

PARLIAMENT, INTERGOVERNMENTAL RELATIONS, AND NATIONAL UNITY

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INTRODUCTION

In 1997 the privy council office commissioned me to make a study of "Parliament and National Unity". For that study I was asked to examine two issues central to Canadian politics and governance: first, what the role of parliament is in national unity and what prevents parliament from having a stronger role in this crucial Canadian concern; and second, what reforms might strengthen parliament's role in promoting national unity. I was delighted and excited to do this study. My previous work on the Canadian Parliament had focussed on parliamentary institutions themselves, and, perhaps because national unity and parliament both in theory and in practice are only distantly related, had neglected the relationship between parliament and that second vital Canadian institution for national policy-making, federal-provincial relations.

I found as I dug deeper into these issues that to a large extent the weakness of parliament in federal-provincial relations was in part a sub-category of its weakness in most matters of investigation, accountability, and policy-making. Domination by the executive and party leaders, excessive partisanship, and short-term amateur membership, all hamper parliament in national unity as they do in other areas. But added to this is the complication of combining the Westminster style of parliamentary government with federalism. Though I have not explored the matter in any detail in this paper, it is clear that, to a large extent, the problems of executive domination and weakness of private members and opposition found in both the federal and provincial legislatures in Canada has been exacerbated by the

corresponding strength of federal-provincial relations. These intergovernmental relations have developed as an extension of the 'prerogative' powers of the crown, using prerogative in the sense of matters that the crown (executive) can perform on its own, without reference to parliament except where legislative support is necessary. Viewed this way, federal-provincial relations are an extension of the traditional powers of the crown to act in matters of state, including the conduct of foreign affairs, negotiation and signing of treaties, indeed to declare war or peace, without reference to parliament. Federal-provincial relations are more like treaty-making than they are like the normal legislative processes. Both provincial and federal legislatures got left out of federal-provincial diplomacy as it grew into such an important part of Canadian politics.

At times, as I explored the issues, I was tempted to say that Dicey was right first time round, and that federalism and Westminster style parliamentary democracy are indeed incompatible. Certainly his resolution of the problem, that the parliaments at the two levels are sovereign and supreme in their own sphere of jurisdiction - the water-tight compartments school of federalism - has long since become obsolete and unworkable. Canadian politics in the late twentieth century are more marked by the importance of inter-relationships, linkages and overlaps, both organic and political, between the provincial and federal sectors than they are by their separation.

Parliament remains the weak sister among our major political institutions. In looking at parliament in the context of national unity, I was forced to reconsider some of my previous views. One of these is my scepticism about proportional representation, which as I discuss in the paper is one of the types of reform that might strengthen parliament's role in federal-provincial relations.

Unexamined in the paper, but prominent in my own mind as I was writing, was the question of whether some system of proportional representation isn't desirable in its own right, regardless of its effect on national unity. My inclination to argue for some seats in the

commons based on proportional representation comes not from the standard argument that a house based on proportional representation would better reflect opinion in the country than the present system, because I'm not convinced that it would. Nor do I believe that a system exclusively based on proportional representation would provide cabinets that balance opinions better. In fact, as studies of both the theory and practice of coalitions have shown, a system of pure proportional representation is likely to produce cabinets even more skewed from a balanced representation than our present system.

Rather my desire to see some of the members of the commons selected through proportional representation comes from my concern with the weakness of the individual member of the house in comparison with the strength of party organization and leadership, and of the rapid turnover of MPs and the short-term nature of parliamentary representation, which are to a large extent caused by a fickle electorate. In Canada, as well, rapid turnover is caused by far more members choosing not to run again than in other countries. Canada loses more members for this cause of personal choice than Britain or the United States lose from all reasons combined: death, defeat, and desire. Some system of proportional representation, because of the additional security and prestige it would provide, might well make a career as a private member of parliament more attractive and desirable than it now is.

An electoral system which combines our present single-member simple plurality model with some elements of proportional representation could well lead to longer serving members of parliament with more independence from party leadership. A secure career pattern for politicians would be more attainable than at present, and some members at least might have a power base within the electorate that would make them less vulnerable to the wrath of party leadership when they wish to dissent publicly from party lines. Interesting and fruitful though those lines of inquiry might be, they were not directly relevant to

this paper, and a close study of proportional representation and its effect on the house will have to wait for another day.

But the fact remains that the greatest single weakness in the Canadian parliamentary system is the role and career of the individual member of parliament. In May 1998, Canada was faced with the distasteful experience of a prime minister claiming that the vote on an opposition motion objecting to a settlement reached by federal and provincial governments on the illness of Hepatitis C caused by blood transfusions was a matter of confidence, and forcing its supporters to defeat the motion, even against their own consciences, only to have the agreement fall apart because some provinces bowed to public opinion, and demanded that the settlement be revised. This vote clearly was not one of confidence. The government itself admitted that if they lost the vote they would not resign. Calling it confidence was simply an excuse for demanding compliance - in effect once again justifying the claim that members of parliament are nothing but trained seals. Surely this kind of macho domination by party leadership over private member, whether in a government or an opposition party, is unhealthy. Surely the strongly held views of members of parliament should be taken more seriously. The men and women Canada sends to parliament by and large are of very high calibre; the system does not allow most of them to contribute their best. Making something a confidence issue that clearly is not, and then having to back down because of public opinion, demeans government, the individual members, and the institution of parliament itself.

It is not possible to examine the role of parliament in national unity without getting into the hoary chestnut of senate reform. I don't think that there is any doubt that the Canadian senate needs reform at the present time, just as it has needed reform over a century and a quarter ago, and at all times in between, and that the key area for reform is the procedure for appointing senators. Though I don't go into the arguments pro and con in any detail in this paper, I do not

have much sympathy with the concept of a 'Triple-E' senate. I do not think that the senate should rival the commons in powers, nor do I believe that the provinces should be equally represented in an upper chamber. But I do, as I discuss in the paper, believe that useful senate reform is not only desirable but possible without any great fuss over constitutional amendment.

What I propose is a 'Double-E' senate, one that both is elected and has effective and legitimate powers. These powers should be more limited than those of the present senate, though not so limited as was proposed in the Charlottetown Agreement. The Canadian senate in the 1984-96 period attempted to serve as an unofficial opposition, in part because of the weakness of the opposition in the commons. My main conclusions from the experience of these twelve years are, first, that the senate truly does need to be reformed, and second, that the senate cannot serve as a legitimate opposition. This very important period in the Canadian senate's history has received surprisingly little attention from scholars. I have made a chapter-length study of it elsewhere (Franks 1999), but so far it has not received the book-length examination it deserves.

Canada's inability to reform its senate, especially in comparison with present British reforms to their upper chamber, is another in the long list of testimonials to the rigidity and inability to adapt of our parliamentary-cabinet institutions. The state of reform of the machinery of government in Canada can best be described as one of paralysis on every major front, the constitution not excepted (see Franks 1995 (a)).

All the reforms I propose in this paper can be achieved without constitutional amendment. That was a condition I imposed on myself, largely because I was writing in the aftermath of the unhappy failure of the Charlottetown Agreement, and felt that this second miserable failure to make comprehensive changes to the constitution was one too many. In fact, virtually every desirable major reform to the central machinery of

government, including our parliamentary-cabinet institutions, can be made without amendment to the constitution. The only exception, as far as parliament is concerned, would be equal representation of the provinces in the senate. Since I do not think that this is a desirable reform to begin with, I do not consider this to be much of a problem. Our parliamentary institutions have the potential, through legislation, for being far more flexible and accommodating than past experience would suggest and than is generally appreciated.

At the same time, I remain firmly convinced that the road towards reducing the tensions and problems of national unity is the same one that must be followed to strengthen parliament itself: to ensure that the individual elected members of the house of commons become stronger, more independent, and more influential spokesmen and spokeswomen for the people they represent. After all, the key issues in furthering democracy in Canada aren't about strengthening governments, whether federal or provincial, in their contests with one another, or within their respective legislatures. Governments, their executives, and in particular prime ministers and premiers, are already far too strong.

Democratic reform in Canada is about strengthening the individuals who make up the country, not about governments, and the only forum in which all Canadians collectively are even close to being equally represented is the house of commons. They are not equally represented in the senate, and they would be even less so than they now are in a Triple-E senate: this sort of senate reform is about strengthening provinces, not citizens. Nor are they equally represented through executive federalism, which is about strengthening governments. The individual members of parliament, working together in committees, discussing in debate, and expressing their varied views on the issues facing Canada both in the national forum of parliament and outside, and listening to the people of Canada who vote them into office, that alone can be the true and effective counterbalance to the forces of division and

separation. Ours is a system of representative government, in which all citizens should, through their elected representatives, have an equal voice in the nation's affairs. The focus of reform on the senate and executive federalism all too often obscures the importance of the crucial place of the house of commons, and the need to reform it through strengthening the individual members.

A stronger role for the individual member of parliament would mean a stronger house of commons. If this could lead to a situation in which the people of Canada felt that their elected representatives in Ottawa can adequately express the concerns of their constituents, that these concerns would be listened to and accommodated, and that their members of parliament in committees and elsewhere could work together to forge better government for Canada, then the most serious of the problems of national unity would be alleviated.

Despite the urgency of problems of national unity, Canada has been slow to reform its machinery of government. In fact, in many areas of public management and administration Canada lags behind its sister Westminster parliamentary governments in Britain, Australia, and New Zealand. New Zealand has adopted a system of proportional representation, and Great Britain is seriously considering doing so. Great Britain is reforming its upper chamber, and the representation of Scotland and Wales. Why Canada suffers from this institutional inertia is not clear. Change of any sort that would redistribute functions, power, and responsibility between government and parliament seems to be perceived a threat to the holders of power, regardless of which particular party holds office. Our present constitution, flawed though it clearly is, appears impossible to change in view of the mistrust and opposition proposed amendments evoke in the various stakeholders, including the public at large. The changes I have explored in this paper can be accomplished without constitutional amendment.

Removing the formidable obstacle of constitutional amendment does not, however, whether for better or for worse, make reforms any more likely to be implemented. In fact, in view of the reluctance of successive Canadian governments to do anything serious to enhance the position and role of parliament and of the private member, or to treat the senate as much more than a sometimes bothersome pasture for aged party war horses, a far more likely prospect than reform is that Canada's institutions for governance will look, well into the next century, much as they do now.

At the same time, I am convinced that it is far too easy for would-be reformers to lament and curse a world too blind or too inert to accept their brilliant and progressive proposals. In my darker moments of frustration with Canadian politics I take comfort from Samuel Johnson:

Boswell: So, Sir, you laugh at schemes of political improvement?

Johnson: Why, Sir, most schemes of political improvement are very laughable things.

Perhaps we would-be reformers should be grateful, not frustrated, that our wise advice is ignored. Otherwise we might join that huge category of very laughable things. This century has suffered more from visionaries who succeeded in putting their visions into practice than it has from those who never had the opportunity to try. According to Thomas Merton, Berdyaev pointed out that in the old days we used to read of utopias and lament the fact that they could not be actualized. Now we have awakened to the far greater problem: how to prevent utopias from being actualized. My mistrust of a Triple-E senate is big enough for me to fear that particular utopia. But I still believe that there are other, more fruitful lines of improvement that Canada should pursue. The reforms proposed in this paper are, after all, pretty modest in comparison with, for example, the mammoth shake-ups to the British parliamentary system being caused by the advent

of the European Economic Union, and the creation of legislatures for Scotland and Wales.

There is a danger in writing a paper like this that its proposals for reform will be misconstrued. This is especially a risk where proposals form a package which must be considered together. My proposals for senate reform are especially vulnerable to this risk. Some commentators on the paper have picked out the proposal for an elected senate, and trumpeted that, without noting that I only support an elected senate as part of a package with other major reforms, especially limitations on the senate's ability to delay and obstruct government business. Fine nuances don't work with the mass media. Nor, much of the time, do coarse nuances.

There is also a temptation, in preparing a work for publication some years after it was written, to revise, correct, and amend. With one exception I have resisted this temptation. The exception is the section on "The Crown, a Neglected Branch of Government" which I added in to rectify an omission in the original version. Apart from that, the paper stands as originally written, with all its warts and blemishes.

