard's forest management licences had been in place for a few years and he had moderated his objections to private ownership:

I think that at our present stage of development one-half of our lands in private ownership would be a

wise step. I don't think we can do it. I don't think we ever will. We've got ourselves involved; we've sold the idea of Government ownership so thoroughly, we have such a strong minority element of socialism, I don't think the people would ever let us sell the land. (Orchard collection)

The attitude that Canadians have been propagandized into believing fervently in the virtues of state ownership of forests, and so it is too late to attempt another approach, is more or less the attitude that has dominated thinking on the subject for the past half-century.

It is the attitude that prevails today. If this outlook continues to determine our approach to forest policy development, then the forest industry as a key component in the Canadian economy, which it has been since before the country came into existence, is doomed. Alternatively, we could throw the subject open to discussion and see where it leads.

Reference

CD Orchard collection. Transcript of interview #42. UBC Library, Special Collection, p. 120.


Democratic Reform—Part VI: Internal Party Governance *continued from page 24*

There is no lack of theoretical ways to constrain party leaders. In some countries, the caucus elects ministers; it only falls to the PM to assign their jobs. This establishes a collection of true peers.

In other countries, the caucus can and does bring down a prime minister when it chooses. The action of the British Tories *vis a vis* Margaret Thatcher is the most recent but by no means the only example of this. The Canadian Alliance convention came within a few votes of the required two-thirds majority of adopting this system last month.

In Canada there have been proposals (in the Tory Party today, and in the Liberal Party by the 1985 Reform Commission) for a "National Council of Presidents" which would meet at regular intervals to consider the works of the prime minister. While normally supportive, the council could greatly embarrass the leader with a vote of no confidence in this or that policy, or even express no confidence in the leader. The Liberals declined to adopt the reform. The Tories will consider the idea this coming August. The federal NDP and the Parti Quebecois have machinery similar to this, and it is notable that it has very seldom led to public embarrassment. The very existence of the power causes any sensible leader to take more account of party views.

As in all human systems, checks and balances are a very good idea. They are minimal in important Canadian political parties. Something may be learned from this. The most successful parties in our system have, in effect, been paramilitary organizations, the federal Liberal party above all. This is so because absolutely rigid discipline is more perfectly adapted to survive in the perverse incentives of our political system. This brings us to the central issue of Parliamentary reform—i.e., changing that system—for our next article.

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Democratic Reform— Part VII: *Representation, Oversight, & Adversarial Governance*

by Gordon Gibson

In the seventh of this eight-part series of articles on issues of democratic reform, we examine the elected machinery of government. Legislatures have as their main purposes, first, the setting of broad policy (through the imposition of laws, taxes and expenditures) and, second, the oversight of government in its execution of those purposes. Our Canadian legislatures achieve the first but largely fail in the second function.

In a democracy, legislatures are also to be representative of the governed. They may be wise or not, consistent or not, depending on the general wishes of the voters, but they must at least be representative. Canadian legislatures often fail this test¹ because they are normally dominated by one person, the First Minister.²

As well, in a *parliamentary* democracy, legislatures are expected to furnish the senior personnel of government. This function is nominally discharged—

ministerial posts are invariably filled and salaries drawn—but many of the personnel are clearly inadequate by any private-sector standard. A strong public service and a few talented elected people can generally make the system work. But, as representative institutions, our legislatures are very imperfect.

In a complex modern society where big government significantly affects the lives of ordinary citizens, this matters. And, naturally, the bigger the government, the more it matters. Surveys show very clearly that most (70 percent) think there is corruption in federal and provincial governments. Regional alienation is endemic at the federal level. Waste and inefficiency are widely assumed as the natural order of things governmental.

There is a lack of trust and so little apparent representativeness to the system that most citizens assume there is little they can do about any given issue and opt out. Thus, we see a decline in voting participation (now below 60 percent at



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the federal level, and falling) and a rise in what the public-choice theorists call “rational ignorance”—the chilling view that it is not logical to waste one’s time on that which one can do nothing about.

In addition, the perceived nature of our legislatures as they currently exist discourages people of talent from offering their services. The extremely adversarial nature of the system (not only between political parties but with the media as well), the almost total lack of influence unless one is a First Minister or senior advisor, and the relatively low compensation outweigh the opportunity for public service and ego gratification that are the principal rewards.

So, the system does not work well. Our society is in tolerable shape in spite of our legislatures rather than because of them. Thus, the constant call for parliamentary reform. That there has been no significant reform for over a century³ (indeed by many measures matters have deteriorated as governments have grown and First Ministers have concentrated power) gives ample testimony to the difficulty of the task, even though, as we shall see, parliamentary reform is in theory one of the easier democratic reforms to make.

