

Institutional Reform:

The grass isn't always greener on the other side

Prepared for the *Festschrift* for John Courtney

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I am writing this paper in Spring, 2004, at a time when Canada's three main federal political parties are advocating a variety of changes to our parliamentary and electoral institutions. The ruling Liberal Party is focussing primarily on parliamentary reform, and especially on limiting party discipline. The Official Opposition, the Conservative Party, puts the priority on Senate reform: it believes Senators should be elected. The third party, the New Democratic Party, focuses on the electoral system: it says that if the Liberals win only a minority government after the next election, the NDP may agree to be part of a coalition government with the commitment that a referendum will be held on some form of proportional representation.

It is obvious that our federal political system would change radically with the cumulative effect of these three sets of reforms. For one thing, one might worry that the decision-making process in Ottawa would become quite cumbersome: with barely any party discipline to bind M.P.s together, an increased number of parties represented in the House after an election by proportional representation (with none of them able to build a majority government on its own), and an elected upper chamber able to act as a powerful counterweight to the lower one, one may fear the conditions for a paralysing stalemate.

At the same time, it is fair to say that our federal political institutions are not perfect and that there is room for improvement. There is merit in considering some relaxation of a party discipline that may sometimes be too rigid. It is difficult to see how an unelected Senate could be something that a well-established democracy can be proud of. And there should be a way to add some proportionality in order to correct the shortcomings of our "first-past-the-post" electoral system.

In other words, I argue that we should consider institutional reform with the common-sense approach Professor John Courtney repeatedly advises us to follow: with rigour and with caution. "*Yesterday's reform often is today's problem*", Professor Courtney reminds us, quoting Bert Rockman.^[i] Caution is the order of the day, for we could do more harm than good if we were to move ahead with institutional changes without properly weighing their consequences first.

I perceive Professor Courtney's advice as a call for modesty and moderation, and not as a justification for the status-quo. He wants us to consider institutional reform as a very serious matter, without demagoguery or capriciousness. Any political system has strengths and weaknesses -- that are often closely interrelated -- and it is difficult to correct the latter without damaging the former. As he wrote: "*An electoral system does not exist in a vacuum.*"^[ii] It is so easy to focus on the apparent weaknesses of an institutional arrangement, to the point of losing sight of the benefits it offers. Moreover, there is a danger of putting far too many

expectations in the promise of institutional change.

Certainly, our institutions and our politicians enjoy less public confidence than they did 20, 30 or 40 years ago. This is confirmed in many surveys. For instance, in 1965, 49% of Canadians felt that “*government does not care what people think*,” a proportion which climbed to 53% in 1979, 63% in 1984, and 70% in 1990, before stabilizing.^[iii] In 1979, 15% of Canadians said they felt “*very little*” respect for the House of Commons, a figure which rose to 20% in 1985 and 33% in 1993.^[iv]

Before concluding that our institutions have had their day and need to be changed, we should ask ourselves if this problem of public confidence is unique to Canada. The answer is no. It can be found in democracies that do not have the same institutions as we do. The satisfaction level with the way democracy works is average in Canada relative to other countries, neither especially high nor especially low.^[v] So, we should not idealize other political systems. As John Courtney wrote: “*One of the great truisms of political studies is that far-away pastures look temptingly green.*”^[vi] I would say that our democracy remains a work in progress and that it is experiencing some noticeable problems, which, by the way, it shares with other democracies, and for which the solutions are not simple.

The main strength of our current set of political institutions is that it provides clear leadership. But that is, at the same time, its most contested aspect. Today, the perception of an excessive concentration of power in the hands of the Prime Minister and his immediate entourage is the main source of concern in terms of the health of Canadian democracy. Hence, we should start our reflection on the kind of link between democracy and leadership that our current institutional arrangements provide. We should make the appropriate diagnosis, before assessing the extent to which improvements can be expected through relaxing party discipline, reforming the Senate, and including some kind of proportional representation in the electoral system.

1. The strength of our institutional system: Providing democratic leadership

The assertion that power is too concentrated in the hands of the Prime Minister and his immediate entourage can mean two things: that power is being increasingly concentrated relative to past practices, or that it is overly concentrated relative to some ideal standard.