An enterprising reporter garnered a copy of this study from the privy council office through the freedom of information act (the act must have worked this time despite the common complaints about problems with it), and newspapers across Canada headlined the resulting story "Canada Sleepwalking Towards Disaster". This forced me into second thoughts, and made me wonder whether I hadn't overstated my case. After due deliberation, I decided I hadn't. Canada has problems with its machinery of government that need redressing, but the general paralysis over reform prevents change. The federal and parliamentary systems seem to be functioning reasonably smoothly in May 1999, but any number of flash points, including another referendum in Quebec, the growing crisis in medicare or post-secondary education, environmental disasters, or simple cussedness in

politicians and the electorate, could produce another crisis of federalism. Canada will be no better prepared for it than it was in the past. We relive our mistakes. We don't learn from them.

This paper was originally commissioned by George Anderson, Deputy Minister Intergovernmental Affairs, of the Privy Council Office. Leslie Seidle, Director General, Policy and Research, Intergovernmental Affairs, was of immense help in seeing it through to completion. I am grateful to the Social Sciences and Humanities Research Council for their support of my research into parliamentary government in Canada, on which much of this paper is based. John Meisel, Ted Hodgetts, and Ron Watts read the paper in draft and offered invaluable advice. I am also grateful to Harvey Lazar of the Institute for Intergovernmental Relations at Queen's University for encouraging and supporting publication. Needless to say, the faults in the paper remain my own. Needless also to say, the views expressed in this paper are my own, and not necessarily those of the Government of Canada. Governments consult widely, and invite the views of a wide variety of people in the long and arduous processes of policy formation. This is especially true in reform to crucial areas of our political system like the institutions of parliamentary government. My voice is just one among the many the can, will, and should consult in the quest for improvement. I am grateful for having had the opportunity to work through and share my views on Parliament and National Unity with the government and the broad Canadian community.

PROBLEM DEFINITION

To talk about parliament, intergovernmental relations, and national unity in the same breath at first glance seems to make about as much sense as writing an essay about three authors as different as Jane Austen, Ernest Hemingway, and Margaret Laurence. All three wrote novels, and wrote in English, but apart from that their differences are greater than their similarities. There might be a

point to discussing them together, but it would certainly not be to show how they influenced and related to one another. Similarly, in Canada, the tradition has been for parliament to have little to do with intergovernmental relations, and for national unity to be a concern of the federal executive rather than the federal parliament. Discussing them together perhaps highlights the fractured and complex nature of Canadian politics, but it does not, at least at first glance, lead to strong conclusions about how one influences the other, or how changes in one might change the others. But parliament is, at least in theory, the central focus for national political debate and life, and the conundrum of its role in intergovernmental relations and national unity is well worth exploring for two reasons: first, to identify the causes of the minor role of parliament in intergovernmental relations and national unity; and second to explore ways of strengthening this role.

Exploration of the small role of parliament divides into two subsidiary tasks. The first is to consider the argument that the Canadian Parliament is weak in most of its roles, partly because it shares in the world-wide decline of parliaments generally, and partly also because of special Canadian factors that make the Canadian Parliament especially weak, even in comparison with other parliaments based on the British Westminster parliamentary-cabinet model, where legislatures have a much less influential role in policy-making than, for example the most frequently used comparison, the American Congress. The second task is to examine the argument that the Canadian Parliament, regardless of how weak it is in other spheres, especially policy-making, is particularly weak in dealing with intergovernmental relations because of the way that these relations are conducted in Canada. Consideration of proposals for improvement similarly must address two issues: first, how to strengthen the Canadian Parliament; and second how to enable parliament to contribute to national unity, and in particular whether this can result

from giving it a more prominent dealing with intergovernmental relations.

The approach adopted in this paper is, in political science terms, 'institutional' (i.e. not 'behavioural'), which presupposes that for its purposes national unity ought also to be considered in institutional terms. A working institutional definition of successful national unity is: a system, structure, and processes of making collective decisions that, over time, are considered legitimate by, and engender consent within, the various groups and regions of the country. It should be noted that the terms 'considered legitimate by' and 'engenders consent within' move well into areas normally considered as 'behavioural' rather than 'institutional'. To a large extent the distinction is artificial: institutions are aggregates of the patterns of behaviour, attitudes, beliefs, and perceptions which behaviouralists study; and behaviour and attitudes, if they are to be anything but random, take place within structures of human relationships that can be termed institutions.

THE ROLE OF PARLIAMENT IN CANADA

The Westminster model of parliamentary government postulates a smaller role for the legislature than do many other systems. Parliament's first and fundamental role is to make a government, that is, to enable a government to govern by enjoying the confidence of the house of commons. Other roles include the consideration of policies and legislation, holding the government accountable, creating an opposition or potential alternative government, the recruitment and training of political leaders, and the mobilization of consent for the policies and programmes of the government. Unlike the United States, in the Westminster model the government has the responsibility for formulating policies and legislative proposals, and for ensuring their passage by parliament. The executive, in

particular the cabinet, has a central energizing and initiating responsibility in national life. This role is especially important in finance and budgetary measures, where the constitution assigns exclusive responsibility for formulating and introducing measures to the government. In turn, parliament holds the government accountable for its stewardship and handling of these immense powers and responsibilities.

The Westminster model is sufficiently flexible that many variations exist within it. The legislature of the Northwest Territories in Canada, for example, has no political parties and hence no government or opposition side. It attempts to operate through consensus rather than the adversarial model of other Canadian legislatures (White 1991). At least once in Canada (New Brunswick 1987) a provincial legislature has had no opposition because it was composed entirely of government members. One of the main variable features amongst parliamentary systems is the degree of government domination of proceedings. A higher degree of government domination means higher partisanship in the legislature. Compared with other major Westminster style parliamentary democracies, and particularly that of Britain, the Canadian Parliament is government/executive dominated and more highly partisan. In fact, the whole Canadian system, and the provincial governments as well, are executive centred rather than parliament centred, and highly partisan and adversarial as well (Franks 1987).

This shows up in such matters as the committee system, where the government in Canada in effect appoints committee chairs and decides who shall sit in its dominant majority on committees, to a large extent decides what goes in reports, and controls research budgets. Opposition parties frequently submit minority reports with no serious attempt being made to achieve consensus in the committee (Franks 1996, Ziegel 1996, Mallory 1996). In comparison, in Britain committees elect their own chairs, frequently from the opposition, there is very little government influence over committee proceedings, and the

informal pressures to achieve a consensus report are enormous and normally irresistible (Jogerst 1993), United Kingdom 1990, 1993). It also shows up in the much higher level of dissent by government members in Britain, where over the past decades many bills, including important ones, have been defeated in the house through the defection of government members (Norton 1975, 1981).

The causes of the executive-centred nature of the Canadian parliamentary system are complex and not entirely clear. Some find their roots in the way in which responsible government developed in Canada: executive institutions were necessary and reasonably well developed before representative institutions arose, and from the outset the executive controlled and dominated the legislatures. At both the federal and provincial levels political life has been dominated by long-lived governments and government parties (Franks 1987, Whitaker 1977), while the opposition has been weak and frequently fragmented.

The federal system has contributed to executive domination. While at first the federal state might have been viewed as a ship with watertight compartments, with each level of government sovereign in its own separate sphere, from very early on the key characteristic became much less the separateness and autonomy of the two levels as their inter-relatedness in a need for cooperation. As federal-provincial relations have come to be organized, they have proven to be an alternative and competing forum to parliament in national policy-making. Intergovernmental relations are so dominated by the executive that the process has been termed 'executive federalism'. Their key forum is the 'First Ministers' meeting. It might have been possible, even at the time of confederation, to create a strong role for the national parliament in intergovernmental relations, such as exists in Germany, or even the United States, but this did not happen. As a result, policies formulated and agreed to through executive federalism normally

come to parliament like treaties to be ratified without real possibilities of amendment, leaving parliament in the role of bystander and kibitzer rather than law-maker. Two decades ago Donald Smiley observed that "The lack of parliamentary involvement in federal-provincial relations is demonstrated not only in situations where it is restricted to the *post hoc* ratification of actions already agreed upon by the two levels of government, but also by governments bypassing their respective legislatures in announcing future policies" (Smiley 1978, p. 74). If anything, the role of parliament has diminished even further since then. Executive dominance in parliament is closely related to the dominance of the executive in intergovernmental relations (Watts 1988). The one reinforces the other, with often the real opposition being the other level of government, not the nominal opposition within the legislature.

Another by-product of this centrality of federalism and federal-provincial relations is that governments, particularly at the provincial level but sometimes as well at the federal, identify the other level of government as the real opposition, not the official opposition within their legislature, thus reducing even further the importance of the assembly itself and debate within it. The history of Canadian politics cannot be understood without appreciating the importance of tensions between Ontario and Ottawa in the nineteenth century, and between Alberta and Ottawa, and Quebec and Ottawa, in the twentieth.

For nearly thirty years a large part of the national political agenda has been concerned with constitutional repatriation and amendment. In fact, many of the major crises in national unity find their origins in failed efforts at constitutional amendment, such as the Meech Lake fiasco and its successor, the unhappy Charlottetown experience. In many ways the constitutional amending process is an extension of executive federalism, and creates, on a magnified scale, all the drama, strengths, and weaknesses of first ministers' conferences. At this point, the weaknesses are

more apparent than the strengths, and efforts at constitutional amendment through executive federalism seem, in terms of national unity, to be far from a win-win process, and less even than a zero sum game. They are more of a prisoners' dilemma, a lose-lose process.

Most of the time, and for most issues, federal-provincial relations through executive federalism have worked well, and produced important policies, coordination and consensus on a wide range of programmes (Dupré 1985, 1987). Modern Canadian social programmes and economic development could not have been undertaken without this sort of instrument for intergovernmental relations. But in the crucial and highly symbolic area of constitutional reform, executive federalism has not, with the exception of 1982, managed to create amendments acceptable to most players. And even the reforms of 1982 were not accepted by Quebec, the key player whose concerns the reforms were initially intended to assuage.

Many of the important players in Canadian politics seem to demand symbolic goods that can be recognized legitimately only through constitutional amendment and entrenchment. This has led to two impasses: first, a devaluation of the legitimacy and importance of ordinary statute law as passed by parliament as a protection and affirmation of rights and identity; and second a sense of frustration and grievance because the constitutional amending process does not produce desired outcomes. Quite possibly, in view of the obstacles imposed by the amending procedures, the constitutional amending process has reached an impasse. (Lapointe and Meisel 1994, Franks 1995). There is a very real problem of finding an acceptable balance between recognizing and defining rights through the legislative process and statutes, and entrenchment in the constitution. This problem is in large part a product and extension of the dysfunctional aspects of intergovernmental relations.

These are not the only factors that reduce the role of parliament in Canadian national political life. The growth in government expenditures during most of the twentieth century, with the exception of war-time, has largely been concentrated in areas of provincial jurisdiction, making provinces the more prominent players in many sectors of policy. The role of the federal government increasingly became to transfer funds to the provinces, with the federal controls, whether in terms of shared costs or setting of standards at the same time becoming weaker. Recent efforts to reduce federal government expenditures, however meritorious they might be for other reasons, have further to reduced the prominence and position of the federal government in defining standards and goals governing policies (Simeon 1994). The provinces have become more important at the expense of the federal level, both executive and parliament, and along with this, of course, federal-provincial relations between executives at the two levels have gained at the expense of both the national parliament and provincial legislatures.

Constitutional entrenchment of the Canadian Charter of Rights and Freedoms in 1982 shifted much of the responsibility for interpreting and defining human rights to the courts, making them a much more prominent player in national politics. While the executive took additional measures in pre-vetting to ensure that legislation met the new standards imposed by the charter, parliament did not, itself, add additional procedures or mechanisms to review bills from a rights perspective, as it has with the joint committee on statutory instruments. Consequently entrenchment of the charter has elevated the courts at the expense of parliament.

PARLIAMENT AND THE REPRESENTATIVE PROCESSES IN CANADA

(1) *The Members of Parliament*

Executive domination, the federal system, executive federalism, growing prominence of the provinces, the strong role for the courts because of an entrenched charter of human rights, all contribute to creating a complex and many-headed system of national politics and policy-making in Canada. In this system parliament is only one player among many, and for many issues far from the most important. These factors lie beyond parliament's control. But specific characteristics of the Canadian Parliament itself, and in particular of the representative processes in Canada, contribute to its weakness. In addition, the Canadian Parliament, like other legislatures, partakes of the more general 'decline of parliament' in the late twentieth century.