The direction for useful parliamentary reform⁴ can be gleaned from a consideration of three of the above words: “representative,” “oversight,” and “adversarial.”

“Representative”

A main reason why parliament is not representative today is because our MP or MLA, the only person we can directly influence, normally has virtually

no power. As noted in an earlier article, we remain at the primitive democratic Stage One wherein the only important purpose of members is to be counted to determine who shall be the First Minister, which worthy (with senior advisors) thereafter makes all important decisions until the next election. Government members may be afforded influence over marginalia; opposition members may wield some influence through the power to embarrass; but, their combined effects are trivial. Count the column inches devoted to the policy views of backbencher Mem-

Count the column inches devoted to the policy views of backbencher Member X.

The answer is “zero.” Must it be so? Count the column inches devoted to the views of Congressman X. The answer is “many.”

The press has it right.

ber X. The answer is “zero.” Must it be so? Count the column inches devoted to the views of Congressman X. The answer is “many.” The press has it right.

The answer to the problem of “representativeness” is simple: it is the empowerment of the ordinary member. The technical means of achieving this include above all a reduction in the disciplinary carrots and sticks available to the First Minister, which range from appointments (to Cabinet and elsewhere, such as Committee assignments) to such minor but personally important things as foreign travel or desirable office space. Finding the best balance is a matter for much thought. For example, in some countries the government caucus chooses the Cabinet, leaving the First Minister only the

assignment of tasks. Committee chairmen should undoubtedly be chosen by members, not the First Minister.

Of first importance in achieving representativeness is a severe narrowing of the doctrine of “confidence”⁵ so that members are genuinely freed to vote as they wish on many more measures. In addition, the iron grip of the government on the management of House business, and especially the work of Committees needs much loosening, with the power shifted to ordinary members.

But, a sense of balance must be retained. We must guard against the creation of 301 (or however many, in the provinces) political entrepreneurs, trading favours and log-rolling for pet projects, trashing the treasury, and over-regulating the country in the process. The idea is certainly not to create

bigger government. That would fly in the face of the fundamental proposal at the beginning of this series that the best and easiest democratic reform is indeed *smaller* government.

From that point of view, a major virtue of the present system is that of overall *responsibility*. A government still must bear the responsibility for that overall direction, which implies the tools to do that job. For example, a relaxation of the rule that ordinary members cannot propose expenditures (only the Crown has this prerogative) would lead to disaster, unless at a minimum the same measure raised taxes or reduced other expenditures to compensate. So, the lesson here is that the balance of power must be changed to increase representativeness, but it must be done with caution.



No such restraint is required in reforms connected with the words “oversight” and “adversarial.”

“Oversight”

“Oversight” is the monitoring function of elected representatives vis-à-vis the work of government. Tax monies are to be voted for such and such. What exactly is the plan? How will results be measured? Who is responsible? And, after the fact, did it work as planned?

Most citizens believe that between Parliament and the Auditor General such oversight is routine and effective. It is not. Committees lack staff resources, continuity of membership, and expertise to do the job at the political level.

Even when they try to do their job, they are often ignored.⁶

The reports of the Auditor General are embarrassing; nothing more. No one is fired, basic policies are seldom changed, no consequences need flow.

Committees do not cut the budgets of under-performing departments or programs and, in the intensely partisan atmosphere of the legislature, the main object of a committee’s majority is to protect the government, not the public. It is as simple as that, and that is what needs to be changed. Permanent and wide mandates for committees, expert research staff, control by the committee of work plans and choice of Chair, and the development of an actual practice of amending legislation and cutting budgets would make an enormous change in the culture of government, much for the better.

And, of course, fundamental to oversight is access to information. The pervasive practice of secrecy by the Canadian government is its best weapon in the control of debate. Policies are

always presented as the only logical thing to do; alternatives that may have been debated internally are suppressed. Results, when reported, are almost invariably selected to put the best face on things. Yet, a huge amount of information exists within government that would be a great help in assessing the formulation and execution of policy. We shall return to this subject of information in the final article, “Constraints on Government,” but for now it suffices to note that committees already have in theory and in law all of the powers required to extract most of the information they need from government if they could ever give up their assumed role as defenders of the government instead of the taxpayer.

... legislatures in the Westminster system are based on destructive competition.