The representative processes in Canada are complex and multi-faceted. In formal constitutional and legal terms representative government means a house of commons chosen through general elections which in turn supports a government selected for the most part from its members. But this bare outline gives few clues to the actual functioning of the system. Two aspects of representation within parliament are especially important to understanding how the system works: the individual members of parliament, and the parties in parliament. The two are inter-related.

In comparison with other western legislatures, the Canadian Parliament is characterized by short-term, amateur members (Franks 1987, Atkinson and Docherty 1992, Barrie and Gibbins 1989, Cramer 1976, Docherty 1994, Loewenberg and Patterson 1979, Lovink 1973, Sutherland 1991). In an average Canadian Parliament, more than half the members will have served in the commons for fewer than five years, while less than ten percent will have served more than ten. In comparison, in Britain normally only twenty percent of members

will have served fewer than five years, while over fifty percent will have served ten years or more. (The election of 1997 is the exception, causing more turnover than ever before in two centuries.) Tenure in the American Congress is even longer than in the British House. Studies of American states, where fifty different legislatures make a useful field for comparative studies, have shown that short stay means a weaker legislature. Both legislative committees and the legislature generally are strengthened by long-term members. This proves itself in many different ways: more experienced members know the formal rules better, and know the informal processes for getting things done; long-term members who are secure in their seats can act more independently of party; they can pursue policy or other issues over a long period of time; they can make commitments and still be around to honour them; they can build up relationships with interest groups and the media; etc. In short, the brief tenure and short-term membership cause much of the weakness of the Canadian Parliament.

The typical short-term member of parliament in Canada contrasts with a typical long-term prime minister. This once again illustrates the relative dominance of the executive in Canada, and the corresponding weakness of parliament.

Amateurism means not only a short term in parliament, but also service in politics being a small, and often brief, part of a person's career. A majority of Canadian MPs are amateurs of this sort, having had little participation in politics before becoming a member, and frequently little involvement after leaving as well. There is certainly little of the sense of a career progression starting with service at the local level, and progressing through service at the state (provincial) level to a career peak at the federal level that is important in the United States. It also can mean a large proportion of inexperienced ministers in the cabinet, which in turn has its consequences for the distribution of power and the strength of the Canadian government and cabinet (Sutherland 1991).

These characteristics of representation by members in parliament have been stable over time in Canada. After a normal election, forty to sixty percent of members will be new to the house. Perhaps the election of 1993 was an anomaly, but it produced the highest turnover in Canadian history, with nearly seventy percent of the house new to parliament, and the opposition in particular having few experienced members to serve as mentors. This has handicapped the Reform Party in particular, to say nothing of Her Majesty's Loyal Opposition, the *Bloc Québécois*.

Several factors create the high turnover in Canada. The first, defeat in general elections, causes most of it. The Canadian electorate is notoriously volatile, and there are few safe seats in the house. Where in Britain eighty to eighty five percent of the seats normally can be considered 'safe', in the sense that the party of the sitting member is assured that its candidate, old or new, will be returned in the next election, in Canada, at best, only about fifteen percent of seats meet this criterion. In the United States close to ninety five percent of the seats in Congress meet this standard of being 'safe'. The causes of this volatility lie largely in the failure of political parties in Canada to gain the long-term allegiance of large parts of the electorate, though demographic change also plays a part (Clarke et al 1996, LeDuc 1989). Electoral volatility appears to be increasing. Clarke and Kornberg (1993) found that the proportion of the Canadian public claiming very strong identification with the traditional federal political parties dropped from 31% to 13% between 1981 and 1991. At the same time the proportion of the electorate claiming no identification with a federal party rose to 30% from 10%. At least some of these drops in party support were caused by the unpopularity of the Mulroney Conservative government. Support for traditional political parties has dropped throughout the advanced industrial world, but to a greater degree in Canada than in most other countries. With parties losing their strength and salience, citizens' concerns are increasingly being

articulated and forwarded through non-party interest groups. This is especially true for issues on the 'new' agenda: environmental concerns, gender and ethnic issues, etc.

A second cause is the inability of most members to gain a large 'personal vote', that is support for the member herself/himself within the constituency independent of their feelings about party or party leader (Ferejohn and Gaines 1991). Studies indicate that the success or failure of a candidate in Canada depends almost entirely upon his or her party and party leader, with only about three percent depending upon the candidate (Irvine 1982, Krashinsky and Milne 1986 and 1991, Price and Mancuso 1991, Wood and Norton 1992). This is lower than in most advanced democracies. Some members undoubtedly have a larger personal vote, but for the vast bulk of Canadian MPs and candidates electoral success depends almost entirely upon factors outside their control, and especially how the voting public feels about parties and party leaders.

A third factor is the high number of Canadian MPs who choose not to run again (Franks 1987, Docherty 1994). Between fifteen and twenty percent of serving MPs leave parliament voluntarily from one election to another, whether by resigning their seat between elections or by choosing not to run again. This is higher than the percentage leaving the British Parliament, or the American Congress, for all reasons, including death, defeat, and desire. A large proportion of Canadian members of parliament are sufficiently dissatisfied and unhappy with their lot as parliamentarians to choose to terminate their service. Frequently this choice is made after a relatively brief period in the house, not unusually after a member has served the years necessary to guarantee a pension. As an American commentator has noted, voluntary retirements are "a cause for concern because they indicate a decline in the desire of able individuals to continue in politics" (Livingston and Friedman 1993, p. 249). It is a much greater cause for concern in Canada where, among other things, it affects

recruitment and training of political leaders, leading to a large proportion of senior politicians, including often even leaders of parties, being recruited from outside parliament and even with little experience in politics.

(2) *The Political Parties in Parliament*

An old adage in Westminster style parliamentary government has it that a parliament is only as good as its opposition. Judging by this standard, many Canadian parliaments are not very good. As was noted above, for long periods of its history the Canadian House of Commons has been dominated by a 'Government Party' -- a party which successfully wins elections over a long period of time, occupies the centre of the political spectrum, and successfully renews itself, in part by adapting its policies and ideology to fit changes in the public. The federal Liberal Party has been such a dominant government party for most of the twentieth century. The interesting question from the point of view of the role of parliament is not why and how a government party perpetuates itself, but what the existence of a dominant government party means for the opposition, and hence for the effectiveness of parliament.

Its first consequence, almost by definition, is a profound imbalance between the two sides of the house. On the government side is experience and power. On the opposition side is lack of experience, especially in office, and a habit of being opposition, that is, of opposing proposals placed before parliament by the government, and of being critical of existing policies and administration. This, in turn, creates a negative and critical mind-set in the opposition (Thorburn 1979, Perlin 1980). The two factors of inexperience and negative attitude, when combined in a new government on the rare occasions when the opposition succeeds in defeating a government party in an election, make it difficult for the perennial opposition turned government to function effectively. The pressures the party responded to when out of power, its attitudes towards programmes and the public

service, its understanding of how to get things done and what the public wants, are all tainted by long years out of power and inexperience. The odds, therefore, are that a perennial opposition party will have a difficult time making the transition to power, and sometimes will fail dismally.

Such, certainly, was the experience of the Progressive Conservative Government under Prime Minister Mulroney, first elected in 1984. Despite being the first government to succeed in winning back-to-back majorities in the house for the first time in more than thirty years, by the end of its second parliament this government had lost so much electoral support that only two of its candidates were elected in the election of 1993. Not the least of its problems was an unconstructive use of parliament by bulldozing legislation through the house with an unprecedented use of closure and limitations on debate. The government unquestionably failed to mobilize consent for key government programmes such as the GST (Sealey 1995, Malloy 1996).

Since 1921 the opposition in Canada not only has suffered from its subordinate place in a system with one dominant party, but has also been split into two or more parties, often at opposite ends of the political spectrum. This makes it even less likely that any single opposition party will gain enough seats to form a government, or will be interested in forming a coalition with another opposition party in the event of a minority parliament (Stewart 1980). There has also been a strong tendency for the opposition parties to be regional factions. As a result, the fractured opposition has been composed of up to four parties, some at one end of the ideological spectrum, some at the other, some expressing particular regional grievances, and with little in common between them except their opposition to the government. This often does not lead to any given opposition party appearing to be a credible alternative to the government party. A successful government must accommodate and even integrate the competing desires of different regions and

factions. Opposition parties in the Canadian Parliament have generally proven themselves unable to do this. And while this might make life comfortable, easy, and secure for the government party, it does little to create the political dynamic and consideration of alternatives desirable for effective parliamentary government. It also places an extreme burden on the government party in fostering national unity.

While these features have characterized the opposition parties in Canada for decades, they were exacerbated to an unprecedented extent in the general election of 1993, after which the opposition was at its most fragmented, inexperienced, and weak. The *Bloc Québécois*, an exclusively Quebec Party whose *raison d'être* is breaking up the country through Quebec separation, became the official opposition. The *Bloc* has little interest in discussing many national issues, and the fact that its members address parliament almost exclusively in French has meant that the English-speaking media have paid little attention to it. Nevertheless, the *Bloc* has performed in stellar fashion on some important issues such as cultural and social policy. But the sad fact remains that this has not got through to the rest of Canada. The *Bloc* is, and is treated as, a regional party regardless of how generally applicable or trenchant the points it makes.

The second opposition party, the Reform Party, like the *Bloc* is almost entirely new to parliament, and its members are even less experienced than those of the *Bloc*. Reform also is a regional party, with all but one of its members coming from western Canada. Its platform, a mixture of populist and radical sentiments, fits comfortably into the long Canadian tradition of agrarian radicalism. But belonging to this tradition has not helped the Reform Party become an effective opposition. The Reform Party labours under the additional handicap of having come to Ottawa with a platform deeply critical of the ways Ottawa and parliament work, and this has made it difficult for them to fit into the folkways of the house. Further, the Reform Party was saddled with

a platform that offered simplistic solutions to complex problems, which have won little public support elsewhere in Canada after exposure to the critical glare of the national debate.

Canadian governments since 1957 have suffered from their own regional imbalances. But never before has the opposition been so regionally based, nor ever before has the official opposition been interested in dismembering the country, with no serious pretence at being an alternative government, and no interest in gaining support outside its own province. While this might make life easy for the government, it has not, as yet, produced important and attention-grabbing debates, or impressive success in holding the government accountable. Parliament, if anything, has become a less interesting place, and less apparently vital to the well-being of the nation.

(3) *The Decline of Parliament*

The argument for the decline of parliament can be viewed from two perspectives: first, actual measures which indicate decline in the saliency of parliament to Canadian political life; and second arguments that, among other things, the growing complexity of modern politics and society have created competing forums which make what happens in parliament, and the attendant processes and structure of representation - by individual member and party - a much smaller and less influential part of the political system.

For the first, that the decline of parliament can be measured, there is ample support. Crimmins and Nesbitt-Larking (1996), replicating for Canada studies that had been done on the British Parliament (Dunleavy et al 1990, 1993) found that, during the post-WWII period there has been a substantial and continual decline in prime ministerial participation in parliamentary debates. The one exception to this continuing decline was the regnum of prime minister Diefenbaker, who was a great lover of parliament, not least because of his skill and enjoyment as a performer in it. Unquestionably parliament has become a less prominent place for major political

announcements and debates, and the decline is continuing. Many reasons suggest themselves for this decline. The growth of the media, particularly television, has provided many political forums which compete with parliament. In a prime ministerial speech or announcement outside parliament the prime minister and his/her handlers can choose the venue, the group, and the time to make the most of the event, to have a favourable reception, to hit the national news at a time when the opposition cannot rebut, etc. In parliament, by comparison, a ministerial statement or speech is followed by an opposition member. There is less opportunity to put a favourable spin on the occasion.

While all of this is correct, one may still wonder whether the alleged neglect of parliament is not overdone at present. The media have learned to counter excessive manipulation by getting reactions from the other sides, regardless of where and when a prime ministerial statement is made. Carrying on the debate in this arms-length and media-determined way outside parliament not only weakens the institution, but means that some of the important safeguards of procedure and continuity are lacking.

Perhaps as a consequence of these successful efforts by the government to avoid parliament, reportage of parliament itself has diminished. The bulk of media reportage of parliament, particularly by television, is on question period. While question period itself is frequently dramatic, and on occasion has contributed powerfully to holding the government accountable or exposing flaws and weaknesses in administration and policies, (Franks 1987) it also appears at times contrived, unconstructive, and overly confrontational (Dobell 1993).

Parliamentary committees also suffer from this lack of media attention. From 1993 to 1995, a period of 156 weeks, major Canadian newspapers had only fifty-four articles of any sort about committee proceedings (Franks 1996). Considering that in an average year there will be

more than five hundred committee hearings, this does not suggest adequate coverage or public discussion. Furthermore, twenty six of the fifty four articles dealt with the finance and industry committees, indicating extreme media selectivity and lack of interest in most committees. Budget reductions now mean that there is no printed final transcript of committee proceedings, another indication of the low respect in which committees and parliament are held. Lack of these transcripts in turn will further reduce media and scholarly attention to parliament and parliamentary committees.

Not the least of the problems with the reportage of parliament comes from the pack journalism, reaction reporting, and other unattractive attributes of journalism in Canada. As John Fraser has commented:

...The notion that somehow cruelty is a journalistic privilege - a *right* really, almost an obligation - seems to me to be a symptom of the prevailing dysfunction which has afflicted my profession for the past thirty years. And while we're at it, what about the "uncontested privilege" or right to be lazy? Or to be vituperative? And then there's the right to fake objectivity and the right to distort facts and quotes - or to ignore them altogether. Such things are part of a journalist's publicly perceived identikit now and are buttressed by example in all media on an hourly, daily, weekly, bimonthly, monthly, quarterly, and annual basis. (Fraser 1994, p. 303)

Fraser traces much of the problem "back to journalism schools, which don't just feed into the post-Watergate cynicism and distrust of anything or anyone worthy of an 'investigative' report or 'in-depth' profile, they positively foster institutional rancour and disbelieving zealotry with a righteousness no longer to be found even in a fundamentalist divinity school" (p. 305). He believes that:

The self-delusion of so many journalists as they skate across the surface of life is almost

beyond comprehension, and this has grown proportionately to their expanding self-esteem. Few stories ever probe deeply, usually because of laziness, but sometimes because such probing will complicate a story line already decided upon. Unless, of course, there's a hint of hanky-panky, but even here all we usually get is the hint....the proof can be found with the pack journalism of the press gallery in Ottawa. Of course there are notable exceptions, but if you ever want a totally dispiriting experience, go off to a good news agent when things are politically hot in the nation's capital and buy a dozen newspapers published from sea even unto sea. To compare and contrast this superficial, knee-jerk, junk coverage is to abandon all hope. (pp. 308-9)

"The consequences of this editorial vacuum, which is evident in so many of our publications", Fraser concludes "have had much to do with the escalating deterioration of public information and debate in Canada" (p. 315).

One critic does not prove a case, but Fraser's concerns with the quality of press coverage of politics and parliament have been echoed elsewhere (e.g. Delacourt 1997, Bryden 1996). The media are a vital part of modern politics, and the level of public attitudes towards, and understanding and perceptions of, politics must inevitably be to a large extent dependant upon what appears, or not, in television, newspapers, and the other media.

The more general argument for the decline of parliaments finds its evidence in many sources. Nevitte (1996) examines these trends in Canada in the context of what has happened in advanced industrial countries world-wide, and concludes that Canadian experience largely reflects what has happened elsewhere. Allegiance to traditional political parties has declined. Powerful new political movements, such as the environmental and women's movements, find themselves outside the party. The multiplicity of interest and pressure groups attempting to affect policies operates

largely outside the parties, and outside traditional parliamentary institutions and processes. When they use parliament, it is only as one out of many channels for influencing government. The attitudes of the post WWII generation, in what is often termed the 'post-materialist' era, are vastly different from those that preceded them. Politics of identity, aided by Cairns's "Charter Rights" groups (Cairns 1995) is taking the place of politics of class. The post-materialist generations have less concern (or fear) over economic issues, and are more concerned with quality of life issues. The traditional parties and politics do not reflect their agenda.

The Canadian parliamentary system, in being affected by these trends, is in the company of other western industrial nations. Quite probably these trends represent a major restructuring of the sort that has happened in western politics several times already in the centuries of change from medieval to modern times: the growth of Whigism and concern with universal human rights at the beginning of the industrial age; the emergence of classic liberalism in the nineteenth century; and the growth of collectivist politics in the late nineteenth and early twentieth centuries. The situation is open ended, and what the final outcome will be for parliament and traditional parties is very uncertain, if not impossible, to predict. One strong recent trend is faith, perhaps blind even faith, in the market mechanisms to the denigration of government and the public sphere. It is too soon to tell whether this reflects a profound shift in ideology.

In Canada not only parliament has suffered from this loss of respect, so also have intergovernmental relations. The assumption behind executive federalism as a decision-making process was that elite accommodation would produce results acceptable to the electorate; in effect, that the agreement of political leaders equalled the mobilization of consent. This no longer holds true, especially in the crucial area of constitutional amendment. The Meech Lake disaster proved that the assent of first ministers by

no means meant the assent of the now-involved provincial legislatures, let alone support of the electorate. The Special Joint Committee on a Renewed Canada in 1991 concluded that "public dissatisfaction with the first ministerial methods of developing constitutional amendment proposals is so high that any proposals now brought forward would be in immediate jeopardy, irrespective of their merits, if they were seen by the public as a product solely of eleven first ministers making deals behind closed doors." (quoted in Russell 1993, p. 167) Ronald Watts concludes that:

By the time of the fourth round of constitutional deliberations 1991-2, the increasing distrust of the electorate with the processes of "executive federalism" and elite accommodation was apparent. This distrust led to efforts to encourage widespread public consultation prior to the intergovernmental negotiations and afterwards to the calling of a consultative referendum to obtain public assent for the Charlottetown Consensus Report. In the event, despite all these efforts, the public denied its assent to that agreement, which illustrates the difficulty of getting public agreement to a comprehensive document incorporating a complex collection of compromises and on changes from the status quo where so many varied and often conflicting interests are involved. Indeed, *The Economist* (31 October 1992) described the referendum result as "Horrendously Canadian: a popular revolt in favour of the status quo." (Watts 1996, p. 366)

Experience with the Charlottetown Agreement showed further that the electorate was likely to reject the compromises inevitable in a comprehensive reform package (Watts 1996).

4) *Timetabling, the Senate, and the Decline of Parliament.*

Weak opposition and government domination have combined to produce a problem that is especially acute in the Canadian parliament and

contributes to its decline: an absence of interesting and newsworthy debates in parliament. The source of much of this failure lies in the processes of timetabling government business (which occupies the bulk of the commons' debating time). In a majority parliament, the government can, at the end of the day, use its majority to ensure that government business gets through parliament. But the price that parliament, in effect the opposition, demands in return is that it discuss, examine, criticize, and debate the governments legislative proposals. Debate and the use of time are at the core of parliamentary control: the knowledge that its proposals will be subjected to the most intense critical scrutiny should make a government very careful only to introduce legislation it can defend and justify; while the knowledge that its success in debate will benefit it in the next election should make an opposition zealous in identifying and exposing flaws. Time is of the essence in this process. The opposition needs time to review legislation, to sound out interest groups, to undertake research and get expert advice on a bill's strengths and weaknesses, and to muster its forces for debate. But there is only a limited amount of time available for the debate of government bills, and an effective opposition must pick and choose between those bills which it is prepared to let through unscathed and with relatively little debate, and those on which it wishes to devote a great deal of time and energy.

Over the past forty years, when the increasing press of government business has made shortage of time a growing problem in the Canadian parliament, succeeding oppositions have not shown themselves to be adept at making these choices. They have all too often wanted to obstruct government business - often for no better reason than simply to delay and embarrass the government. Parliament has spent far too much time on trivial bills and, increasingly, not enough time on major contentious ones. The government's response has been to restrict debate through closure and timetabling in advance. This process reached its extreme under the Mulroney

Conservative government in the 1988-93 period, where closure and other time-limiting devices were used more than they had been in the entire previous history of the Canadian parliament. Even on important issues debate on the floor of the house was limited to twenty hours (Sealey 1995).

This harsh timetabling, though it might have appeared efficient and effective to the government, had harmful side effects. It prevented the commons from having effective and newsworthy debates. It prevented the government from using parliament to put its case to the people, to defeat the opposition's arguments, and to persuade the public that its measures were needed. This was especially true of the major tax measure, the GST, which was opposed, even as it received royal assent, by eighty percent of Canadians. Doubtless this misuse, not to say abuse, of parliamentary procedure helped to contribute to the government's crushing defeat in the 1993 election. Curiously enough, at the same time it did not, in any real sense, make the commons more efficient. The opposition found ways of delaying and obstructing, frequently by spending even more time on the trivial bills than before because it was not allowed to spend this time debating the important issues. The total amount of time spent on government business did not get smaller. The time 'saved' on major bills was spent on minor ones; government and parliament paid the cost of the illusory saving of time on debating crucial government policies.

And in another peculiarly Canadian product, the senate took over where the commons had failed (Franks 1997). Between 1984 and 1993, the Canadian senate, with its Liberal majority led by Allan MacEachen, was more active than it ever had been in its previous history. In many ways it, not the commons, became the effective opposition to the government. The senate transformed its role, and defied all previously understood norms and unwritten rules governing its behaviour. It precipitated an election by refusing to pass the free trade bill. It rejected many other government bills. It engaged in protracted arguments with the

commons over others. Its obstruction of business from the commons extended to supply, an area of legislation normally considered to be the purview of the commons. It obstructed the important GST legislation to the point that the prime minister resorted to a previously unused clause of the 1867 BNA Act to create a senate majority of supporters.

Senator Frith (Liberal) defended the Senate's activist role by arguing that government control over the Commons had reached the point where the lower House was ineffective:

In Canada democracy has become an illusion. In reality Canadians are ruled by one person. The Parliament of Canada has become nothing more than a vehicle for the election of a new despotic government in cycles of four or five years....The resulting totalitarian system has evolved in a most remarkable manner: no armed revolution or military coup was required. It has sneaked up on us because Parliament has been doing nothing to stop it from doing so. Indeed, Parliament has been encouraging its own evolution into impotency by quietly lying down and holding still for a slow and painful emasculation process, a process masquerading as the 'streamlining' of the parliamentary system. The objective of all streamlining is to increase speed by eliminating resistance. When applied to the parliamentary process it means changing the rules so as to reduce Parliament's resistance and thus increase the government's speed in having its own way. And in our system the word government now means Prime Minister. (p. 7)

So successive governments have found Parliament, and the need to listen to parliamentarians, a damned nuisance. And governments have been able to persuade the media and electorate that that is just what Parliament is - a damned nuisance. Especially when parliamentarians went 'too far' in

partisan resistance to 'efficient' government (Frith p. 10).

There is more than a little truth to Frith's contention. By 1990 the Mulroney government had used closure and timetabling in advance more times than all previous Canadian governments (Sealey 1995). They limited debate, even on major bills, to no more than twenty hours. The opposition was no longer able to delay and argue to the point that a headstrong government could be slowed down and forced to listen to criticism.

Parliamentary government is as much about accommodating minorities as allowing majorities to have their way. The Commons was no longer working in a way that allowed these slow processes of vision, revision, and accommodation to work. In the last analysis, this heavy-handed domination of Commons business did not help the Mulroney Government. No other Canadian government has by the measure of electoral outcomes failed so drastically to mobilize consent for its programmes. But, at the same time, activism did not win legitimacy for the senate. Editorial opinion in newspapers continually questioned the right, or appropriateness, of a non-elected senate confronting and defying a government in this manner. Activism, even when the senate majority had public opinion on its side, as it did in the GST debate, had the paradoxical result of increasing demands for senate reform.

The end result of this unhappy time was that the commons was in disrepute because of its ineffectiveness, the government's ham-fisted controls had contributed to a lack of respect for it and indeed all government and parliamentary institutions, there were demands for reform that, in the event, the government was unable to satisfy, the government failed to mobilize consent for its policies, and the senate was no more highly regarded than before. Heavy-handed control over proceedings in the house of commons was only one factor contributing to these dolorous results, but it was a far from negligible one. Parliament had indeed declined.