“Adversarial”

Finally there is the word “adversarial.” Outside of politics and the courtroom—two famously unproductive venues—our whole society is built on the cooperation of voluntary transactions. This includes the idea of competition, but we try to set the rules so that the competition benefits markets rather than rigging them.

In Canadian legislatures, the opposite applies. Governments, of course, are based on coercion rather than voluntary transactions. But worse, legislatures in the Westminster system are based on destructive competition. To be able to achieve anything one must be in government and preserve that position at all costs; to gain government one must destroy the one currently in place. In a vicious cycle, this forces our

representatives constantly to choose sides, to contest rather than cooperate, and to distort and misrepresent issues to the public in the pursuit of advantage. That is the system and the lion is not about to lie down with the lamb. However, there are some things that can be done.

Some of the above recommendations that would allow representatives to act as free men and women and wield real power in many situations would inevitably cause the gradual formation of associations and coalitions across parties in various policy areas. But the main driver of the adversarial system is the rule of “winner take all.” Where there is no second prize, the competition is single minded and ugly, and the public

is forgotten. A key parliamentary reform is the development of “second prizes.” These already exist in minor ways: the Opposition is entitled to set the subject for debate on a few selected days and parties are entitled to designate their own committee members.

There should be much more, however. For example, the Opposition party normally has received the support of at least one-third of Canadians and the opposition parties together generally have over half of the vote. Why should not the Leader of the Opposition have the right of appointment of some small fraction of the members of various Boards and Commissions, as is the practice for the minority party in the United States? Quite apart from anything else, nothing readies a group for government like genuine experience and responsibility beforehand. Why should not certain non-partisan (or so one would hope) committees of Cabinet like those responsible for CSIS and the RCMP or National Defence include an Opposition member, subject to standard confidentiality rules?

Clearly, in the political climate of today such things are unthinkable. Given the current immense concentration of power in the First Minister, this will change only as a result of a great leader or, more likely, the gradual reforms insisted upon by empowered ordinary Members over time.

In the end, parliamentary reform is the simplest thing in the world. All of the power to achieve it lies within Parliament; it need only decide. But, until parliamentarians are truly free to represent those who elect them—who would rather have cooperation and oversight and representativeness rather than contestation and secrecy and one-man rule—significant reform is unlikely and our best hope lies with constraints on government, the subject of the final article in this series.

Notes

¹ This comment does not apply to municipal councils and the like.

² They may also fail the test because of the manner of selection of representatives, see Part V on electoral reform.

³ There are a few notable exceptions such as British Columbia's fixed election dates and the experiment with caucus policy input in Alberta.

⁴ Retention of the Westminster system is assumed. The option of a presidential republican system seems to have little support in Canada for now, except among Quebec sovereigntists.

⁵ The draconian notion that the First Minister may or even must call an election in response to any defeat of his legislative or budgetary initiatives, this being the ultimate disciplinary tool over people who fundamentally despise elections.

⁶ The Scrutiny of Regulations Committee has for six years found that the Aboriginal Fishing Strategy regulations are unlawful. The courts will have to sort it out. In a proper system the Committee would simply have cut the program pending government repair of the defects. 

Democratic Reform— Part VIII: Constitutional Constraints

by Gordon Gibson

This series ends as it began in referring again to the basic underpinning of democracy, namely, the sovereignty of the individual as the ultimate authority. Government's job is to blend the individual sovereignty of thousands or millions of people with the common good where—and only where—there is an argument that coercive transactions inflicted by a government monopoly can do a superior job to voluntary transactions through the free market.¹

Reference to the guiding star of individual sovereignty brings by necessary implication the doctrine of *subsidiarity* mentioned earlier in this series as a spur to decentralization. It leads by necessary implication to the above noted principle of minimizing coercive transactions, i.e., optimal government size.

But once we have agreed on some size of government, large or small, what then? That has been the main focus of these articles, as they have addressed such issues as electoral reform, parliamentary reform, internal party governance and so on.



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In considering all of these areas for potential democratic reform we have looked at many solutions that could make things better, if still far from perfect. In addition, though, we have noted that those in power under existing rules will always resist changing those rules that act to their advantage.

Recognizing these inherent difficulties with governance leads one to consider enhancing *constitutional constraints*—the rules governments must follow in exercising their power whether they like it or not—and that will be the subject of this concluding essay.

The most fundamental constitutional constraint of all is the oldest, namely, the rule of law. Centuries ago rulers, even despotic rulers, noted that order and predictability, including predictability of the rulers, made for better outcomes. While surely not always observed even in our own times, and even in western societies, the idea of the rule of law is now settled wisdom. What remains is fine tuning, but that is very important, as people who bought early television sets will recall.