5) *The Crown: A Neglected Branch of Parliament*

Constitutionally Parliament has three parts: the House of Commons, the Senate, and the one that is often forgotten, the Crown. The role and functions of the Commons and Senate, complex and contentious though they may be, are still relatively straightforward when compared with the Crown, for in the Crown the contrast between the real individual who holds the office of Governor General and his or her activities in office, in effect the corporeal embodiment of the Crown, and the actual functions of the Crown as a constitutional and legal entity, are far greater and starker than the contrasts between fact and theory for either Commons or Senate. Both the apparent nugatory importance of the Governor General and the great importance of the Crown in actual governance find their *raison d'être* in the historical struggle between monarch and Parliament during the development of responsible parliamentary government.

As, over the centuries, the executive and legislative functions of the monarch were taken over by ministers selected from and responsible to Parliament, and the King or Queen became a constitutional rather than governing monarch, the Crown as a symbolic and legal entity remained powerful, while the monarch as a person, an individual human being, became relegated to the sidelines. As Kantorowicz observed many years ago in attempting to explain the evolution of the powerful state in western Europe, the King had two bodies, one the actual person of the King, the second the mystical and symbolic office of the monarch, with its justification in a more than quasi-religious sense of the King as the head of the body of the state, as the focus for common concerns and a general public interest. (Kantorowicz 1957) The mystical and symbolic monarch still finds its place in the 'Crown in Westminster style parliamentary government and law, and in the state' in the European style of democracy.

In England, the monarch became the constitutional 'Chief of State', largely devoid of power, becoming what Bagehot termed a 'dignified' rather than 'efficient' part of the constitution. As J.A. Corry wrote:

Out of the wreck of his former pre-eminence, the King has saved what Bagehot called, "the right to be consulted, the right to encourage and the right to warn." Because his consent is required for statutes and many other official acts, he could not well be deprived of all contact with affairs of state. His ministers keep him advised on major issues and they receive in turn such counsel and caution as he cares to give them. Governments change and ministers come and go. A King who has had many years on the throne has the opportunity for a wide grasp of public affairs. If to ability he joins study and effort, his position obviously enables him to wield great influence. His hand is strengthened by the social popularity with the masses of the people that the Monarchy has enjoyed in this century. (Corry and Hodgetts, p. 151)

In Canada, the Chief of State is the Governor General. He or she does not represent the British Government but is the personal representative of the monarch. The Governor General is appointed on the advice of the prime minister in Canada, and normally serves for a term of five to seven years. Limited though the powers of the British monarch undoubtedly are, they are in actual practice greater than those of the Canadian Governor General, who labours under severe disadvantages in comparison. In his own person, Corry pointed out, the Canadian Governor General:

...cannot hope to have the influence that it is open to the King to exercise in Britain. His term of office is short.... Most important, he is chosen by the King on the advice of the Canadian cabinet and may be removed by the King on its advice before his term of office expires. While the cabinet keeps him advised of its policy, it is not likely to be greatly

impressed by his counsel. He can scarcely take a stand against it. And if he makes gestures in its support, his actions will be regarded as a prostitution of his office for the benefit of the government of the day. (Corry and Hodgetts p. 155)

Over the years since the Canadian Government took over the responsibility for nominating the Governor General, the position has, if anything, declined in importance. Not the least of the causes of this decline has been the appointment of a succession of persons for the post who have had little to recommend them to the position apart from their friendship with the prime minister and service to the party in power.

The Crown has two roles in Parliament: one a formal and not usually contentious role, of performing such functions as summoning Parliament, reading the speech from the throne, forwarding the royal recommendation on money bills to Parliament, proroguing or dissolving a Parliament, and assenting to legislation passed by the Commons and Senate. One of these formal functions is to appoint or dismiss the prime minister. Normally the exercise of these functions is straightforward and uncontentious, but sometimes they can be matters of grave dispute, and in these instances lie much of the history and argument over the position and its residual powers. The Governor General, like the monarch in Britain, can on occasion independently exercise prerogative powers that are usually exercised only on the request of the prime minister. This would happen only in very difficult and contentious circumstances. For example, Lord Byng as Governor General of Canada refused to grant prime minister Mackenzie King an election in 1926, and called upon Arthur Meighen, leader of the opposition, to form a government instead. Meighen's subsequent defeat in the House on a vote of confidence led Byng to grant Meighen a dissolution of Parliament. In the subsequent general election King made a major issue of the actions of Governor General Byng. King triumphed in the election, as did his interpretation

of the constitutional conventions in this notorious 'King-Byng' affair.

More recently, in 1976, an Australian Governor General, to resolve the impasse caused by majorities from different party in upper and lower houses and an intransigent prime minister and Senate, exercised on his own accord the powers of dismissal and appointment of prime minister. A peculiar feature of the Australian constitution had required this manoeuvre: the Australian constitution, unlike the Canadian, had a requirement that the Governor General could only dissolve Parliament when requested to do so by the prime minister. The prime minister in power, despite the near-breakdown in government caused by the stand-off between the two houses, refused to request an election. The only way to break the impasse and let the country express its views was for the Governor General to find a prime minister who would make the request. Even more recently the president of India exercised a sort of residual prerogative power in refusing to declare a state of emergency demanded by the government.

The second role is that of the Crown as a legal and constitutional entity in Parliamentary government, of a government formed from the advisers to the Crown leading, and being held accountable by, Parliament. (Smith 1995, Heard 1991 pp. 29-35) A superficial reading of statutes and constitutional documents would give the unwary observer the impression that the Crown is the most important position in Canada, for all acts of Parliament must be assented to by the Crown, acts of government are made in the name of the Crown, as are most appointments to senior positions. The courts of law are those of the Crown, and it is in the Crown's name that the government's case is put forward. Ministers and even the prime minister only have power to the extent that they are given it, whether by statute or prerogative, as servants of the Crown, and in their turn public servants can only speak or act on behalf of their ministers. To a very real extent the government, in the European sense of 'The State',

in so far as it has a formal identity apart from the party in power, is the Crown.

To examine this role of the Crown, of the relationship of Crown to prime minister and cabinet, and to explore the implications for Canadian politics of our particular form of government by Crown in Parliament, however necessary such a pursuit might be for the understanding of Canadian government and politics, is far beyond the scope and purposes of this paper. One important point needs to be made however, and that is that the way in which Crown, ministry, parties, and Parliament interact has given Canada a system of governance which is more dominated by the executive than is that of Britain. Since this executive domination in Canada is also associated with long-lived governments and prime ministers in power, the end result gives Canada a system in which the prime minister, and to a lesser extent the cabinet and individual ministers, are more powerful, and have more power centralized in them, than their British counterparts. Criticisms of the Canadian Parliament, whether of the Senate or the House of Commons, often find their unarticulated root concerns in this concentration of power in prime minister and cabinet, and the ministry's overwhelming dominance of the majority in the Commons, business in Parliament, the executive including the public service, federal-provincial relations, appointments, and for that matter most of governance.

Again, exploring, let alone resolving, the problems in this distribution of power between Parliament and government and within the central machinery of Canadian parliamentary democracy lies far beyond the scope of this paper. What is important for this exploration of Parliament and national unity is the position and role of the Governor General as part of Parliament, in so far as these have some bearing on the matter of national unity. And the sad truth is that at present the Governor General has little impact on national unity.

Two areas where the Governor General could affect national unity can be identified. First is actual actions by the Governor General such as dissolving Parliament to force an election on a headstrong government intent on some action which would cause grievous harm to national unity, or is otherwise so contentious that it needs to be sanctioned through the process of a general election. (The Senate acted this way by withholding consent to legislation until the government had won a general election on Free Trade legislation in 1988, and on the Naval Assistance Bill in 1913).

Second is the Governor General articulating ideals of national unity and public well-being through speeches, public actions, conferring honours, hosting social events, and other formal and dignified aspects of government. In effect, the Governor General might serve as a symbol of, and leader in, national unity. The British Crown has always had a role in promoting national unity, in being what Amery termed the central energizing part of government, promoting a general public interest in contrast with the more particular and local interests represented in Parliament.

In addition, according to Smith, "the idea of government as a benevolent agency or of society as a community is, some say, the product, in part at least, of the personal and humanizing influence of the Crown. That is the central theme in Mackinnon's *The Crown in Canada*, and it makes that study something more than simply an exploration of 'un instrument constitutionnel.'" (p. 183) Corry also emphasized the importance of the monarch 'as a symbol of unity':

Steady allegiance to Country, Nation, Community is difficult to obtain because most people are not greatly moved by abstractions. The living figure brings the argument for subordinating our desires to the good of the whole down to the level of common experience. The King can call men to arms more effectively than can the Country or the Nation. The good that governments do can be

ascribed, through the King, to the people; the evil they do can be pinned on the ephemeral government of the day. The opposition which obstructs that government maintains its prestige more easily because it is His Majesty's Loyal Opposition. It is loyal to the permanent common interests and fundamental aspirations of the people while opposed to the audacity of a temporary parliamentary majority. (p. 154)

"In fact", Corry concluded "the symbol has triumphed over the person." However, the weakness of the position of Governor General in Canada, compared with that of the British monarch, has made it that much less valuable and useful in this symbolic role. Similarly, the weakness of the position makes the Governor General that much less likely to be able to wield the moral and political authority necessary on those rare occasions when it is necessary for him or her personally and independent of the government in power to exercise the position's residual prerogative powers, in calling an election, or appointing or dismissing a prime minister.

If this were to be changed, the first factor to need examination would be the method of appointment of the Governor General. The present process of appointment by what in effect is the prime minister alone raises all the concerns of patronage, partiality, and absence of consent which are raised by appointments to the Senate. In both instances these concerns and doubts, whether justified or not, weaken the strength and autonomy and value of a potentially important and useful branch of government. To the extent that this happens, the many voices of regional, ethnic, linguistic, and other particular concerns appear to be neglected, and the position of Governor General, a central part of Canada's parliamentary and executive institutions, fails to achieve its potential in achieving national unity, or for that matter other important goals. In India, the President, who has formal functions similar to the Canadian Governor General but in actual practice is much more influential and respected, is elected

by a combined vote of federal and state legislators. R.B. Bennett stated that in 1936, when John Buchan (Lord Tweedsmuir) was being considered for the position of Governor General in Canada, "he, as prime minister, first discussed the matter with Mackenzie King, the leader of the opposition, so that the governor's appointment was in effect non-partisan inasmuch as it carried the approval of the leaders of both major parties." (Dawson and Ward p. 150) This precedent was not continued however, either in the later appointments of British or, subsequently, Canadian Governors General. To re-instate the procedure like that practiced by R.B. Bennett, perhaps by seeking the support of the leaders of all parties in Parliament for the nomination of a Governor General, would mitigate some of the worst problems in and deriving from the present method of appointment.

POSSIBLE REFORMS

This discussion of parliament, intergovernmental relations, and national unity has ranged over politics, constitutional features, federalism, world-wide changes in culture, values and society, and parliament itself, including parties, members, committees, the role of the courts and government, doctrines such as ministerial responsibility, and the press gallery. Such variety and breadth is necessary. Parliament forms only one part of the complex web of modern politics, and often a minor part at that. And the role of government in modern advanced industrial states is such that values, policies, public attitudes, and all the other aspects of this complex web influence, and are influenced by, parliament. Reforms to parliament similarly are influenced by, and influence, this complex web. Few of them can be looked at simply in terms of parliament itself.

This section will identify and discuss possible reforms to enhance the role of parliament in intergovernmental relations and, ultimately,

contribute to national unity. The key issue for the purposes of this paper will be the dependant variable, national unity. This, in turn, was defined as "a system, structure, and processes of making collective decisions that, over time, are considered legitimate and engender consent within the various groups and regions of the country". The argument in this paper has had two thrusts: first, that the Canadian Parliament is weak even as Westminster style parliaments go; and second, that parliament's role in intergovernmental relations is weak even in comparison with its role in other spheres. This discussion of possible reforms will address both areas, strengthening parliament generally, and strengthening its role in intergovernmental relations. Of course some reforms by their nature overlap the two areas.

Because of the wide-ranging nature of this discussion of parliament, intergovernmental relations, and national unity, the reforms considered are similarly disparate. Most, however, relate directly to parliament. Some are big, some little. Owing to the constraints of length, none will be discussed in depth. This section simply identifies areas for, and the direction of, possible reforms. Much more work needs to be done to flesh them out to the point where their actual implications, and their likely benefits or disadvantages, and the actual form they should take, can be identified with any confidence. The reforms considered will be limited to those which the Canadian government and parliament can implement by themselves, without requiring constitutional amendment.

1) *A Stronger More Stable Membership in Parliament*

(a) *Improved Remuneration for Members of Parliament.* It was noted above that a very high proportion of Canadian MPs choose to retire voluntarily. One way to reduce this voluntary retirement is to make life as a member more attractive. Not the least of the features that makes parliament unattractive to MPs is the low pay. Successive commissions established to

recommend pay and allowances for members have consistently recommended higher pay (e.g., Canada 1994). The government has not accepted these recommendations. More appropriate pay for members would achieve two objectives: first, it would be a clear statement by political leaders that parliament is important and service in it is prestigious; and second it would reduce voluntary retirement and hence turnover by making service more attractive to highly qualified people.

(b) *Proportional Representation.* Several of the numerous varieties of proportional representation has been advocated for Canada by many practitioners and students of Canadian politics (Cairns 1968 and 1970, Cassidy 1992, Irvine 1985, Smiley 1978, Canada 1979(b). Also Elton and McCormick, and *The Globe and Mail* 25 March 1997). The main argument for proportional representation has been that the single member-simple plurality system now employed in Canada unduly favours small regional parties and dominant nation-wide parties, while at the same time it handicaps nation-wide small parties and even larger nation-wide official opposition parties. Also, sometimes, nation-wide parties lack commons representation in regions, as happened to the Liberals in the West in the 1970s, and in 1980-4. They propose some form of proportional representation to redress these imbalances, and to produce a house of commons that more accurately reflects how citizens vote. Most proposals are for adding additional members of the house of commons, usually much less than fifty percent. These additional members would be elected in each province, in proportion to the percentage of votes received by their parties, and would complement the members elected, as at present, by constituencies on a single-member, simple-plurality, basis.

Some commentators (Lovink 1970, Franks 1987) have questioned whether these results would actually be achieved by proportional representation, or whether, even if the house were more accurately to mirror voting, the outcomes would be those desired. Undesirable outcomes of

proportional representation might well include more minority parliaments (though this would depend on the degree to which the system adopted would encourage strict proportionality), coalitions within parliament that lead to extreme rather than moderate policies, two classes of members, and even stronger control by party over members. On the other hand, proportional representation would undoubtedly produce one benefit that proponents have virtually ignored: it would create a core of members who are certain of reelection, and who would become the nucleus of a much longer-serving membership. This, in turn, would greatly strengthen the house by reducing turnover and giving a substantial body of members the assurance of a long career and, if the appropriate measures were taken, some independence of party.

Proportional representation is also a characteristic of most political systems which successfully deal with problems of political harmony between different cultures and languages. This will be considered in more detail below.

2) *A Stronger Role for Parliament in Human Rights.* It was noted above that the entrenchment of the Canadian Charter of Rights and Freedoms shifted power to the courts, and away from parliament. This has certainly raised the prestige of the courts, and probably as well lowered the prestige of parliament. Parliament could adopt procedures for affirming human rights better than it now does. Such measures might include:

(I) *Committee review of legislation from a human rights perspective.* The legal staff of parliament could prepare a review of the provisions of bills from a human rights perspective which would be submitted to the relevant committee, probably the one considering it after second reading. Or perhaps the existing joint committee on statutory instruments could perform this review. Examination of this report on human rights issues in legislation by the committee could then become one of the required steps in

the passage of bills. In Australia, specific parliamentary committees have been created to perform this function (Hiebert 1997).

(ii) *An Ombudsman.* At present many commissioners concerned with aspects of human rights, such as the privacy commissioner and official languages commissioner, etc., report to parliament. Parliamentary review and consideration of these reports has not been impressive. Parliament could establish an office of an Ombudsman which would combine these existing commission functions and perhaps add the more general function of hearing and reporting on public grievances against government on procedural and substantive issues of human rights. In turn, this report could be reviewed by a parliamentary committee much as the auditor general's report is reviewed at present by the public accounts committee. This would give parliament a much higher visibility and importance in establishing the ground rules for fairness in the ever-growing area of citizens grievances against government.

(3) *Strengthening the Role of the Private Member.*

(a) *Free Votes.* Virtually every list of proposals for the reform of parliament (including those of the McGrath Committee on Reform of the House of Commons, Reform Party, Canada 1985, and the Liberal Red Book), include in them proposals for more 'free votes' in the house. Nothing, however, has been done to reduce the demands for party discipline on members or to create an atmosphere more tolerant of dissent. Not even the Reform Party, which had freeing up of private members from party discipline as one of its party's campaign promises, has been immune from exercising strong discipline, even to the extent of expelling members from caucus. There are serious arguments against, and obstacles confronting, a regime with looser discipline and more free votes (Franks 1991), but an issue so

important to Canadian politics surely deserves more serious attention from government than it has yet received.

There are no contradictions between more free votes and greater tolerance of dissent on the one hand and the conventions on confidence on the other. Responsible parliamentary government has, at times, functioned very well in both Britain and Canada with the government being defeated on many items of its business. Sometimes these defeats have been caused by the defection of government members. As long as the defeat is not on a matter of confidence, and most government business in the commons is *not* a matter of confidence, the government will survive defeat with no serious harm being done (Canada 1985, Franks 1991, Heard 1991).

(b) More Effective Committees. This hoary chestnut has been around the ring many times during the last three decades. Each successive examination of reform of parliament (e.g. Canada 1979, Canada 1985) recommends changes to improve committees, not infrequently through reversing changes made on the recommendations of the previous reformers. At this point, the constraints on reform to committees are identifiable, and they are severe (Franks 1996(a)). The key obstacles lie in the short-term amateur membership of the house and in government and party domination of committees. Serious reform to committees cannot happen without these other problems being resolved.

One important reform would be easy to implement: restoration of publication of committee minutes and proceedings. The present practice leaves these to aficionados of the Internet to find - a small proportion of Canadians. Publicity is the lifeblood of parliament and politics. Not publishing committee proceedings on the pretext of saving money is a spurious argument which demeans parliament and its proceedings. These records are fundamental parts of our national heritage and constitutional record. They should be available to every citizen in the

most permanent, convenient, easy to read format. Putting them on internet, and making them and other parliamentary documents available in compact disk form is very good, but these documents also need to be available in printed copy. Only if government gives the highest respect to parliament, its committees, and their proceedings is it likely or even possible for the press and citizens to respect and pay attention to the institution.

4) *Better Use of Parliament by Government.* The above discussion of prime ministerial use of parliament indicates a growing tendency by government to ignore parliament in speaking about issues, or making government statements, that would in the past have found their appropriate forum in the house. This gradual decline in Canada replicates British experience. Nevertheless, there are many times and issues for which a statement in parliament by the government would be an appropriate and powerful instrument for presenting the government's case and encouraging discussion of difficult issues where public perceptions are misguided. Canadian Governments have made much more effective use of this forum in the past than they do at present. Use of parliament to air these issues would reduce some of the extremes of unchecked rhetoric that scrums and reaction journalism outside the house encourages, and would strengthen parliament's role as the key forum for debate of national issues and education of the nation.

The era is long past when parliament itself drafted, amended, and made a real decision to approve or reject legislation. Most legislation now gets through parliament unscathed. But this is not to say that parliament is, or must inevitably become, irrelevant. Parliamentary debate can and should educate the public. It should increase public interest in and awareness of political issues. It should allow the government to explain, win arguments about, and ultimately earn public consent for, its policies and legislative proposals. That the Canadian parliament does not do these

things well is a product of many factors, not least of which is a growing reluctance by governments to respect and take advantage of this central political forum.

5) *A Stronger Role for Parliament in Intergovernmental Relations and Constitutional Amendment.* As was discussed above, the role of parliament in intergovernmental relations has been primarily reactive, and limited to ratifying decisions made elsewhere in first ministers' conferences. But there have been exceptions. Several joint committees on the constitution have been exceptions to this general rule, and their workings and results offer some guidance as to what functions a more active committee on intergovernmental relations might fill.

Findings on these joint committees are mixed. Russell concludes that, for the amendments of 1982, "the crucial instrument in the process of building legitimacy for the federal initiative was the special parliamentary committee that sat through the late fall of 1980 and early winter of 1981" (Russell 1993, pp. 113-4). This committee was unusual in getting a great deal of publicity. All of its fifty-six days of hearings were televised. Unlike previous committees on the constitution, the bulk of the witnesses before it represented interest groups, including native peoples, the multicultural community, women, religion, business, labour, the disabled, gays and lesbians, and many civil rights organizations. The proposals of many of these groups were accepted by the committee and ultimately by the government, creating a new set of players in constitutional politics - those groups which had had their claims recognized by mention in the constitution. The perspective of these groups is different from those of provincial governments, and their interests and participation has added new complications to the constitutional processes (Cairns 1995).

Their inclusion has also produced yet another set of constitutional players - the interests left out of 1982 constitution. This has expanded the number of players in this crucial aspect of

intergovernmental relations and reduced the legitimacy of executive federalism. As a result, while the 1980-1 committee was crucial to successful constitutional amendment in 1982, it also profoundly changed the rules and players of the constitutional amendment game, making it much more difficult for governments, or for that matter parliament, to devise legitimate and acceptable amendments.

The Castonguay-Dobbie committee in 1991 was beset with problems. Already by the time it was at work the *Bloc* and Reform parties were clearly going to become key players in the next parliament, but neither party was represented on the committee. Nor did its proceedings give anyone much confidence. "The trail of Canada's constitutional odyssey is littered with constitutional vehicles that went off the rails" Russell observes, "but for sheer disaster nothing can top the miserable performance of the Castonguay-Dobbie committee.... When the so-called unity committee hit the road, its members were squabbling, its logistics dreadful, and its meeting places half empty. Its national tour was terminated in early November when no one showed up at a meeting in Manitoba." (1993 p. 175)

The Beaudoin-Dobbie committee which followed after senator Castonguay reigned as co-chair was more successful, but not much. A large committee, with thirty members, it did much of its work in closed-door sessions, in which the members of each of the three parties on it were in close communication with their leaders, including, for the Liberals, former prime minister Trudeau. The Beaudoin-Dobbie committee's discussions in essence became a negotiation among the leaders of the three old-line parties, leaving the two incipient opposition parties out of the loop and free to oppose whatever was decided. At the time the Mulroney government stood at eleven percent in the polls, which meant that not much that the government agreed to could be assured of public support. Nor, because of the absence of *Bloc* and Reform representation, could the committee

produce a consensus report that truly reflected the important current factions in Canadian politics. Its 'unanimous' report included dissent on significant details, while disagreement on others was avoided by offering options rather than recommending detailed solutions. Some of the legitimacy gained through the committee and the public conferences that had preceded it was lost through these disagreements within the committee. In the end, of course, these protracted public and joint-committee deliberations, which were followed by the Charlottetown first ministers' discussions, failed to mobilize public consent.

The value of these joint committees on the constitution is contestable. On the one hand, the success in amendment in 1980-1 owed a great deal to the legitimacy gained through the committee proceedings. On the other hand, no succeeding committee managed to achieve the same result. The Castonguay-Dobbie committee was a failure, while the Beaudoin-Dobbie committee did little to win public support. The Meech Lake Accord was not considered by a parliamentary committee before its approval by the first ministers. The 1980-1 committee also succeeded in changing the ground rules for constitutional amendment in a way that reduced forever the importance of both parliament and first ministers to the process. Collective experience with these committees leads to the conclusion that consideration of proposals for constitutional amendment by a joint committee of parliament is essential to success, but certainly does not guarantee or even help achieve a successful outcome. It can also alter the outcomes in unexpected ways.

Committees of parliament suffer from the same handicaps when involved in constitutional amendment and federal-provincial relations as they do in other spheres. Two decades ago Donald Smiley was pessimistic about the possibility for a stronger role for parliament in intergovernmental relations:

In general terms, I do not see any very promising prospects for the House of

Commons - and this applies in almost the same way to the provincial legislatures - to involve itself more effectively in the ongoing processes of executive federalism. It would indeed be difficult to develop a standing committee on federal provincial relations precisely because the scope of such relations is so broad as to include in one way or another virtually every important activity of the two orders of government....(Smiley 1978, pp. 76-7)

If anything, the dominance of the executive has increased since then, and the role of legislatures continued to decline. There is no prospect for real reform unless the role of parliament can be altered to one of active involvement in the formulation of intergovernmental agreements. This is unlikely within the present system.