Constitutional constraints amount to elaborations of the laws that rule governments. These laws are required because the normal incentive of governments is to maximize their power and to minimize their vulnerability. In fact, the interests of the citizen argue for exactly the reverse, which will never happen without rules to that effect.

The most fundamental check on government springs from citizen knowledge. We must know what governments are doing, and why. We must know this in a timely way. Then, as soon as possible after the deeds are done, we need measurement of the results. No board of directors of even something so relatively unimportant as a medium-sized corporation would settle for anything less. Why should we not demand the same—and more—of governments?

Governments hate this idea. Accounting for their efforts increases their vulnerability. If people know what they are up to before it is done, they may try to stop it. If people know the alternatives available, they may rationally want to go in another direction. If people have the measurement of the results, the results may be seen to be very inadequate. Secrecy is the shield against all of this, and Cabinet government—the Canadian standard, aside from the far more trusted municipal sector—is founded upon secrecy.

So after the rule of law, which we have, the next absolute essential is a default right to *all* government information in a timely fashion, except that which can be reasonably be held back on the basis of privacy or security—and even those areas should be subject to inspection by judges or information commissioners to check the propriety of the classification.



We should work towards Freedom of Information laws which provide nothing less. Existing laws are but beginnings.

To practitioners this may seem an impossible dream, for the following reason. Our system of governance is highly adversarial. It is the Opposition's job to destroy the government. The Opposition (much aided by the media) loves to characterize indecision as weakness,

... progress will be slow ...

even though decision may not be timely, and to characterize genuine policy debate as evidence of internal splits, even though significant policy debate is really a sign a government is doing its job. For most practitioners, honesty and free information are, in fact, one way tickets to political oblivion. One must manipulate the facts and data, and conceal or "spin" less than perfect outcomes in the interests of survival. Besides, without secrecy how could one ever talk frankly?

This view is so deeply embedded that progress will be slow. At the federal and provincial levels of government openness as a policy has never really been tried. One day we will see a government somewhere that reaches the reasonable conclusion that if it takes the public into its confidence, the public might, in turn, be more supportive of policies as they emerge, and more tolerant of problems as they arise. Most people are pretty reasonable about such things. A clever government that followed such a policy—and that listened carefully to and shared power with the Opposition—might well endure far longer than the two or three terms we are used to.

One thing is certain: almost all current secrecy is *not* required in the public interest. Most people who have sat in Cabinet rooms will admit this. For several years as an assistant to a federal Cabinet minister, and then later to Prime Minister Trudeau, a part of my job was to review all Cabinet documents for their political implications. I can say with certainty that based upon that sample, 95 percent of all Cabinet documents could be published, and far from damaging the public interest, the publication of them would hugely enhance the public dialogue. Governments are treasure houses of policy information and arguments that you and I are not to know.

We need to keep up the pressure on our representatives. Since most representatives don't mind the idea of forcing *others* to be open as long as it doesn't involve them, some momentum, some further progress can gradually be achieved, as indeed FIPA (the Freedom of Information and Privacy Association of BC) has demonstrated in a nine-two decade lobbying effort.

Beyond freedom of information, a number of constitutional constraints have proven wildly popular with citizens. I refer to those human and political rights embedded in the Charter of Rights and Freedoms. The Charter has its critics, largely because of judicial activism in the playpen of deliberate ambiguities left in the law by politicians unable to agree on such things as minority rights. In addition, so-called "positive" or "collective" rights can provide an opening for even greater judicial activity, and must be approached with great caution. But the idea of a law that no government can over-ride is very popular.²

As noted by my colleague Herb Grubel at The Fraser Institute conference on democratic reform in November 2001, a

most important omission from the Charter is any reference to property rights. Such rights were included in early drafts by Prime Minister Trudeau³ but were removed at the insistence of the NDP government of Saskatchewan (certainly acting in concert with the views of the national party) as the price of assent to the overall deal. A property rights clause would, of course, inhibit much of the confiscatory policies of activist governments.

But as has so clearly been demonstrated, not only by free market writers but by the whole experience of the twentieth century and the failure of fascism and communism, property rights are indeed the bulwark of freedom, quite apart from their demonstrated economic and environmental benefits.