Nevertheless, a standing joint committee on intergovernmental relations might well add something useful to the processes. Greater parliamentary involvement is certainly needed, and the appropriate tool for investigation, discussion, and the hearing of witnesses from various interests and concerns is certainly a parliamentary committee. At best, however, a standing committee could be only a minor voice in the complex and extended processes of intergovernmental relations.

(6) *An Intermediate Level Between Statute and Constitutional Entrenchment.* It was observed above that the Canadian constitution is prohibitively difficult and risky to amend. But many groups and interests demand that their concerns must be met by entrenchment in the constitution. Ordinary statutes as passed by parliament do not have the symbolic saliency of constitutional entrenchment, and many influential groups do not accept mere statutory guarantees as adequate. Quite possibly an intermediate level of 'basic law' can be found for assuring rights and other fundamental relationships which is easier and less hazardous to accomplish than constitutional entrenchment but has much higher

symbolic value than ordinary statutes. Such a procedure could give powers up to and including a veto to minorities, but would not require either the unanimous support of ten provinces, or need to meet the seven provinces with fifty percent of the population requirement (in fact, the minorities involved might not always be provincial governments). Nor might they need to be approved through referendum. Other countries have, at times, used such a basic law instrument. The Canadian Government could well explore this possibility as a more flexible and achievable alternative to constitutional amendment.

Because they were ordinary statutes, the initiatives taken by the federal government in 1995 to provide assurances that Quebec and other regions would have a veto over future constitutional amendments, to give recognition to Quebec as a distinct society, and to enable responsibility for labour market training to be transferred to provincial governments do not meet the same symbolic and functional standards as constitutional entrenchment. Being ordinary statutes they are amendable, or repealable, unilaterally by the federal parliament alone. And they were formulated and ratified unilaterally, without the assent of any provincial governments, particularly that of Quebec.

These weaknesses would be mitigated by ratification through the more exacting process of an intermediate level of basic law. This intermediate level would be of higher symbolic importance than ordinary statutes because it would be more difficult both to 'legislate' and amend. But it would be easier to legislate and amend than the provisions of the constitution itself.

Something like this sort of intermediate level was proposed for Canada in the Charlottetown Agreement. Section 26 of the consensus report read:

The Constitution should be amended to provide a mechanism to ensure that designated agreements between governments

are protected from unilateral change. This would occur when Parliament and the legislature(s) enact laws approving the agreement.

Each application of the mechanism should cease to have effect after a maximum of five years but could be renewed by a vote of Parliament and the legislature(s) readopting similar legislation....(Canada 1992, section 26)

This provision clearly was designed to give greater symbolic legitimacy to, and protect from unilateral action by one level of government, crucial provisions of fiscal federalism. The same sort of strength and symbolic legitimacy could be extended to rights and policies in other areas, giving important semi-constitutional agreements between governments, and provisions relating to the treatment of minorities, strong symbolic visibility and recognition in this sort of "manner and form" (Swinton 1996).

Another approach might be to identify a way of making selected legislation or intergovernmental agreements more difficult to amend. Bills specially designated as 'basic law' could require a larger than fifty percent majority to pass, and similarly could be amended only by a vote of two-thirds of the house, for example.

Constitutions can be easy or difficult to reform. They can also be detailed or general. Successful constitutions fall into two categories: those that are short and general in their provisions and difficult to reform; and those that are long and detailed but easy to reform. The Canadian falls into the worst of all constitutional categories. It is both long and detailed and prohibitively difficult to reform (Franks 1995). Provinces, many minorities, disadvantaged groups, activist organizations with all sorts of specific political ideals, all demand constitutional recognition. Those left out feel hard done by, while those included defend and want to enhance their status. This is the source of most of the constitutional problems in Canada. The amendments of 1982

were far from complete or satisfactory, but the amending formula then adopted has twice and disastrously prevented major change. At the same time many groups, especially Quebec and aboriginal peoples, have been frustrated when their demands for recognition of their special rights and position in the constitution have been defeated.

The Swedish constitution offers a useful example of a constitution that is both detailed and easy to amend. It can be amended by the Swedish parliament, but only if the parliament passes the same amendment twice, with a general election intervening between the two votes. This sort of decision rule provides a much lower threshold for ratification than the amending procedures of the Canadian constitution, and allow flexibility and simplicity in making items 'constitutional'. In fact, it makes the constitution more an enhanced statute than a hallowed document on a much more exalted plane of existence than mere laws passed by parliament.

An intermediate level of basic Law in Canada could be semi-entrenched through a decision rule and ratification procedure of this sort. For example, agreements between governments in Canada and other provisions which were required to go through a procedure of this sort to legislate and formalize (perhaps including a similar provision for ratification by the second level of government) would certainly have a solidity and permanence that ordinary statutes do not enjoy. They would also have much higher symbolic status than ordinary statutes.

(7) *A Double-E Senate*. Senate reform, like free votes and committee reform, crops up perennially in discussions of reform to parliament. More has been written about senate reform than about reform to the commons. Whatever the merits of the various proposals for senate reform, most require constitutional amendment. Two major problems of the present senate (accepting that it is not a strong body representing provinces) are: first, it has too much legislative power; and

second, it lacks legitimacy because of the method of appointing senators. Two of the three prongs of 'Triple-E' senate reform proposals - Equal, Effective, and Elected - can be accomplished through acts of the federal parliament alone: election and effectiveness.

A useful package for senate reform through federal statute would include: 1) a clear definition of the powers of the senate through a 'self-denying' ordinance, such as, perhaps, limiting the senate's role in ordinary legislation to a suspensive veto, while it could have much greater powers in matters such as culture and language which are of crucial importance to provinces and other minorities; and 2), a better way than the present for appointing senators, such as from lists provided to the governor in council based on the results of province-wide elections. The senate's role in basic law guaranteeing fundamental freedoms could also be made much stronger by requiring, for example, concurrent majorities of the two major linguistic groups on legislation affecting language and culture. This reformed senate would reduce the uniqueness and solitary role of executive federalism as a forum for national decision-making in some key areas. At the same time it would complement and support executive federalism by adding to its decisions the legitimacy of review and approval by parliament.

These reforms can be made by statute or other parliamentary instrument. They do not require constitutional amendment to implement. Parliamentary procedure, which is a vital part of the Canadian constitution, lies entirely within the competence of parliament. A clear definition of the role of the senate in the legislative and supply processes, as long as it does not directly contravene the provisions of the constitution (such as by allowing money bills to be introduced in the senate) can also be made through parliament alone. Such a self-denying ordinance as is being proposed here has already been introduced into the senate on at least one occasion. Similarly, the constitution merely states that senators are appointed by the governor in council. Who is

appointed depends upon the method of selection of the candidates recommended to the governor general, and one senator in recent years was selected in the first instance by the voters of a province.

Despite all the periodic enthusiasm for senate reform, it would be wrong to assume that a Triple-E senate, or other such body, would make a major change to intergovernmental relations. The Australian senate, a genuine Triple-E upper chamber, is highly partisan and responds more to party than to region or state (province) (Sharman 1987). It is most unlikely that an elected senate in Canada would be much different. Its influence would be incremental, not transforming.

(8) *A More Consensual System.* Arend Lijphart in particular has argued that the Westminster style of fusion of power within the cabinet is an inappropriate style of government for countries with wide geographical, cultural, and linguistic differences (1984). In pluralistic societies, consensus models establish constraints on majorities which preserve and affirm the rights of minorities. Among the features of consensus democracies are:

- 1) Executive power-sharing and grand coalitions,
- 2) Separation of powers, formal and informal,
- 3) Balanced bicameralism and minority representation,
- 4) A multi-party system,
- 5) A multi-dimensional party system [a mix of parties which are distinguished one from another on many different bases, including ideology, geographical base, cultural and ethnic mix, class, etc],
- 6) Proportional representation,
- 7) Territorial and nonterritorial federalism and decentralization,
- 8) Written constitution and minority veto.

Of these eight features, Canada now has only: (4) a multi-party system; half of (7) the territorial but not the non-territorial federalism; and most of (8) a minority (in Canada provincial) veto over

constitutional amendment. Canada, in Lijphart's analysis, processes the social, geographical, and cultural features which could be better accommodated through a consensus form of political system. But the Canadian system of parliamentary government as it now works is in its essence majoritarian.

If Canada were to make fundamental changes to the system of government of the sort that other countries have adopted to accommodate cultural and other pluralisms, then these features of consensus government would have to be given serious consideration. The possible reforms identified earlier in this paper include many aspects of consensual democracies: a dispersal of some of the power now fused in the executive; proportional representation; a greater role for members and committees; less government control over the proceedings of parliament; minority participation in making basic law; a reformed senate. Most of the features of a consensus democracy could be introduced without constitutional reform. Such consensual reforms identified and proposed above include: proportional representation; balanced bicameralism through an elected senate with clear responsibilities for recognizing and preserving minority rights; the likelihood of executive power sharing and coalitions because there would be more minority governments under a system of proportional representation; and promoting territorial and non-territorial federalism through a basic law mechanism. In fact, these changes taken together would put Canada in the category of consensual rather than majoritarian systems. They can all be made without amendment of the formal constitution.

This paper has considered parliamentary government at the federal level, but much of what has been said also holds true, indeed is more true, for the provincial level. Executive domination, amateur short-term membership, weak opposition, ineffective committees, in many ways are exacerbated in provincial legislatures. This, when coupled with the importance of provincial

premiers and a few key ministers in executive federalism, gives rise to a federal-provincial dynamic that does not properly or truly reflect the complexity and divisions of opinion within the provinces.

The *Parti Québécois*, out of office, supported movement towards an American style presidential-congressional government before 1976, but abandoned it after gaining power. The rewards of the executive-dominated control of power in the parliamentary-cabinet system were too attractive to lose, especially for a party with an overwhelming concern for imposing drastic change on the system. The checks and balances of a consensual system, the variety and moderation of voices through multiplicity of channels, would, at best, delay and attenuate the processes of government and policy change. The executive dominated parliamentary system gives a programmatic, change-demanding, party like the *Parti Québécois*, the monopoly of power and unity of voice needed to accomplish their objective.

Lijphart's conception of consensual democracy, in its broad lines, proposes that there should be many channels for interaction between the components of the nation rather than the few - parliament and executive federalism - that exist in Canada. In actual practice, of course, these two forums are complemented by many more informal ones in Canadian politics. But in the key issues of national policy and constitutional amendment executive federalism, and to a much lesser extent parliament, dominate. The reforms examined above deal exclusively with creating more, and competing, channels for influencing key issues at the national level. They ignore the provincial. The multiplicity of channels postulated by consensual democracy demands a multiplicity of actors at the provincial and regional level as well as at the federal.

The United States offers a model that contrasts with Canada (Olson and Franks 1993, Lemco and Regenstrief 1984). There, not only do

state governments maintain representatives in Washington, but so also do state legislatures, perhaps different ones for each state house, and a further one for the state governor's office. Major cities and urban regions will have representatives in Washington as well. The activities of these representatives will cover a wide range of targets: Congress, Congressional representatives, Congressional committees; the Senate, Senators, and Senatorial committees; the bureaucracy; the President and his office, etc. The complexity of decision-making at the federal level in the United States is reflected in the complexity of representation from the state and local level. The separation of powers in the American system makes each of these players influential in the policy and legislative processes.

A CHOICE BETWEEN FUTURES

The reforms listed above divide into two groups: on the one hand, those that attempt to improve the status quo by making the present structures of national decision-making through the two channels of parliament and executive federalism work more effectively; and, on the other hand, those that propose a drastic reform to the system in the direction of a consensual form of government. The choice between them pits a grab-bag list of incremental reforms against revisions to the fundamental processes of representation and structure of power in the national government. This section will consider each in turn.