Is there any chance of getting a property rights clause? It used to be thought that amending the constitution (of which the Charter is a part) was so difficult as to effectively be impossible. This view has been importantly modified by the decision of the Supreme Court of Canada in *Re Quebec Secession* (1998) wherein a unanimous bench held (at paragraph 69) that: "The Constitution Act, 1982 gives expression to this principle, by conferring a right to initiate constitutional change on each participant in Confederation. In our view, the existence of this right imposes a corresponding duty on the participants in Confederation to engage in constitutional discussions in order to acknowledge and address democratic expressions of a desire for change in other provinces."

In other words, if we can get just one province (Alberta might be a candidate) to officially support the addition of property rights to the Charter, the others must discuss the idea in good faith. This being the kind of idea that gradu-

ally accretes support and seldom loses it, a critical mass will build. (It would, of course, be useful to get some sort of a commitment from federal leadership candidates as the various parties go through this cyclical exercise.)

There are other devices at a sub-constitutional level that can have an important constraining effect. The independence of the Bank of Canada is a little appreciated example of this. The protection of the currency against inflation and against would-be spendthrift and inflationary governments is one of the rocks of our society.

If we could add to that anti-inflationary bulwark a constraint against the depreciation of our currency internationally, the foundation for economic security and prosperity would be much enhanced. The idea of a North American currency union speaks directly to this issue of constraints on governments, for as members of the European Union have agreed, and found to be the case in practice, a common currency is a major discipline on spendthrifts. Just as provincial governments are subject to financial disciplines, so it would be useful for Ottawa to be so constrained to a greater degree than at present.⁴

Along the same line, federal balanced budget legislation would be a good addition to the experiments in this area by several provinces. While it is true that one Parliament cannot bind its successors by such a law, the very existence of the law acts as a tripwire, bringing at least some embarrassment down upon a future government that crosses the line.

Another way of imposing useful constraints on legislatures is adhesion to international treaties, particularly those that relate to trade and capital flows. NAFTA and the WTO are useful in this regard, as is our membership in such

bodies as the OECD in terms of international statistics and comparisons.⁵

Finally in this brief survey, one should note the concept of *supermajorities*. This idea says that some things are so important that the usual standard of 50 percent plus one of those voting is an inadequate hurdle. For example, many argued that Quebec secession could not properly be validated by 50 percent plus one. In many countries constitutions can only be amended by supermajorities of 60 percent, or even two-thirds of those voting. Other schemes call for 50 percent plus one of the entire voters' list.

Whatever the arithmetic, the idea is that important change should require a greater consensus. A balanced budget law, for example, could be given greater stability by inclusion in the list of items requiring a supermajority for change. Use of the "notwithstanding clause" might usefully be constrained in the same way—which curiously would probably make its use more legitimate.

Standing Orders, which are the rules of legislatures designed *inter alia* to protect the rights of the Opposition should certainly require supermajorities for change. The same might be said of electoral law, or expropriation legislation. Other examples will occur to readers. The idea is not to make government impossible, but to ensure that serious measures ("serious" in the sense that they are about the rules of the game) can only be changed by way of serious support.

Is all of this because government simply cannot be trusted? Not at all. The whole idea is to ensure that governments *can* be trusted, because we have built in enough checks and balances that we can be pretty sure the system will work.

There is no doubt that good people can make just about any system work, but

there is also no doubt that bad systems attract bad people, who then get about their business. It is typical even of good people in government, people who want to make the world a better place, that they will invariably see government as the answer to every problem. It is not. That wisdom ought to be chiselled in stone above the entrance to Parliament.

Notes

¹This is not the place to debate the size of such a "natural government sector," but some free market economists have suggested in the area of 20 percent of the economy. The subject is very murky, because of the impact of regulations, which do not show up as a fraction of GDP, and transfer payments, which cannot be considered as GDP-neutral because of incentive effects. And, of course, when one (properly) insists that there are important values not captured at all by economic measures, another complexity is added.

²The public opposition to the "notwithstanding" clause is an example of this—even though in my opinion this clause was a wise addition as a little-used safety valve.

³Interestingly, Trudeau also proposed a Direct Democracy referendum method for amending the constitution, which almost all provincial governments shot down in horror. The idea that the constitution belongs to the people is not congenial to many in power.

⁴There are, of course, many other arguments for a currency union than this constitutional one.

⁵Big government activists have quite a different agenda in respect of international treaties. They decry those treaties, such as NAFTA, that limit government action at home. They press for those international treaties such as the International Criminal Court, even though there is no international political system to guide such a body, because it would expand the power of government generally. The Kyoto Accord is an interesting mixture of motives. While on the one hand it constrains local governments to meet certain targets, on the other hand it vastly increases their powers to interfere in the lives of citizens. 