1) *Option One: Small Reforms to the Present System.*

The list of possible reforms to the present system are modest, and the limitations of most of them are already known. They include:

(i) *Improved remuneration for members of parliament.* This would reduce voluntary retirements and lead to a more stable membership in the house. No recent government, however, has been prepared to face the political consequences

of such a reform, and none is likely to in the immediate future.

(ii) *A stronger role for parliament in human rights.* These reforms would not be difficult to make, and would have some benefits. Their impact on the system as a whole would be minor.

(iii) *Free votes.* This reform has been proposed many times. Its disadvantages seem to governments to outweigh its benefits. Doubtless more toleration of dissent is possible, even desirable, but not only is this unlikely to happen, its impact on the system as a whole would not be large. British experience shows that governments can survive and even prosper despite defeats in the house; the experience of the 1972-4 minority parliament in Canada shows the same. More independence for MPs could increase their stability and legitimacy as representatives by increasing their 'personal vote'.

(iv) *More effective committees.* The limitations of the present committees and committee system are already apparent. So also are the constraints on their reform. They cannot do much more than they are now doing. The constraints lie beyond the power of the house itself to correct: in short-term unstable membership, executive domination, high partisanship. No major reform to improve parliament's handling of intergovernmental relations and national unity through committees is possible without fundamental changes elsewhere in the system.

(v) *Better use of parliament by government.* There is room for improvement here. The impact of the reforms on parliament's prestige and influence would not be large, however.

(vi) *An intermediate level between statute and constitutional entrenchment.* This area needs more exploration. The discussion above has identified a few of the many possibilities available here. The possibility of at least one route out of the impasse in constitutional amendment might be found here.

(vii) *A stronger role for parliament in intergovernmental relations and constitutional amendment.* Some minor improvements are possible. Identified above were the possibilities of a standing committee on intergovernmental affairs, special provisions of double-majorities for language and cultural matters, and the above-mentioned stronger role for parliament in human rights, and use of basic law semi-entrenchment. These reforms, when added together, would make parliament more visible and influential in intergovernmental and constitutional politics. They cannot, however, in any serious way, mitigate the dominance of executive federalism in constitutional reform and intergovernmental relations.

* * * * *

These reforms have the advantage of being incremental changes to the existing system. Their consequences can be estimated pretty accurately, as can their advantages and disadvantages. Unfortunately, they are also small, and taken as a package, they would do little to improve the minimal role of parliament in intergovernmental relations and national unity. Some of the reforms, like strengthened committees and more free votes, have been in the rhetoric of reform for decades, but have either not been implemented for very good reasons, or have been found to produce little real change when tried. However good the intentions of reformers, and however thorough the preparatory analysis and groundwork, these incremental reforms cannot create real change because of the constraints imposed by the rest of the system. If the intention of reform is to address seriously the problems engendered by the dominance of executive federalism in much of national politics, policy-making, and constitutional amendment, then reforms must go in a different direction. They must deal with the roots of the problems, not the consequences.

2) Option Two: Towards A More Consensual System.

Several of the reforms discussed above go far beyond the incremental mode of reform and propose fundamental changes to the system. The three most prominent are proportional representation; the intermediate level between statute and constitutional entrenchment; and the Double-E Senate. These reforms are consistent with a more "consensual" system of government than the "majoritarian" system which Canada now has. And the consensual system has been found to be the type most compatible with a successful governance and unity in large, geographically and culturally diverse countries like Canada. This section will not discuss the reforms needed for a more consensual form of government in detail. Rather, it will identify some of the advantages and disadvantage of such a move.

(i) *Movement towards a more consensual system would be a bold step.* A bold proposal to reform parliamentary government and how it deals with the complexities of federalism and intergovernmental relations would be different and would offer promises of coming to grips with the underlying problems that the minor, incremental reforms lack. To make a serious move towards a consensual system, a reform package would include: 1) a system of proportional representation; 2) an elected senate; 3) semi-entrenchment through a basic law mechanism of some rights of minorities and agreements between levels of government, including fiscal arrangements. A by-product of these reforms is likely to be the gradual development of even more features of a consensual system, especially more minority governments which would give a stronger role to parliament in relation to the executive, and would increase the possibility of coalition governments. Quite possibly the time has come for this sort of bold step. Not only is incrementalism of the sort considered under the first option boring, it also doesn't work. A bold proposal for a more consensual system would be a pre-emptive strike to change the terms of

discourse in the confederation debates. Such a change is needed.

(ii) *It would appeal to the electorate.*

Movement towards a more consensual democracy would appeal to several important elements of the electorate who are disenchanted with the present methods of operation, including those who admire the American system, and those (a growing number) who do not like the confrontational, adversarial nature of present parliamentary politics.

(iii) *Consensual reforms can be made by the federal government and parliament without involving executive federalism and constitutional amendment.* The consensual reforms proposed in this paper can largely sidestep executive federalism. The onus would be on the provinces to agree on the balance of provincial/regional representation in the senate, and this sort of senate reform could be proposed as a stand alone constitutional amendment. It would not harm the federal government one way or another if the provinces agree or fail.

(iv) *Nothing else seems to work.* At present Canada seems to be sleep walking towards disaster. Or, to use another metaphor, the Canadian Government seems to be paralyzed, a cobra hypnotized by the mongoose of disunity and unable to arouse itself to positive action. The federal government is in a reactive and damage control mode. That does not work in this sort of crisis. A move towards consensual government, at least, would be a positive action. It would create an alternative way of thinking about and resolving problems. It looks like a much bigger step than it actually is. Every reform proposed above, including proportional representation, an elected upper chamber, loosening of party discipline, and more effective committees, has been adopted by at least one of the major Westminster-style parliamentary democracies. In terms of institutional reform, Canada has proven to be the most conservative of all parliamentary governments.

(v) *It might well produce a desire in the provinces to emulate the changes.* This, in itself, would contribute to a more complex, varied and richer political discourse in Canada. On the other hand, unilateral reform could put the federal government at a disadvantage. Increasing the variety of influential channels at the federal level in Canada will make much more obvious that there are many different voices and viewpoints that should be accommodated in national policy-making. But, unless the complexity at the federal level is mirrored by a comparable complexity at the provincial level, a consensual structure at the national level contains the possibility of apparent confusion and division at the federal level which might stand in stark contrast to apparent unanimity within a province. A stronger and more legitimate voice for minorities and divisions within the provinces in intergovernmental relations would be desirable, and perhaps even essential, for a consensual system to contribute to national unity.

(vi) *The notion that consensual-type reforms contribute to elite domination is wrong.* In many European countries consensual arrangements - proportional representation, coalitions, multiple loci of power - co-exist with large mass parties of a wide range of political persuasions. The United States is the exception because it both has a consensual-type system and strong elite domination of politics. But other, peculiarly American factors which have little or no relationship to consensual institutions, create this elite domination: the voter registration system effectively disenfranchises large parts of the electorate (hence low voter turnout, particularly among the less-advantaged), and the financing of elections is so onerous that elected congressmen and senators must spend a large part of their working lives raising funds, especially from powerful and wealthy interest groups and individuals. These contribute more to elite domination in the United States than does the system of separation of powers and checks and balances.

(vii) *Movement towards a consensual system would alter, but not harm, the doctrine of ministerial responsibility.* Smiley believed that change towards a more consensual system would necessarily lead to an American style of presidential-congressional government. This is not correct. Many European nations combine a consensual with a parliamentary system. One aspect of consensual systems not addressed by Lijphart, however, is the locus of responsibility for day-to-day administration. In all consensual systems a formal distinction is made between the political accountability and responsibility of ministers for policies, legislation, finance, and the general stewardship of government on the one hand, and the administrative responsibility and accountability of public servants for day-to-day operations and administration on the other (Franks 1995(b), 1996). In fact, the other major Westminster-style parliamentary democracies make this distinction more formally and clearly than does Canada. In Canada already a large proportion of the servants of the crown are employed in non-departmental organizations for which boards, commissions, etc. and not the ministers are accountable. The current trend towards alternative service delivery systems will, in Canada as it has in Britain and New Zealand, transfer even more government activities to bodies outside traditional ministerial responsibility and accountability. The Canadian parliament and government have not yet resolved the problem of mechanisms for accountability to parliament for these sorts of non-departmental organizations. The experience of other parliamentary governments offers many useful guidelines on how accountability can be assured (Franks 1995(b), 1996).

Clarification of the doctrine of ministerial responsibility for administration is needed to create the sense that the administration belongs to the nation, and not just one political party. Concomitant with this would be a reduction in patronage of some types. This reform does not mean, it must be emphasized, that Canada should

abandon the doctrine of ministerial responsibility. Ministerial responsibility and accountability to parliament would still remain the cornerstone of our system. What it would do is clarify responsibility for administrative action, and put Canada more in line with what other major parliamentary democracies, including the Westminster-type ones, do. The essential core of responsible parliamentary government - that the cabinet is accountable to and dependant upon the support of the house of commons would remain. Accountability might become even more focussed on policy, stewardship, and financial management etc, at the expense of trivialities.

In addition, a consensual system would almost certainly lead to more defeats of government legislation in the house, and more productive dissent by members. The role of the political executive (cabinet) would be weakened, while other elements would gain - the house of commons, the individual member, committees, the reformed senate, the variety of interests which want to influence government policy - to name a few. But this does not mean the end of responsible government. The conventions on confidence are much more flexible than are generally appreciated (Heard 1991), and could certainly accommodate such a change. What it would mean is an end to the decline of parliament, greater legitimacy for parliament, government, and the representative and legislative processes, and a stronger and much more positive role for parliament in national unity.

(viii) If one major stand alone constitutional amendment were to be made, it would set a precedent for others. The composition of the senate is an ideal candidate for such a stand alone constitutional amendment. Several observers have argued that incremental, and small, constitutional amendments would make the whole constitutional amendment process easier, more accommodating, and more flexible (Watts 1996, Laponce and Meisel 1994, Russell 1993). Perhaps the problem in constitutional amending procedures is not that the amending process is unworkable, but that amendment packages keep growing into massive

grab bags that try to please everybody and then fail disastrously because the forces of rejection and resentment are greater than those of accommodation. What Russell calls "mega constitutional politics" simply does not work. Establishing a process of a series of little amendments, like the Swiss (Watts 1996), could avoid the escalation of stakes and probability of failure of massive constitutional packages. It would probably also avoid the need for referendums as well (Laponce and Meisel 1994 pp. 89-103, 114-20). Canada is not alone in finding mega reform impossible. Both in Switzerland and in Australia efforts comparable efforts at mega constitutional reforms have failed (Watts 1996).

ON MAKING MAJOR REFORMS

Whether a massive move towards a more consensual system is desirable or not depends upon the alternative. The other option for reform, of small incremental change to the present system of the sort identified above, is not only timid but includes reforms which, at best, have proven to make little real change in the past. Incremental change would also do nothing to address the problems in the present system. It would only reinforce the views of those who look on the present system with scepticism, not to say despair. It would do nothing to contribute to national unity.

The consensual option, in comparison, promises fundamental change and amelioration of the problems. Such a fundamental change has risks because it is an advance into the unknown. But each element of the unknown has been tried in another major Westminster-style parliamentary democracy, and Canada can learn and profit from their experience. New Zealand has adopted a form of proportional representation. Australia has a elected senate. Both Britain and New Zealand have gone well down the road of devolving responsibility for day to day administration to public servants rather than ministers. Canada has

made the least reforms to its machinery of parliamentary democracy of any of these countries, yet it also suffers from the worst stresses and risks of disintegration. These two phenomena are not unconnected.

The question that needs to be addressed is: what are the costs of not making such fundamental reforms. Is Canada going to sleep walk into disintegration, with no attempt being made by the federal government to address the institutional and system problems that have led to the present crisis? Is no new initiative and vision going to come out of Ottawa? Can a bold effort at change have any worse effects than changes that do nothing? A bold new step would have to be in the direction of consensual democracy. The risks of making such changes are great, and they would be a journey into partly uncharted waters. But the risks of doing nothing, or of making incremental pseudo-reforms are almost certainly, at the present time, even greater.

If a government were to want to move cautiously towards a consensual system, it could do so by saying that it intends to move in the consensual direction, but before doing so wants to consult, discuss, and explore, and mobilize consent. In order to do this, it could set up a royal commission or other such body, perhaps one involving parliament, with a strict mandate, to explore and propose reforms that would move Canada towards a consensual system, and to report in not more than a year.

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