As for the first assertion, the trend toward this concentration of power over time, I have yet to read anything that substantiates this. The works by Donald Savoie and Jeffrey Simpson^[vii] are at times captivating, but to my mind they do not prove the thesis of an increasing concentration of power as the years go by. I find nothing in these works that can convince me that the Prime Minister and his immediate entourage, in particular the Privy Council Office and the Prime Minister’s Office, acquired more power under Jean Chrétien than they had under Brian Mulroney or Pierre Elliott Trudeau.

However, if I compare their descriptions with analysis of an earlier time, like the one penned by Jack Granatstein on the Mackenzie King era in *The Ottawa Men*,^[viii] it is clearly evident that power at that time was far more concentrated in a few hands than it is today. There is no possible comparison to what we are currently experiencing. The political system then was less complex, there was less expertise, and there were far fewer checks and balances on power.

But expectations of democracy change. We now demand of our elected officials conduct much more irreproachable than before.

I know that some people, including Liberals who nevertheless admire Mr. Chrétien, find that he was too authoritarian. I am afraid that on this topic, my personal experience might not be of much value. I never worked as a Cabinet Minister with any Prime Minister other than Jean Chrétien. In fact, I had never had a boss before him, since as one knows, academics have no boss, thereby pursuing the most liberal of

professions.

One day, Mr. Chrétien asked me if I liked working with him. I replied: “*Not always*”. He asked me why not. I told him: “*Because you don’t always do what I ask you to.*” Which shows just how unrepresentative my judgment is in this regard!

While as a minister I worked closely with only one prime minister, I have, on the other hand, worked with three deputy prime ministers, two finance ministers, three foreign affairs ministers, two chiefs of staff in the Prime Minister’s Office, and three clerks of the Privy Council. I can confirm what everyone already knows: power shifts a great deal in accordance with the people holding it.

Power is a very difficult concept to define. I have a friend who worked on Brian Mulroney’s political staff. He told me many tales about the concentration of power at that time. However, I try not to conclude from his remarks that power has never been so concentrated as it was in the hands of Brian Mulroney and his entourage.

My thesis director, the great French sociologist Michel Crozier, taught me that power is not a possession that some have and others do not. Power is a relationship within systems of complex actions.^[ix] Analysing it is never simple. That is why I suggest a great deal of caution before making peremptory judgments on a supposed trend toward concentration of power within the Government of Canada.

As for determining whether the power wielded by our prime ministers is excessive in relation to some ideal standard, we must first agree on the standard in question. Certainly, the combination of a parliamentary government and a first-past-the-post system often places our prime ministers and our premiers in a position that allows them to enjoy absolute majorities in the House or the legislative assemblies. This gives them a more solid base than that afforded a president, such as in the USA and Mexico, who has to deal with both houses of Congress, or a prime minister, such as in Israel and Belgium, leading a governing coalition of parties elected under a proportional system.

But on the one hand, one must bear in mind that in our decentralized federation, our federal government has fewer areas of jurisdiction than do the national governments of other countries. Consequently, to use a sports analogy, our Prime Minister plays on a smaller rink than his foreign counterparts, even if he has more freedom to manoeuvre.

On the other hand, I see nothing questionable, from a democratic standpoint, in the fact that we in Canada are able to elect stable governments that are usually composed of a single party. We can and we should discuss the respective advantages of presidential and parliamentary systems, or of the various electoral systems, but let us agree that these choices of institutions remain within the realm of democracy. They express different modalities. Certainly, the modalities which originate from our electoral system and our parliamentary government favour the exercise of leadership. But the point is, democracy and leadership are not mutually exclusive.

Indeed, in representative democracies it is generally felt that elected officials must conduct themselves as leaders, that is, as decision-makers who accept responsibility for their decisions. Elected officials are asked to act according to their conscience, according to what they feel is just, desirable and feasible. We do not want elected officials without conviction, who, like weathervanes, follow the winds of public opinion, tossed about by polls.

I know that one notion of democracy would have the elected official conform at all times to the preferences of the majority of his or her electors. For example, if he is against the death penalty but most of the voters in his constituency are in favour of it, he must vote for the death penalty. This notion is present in democracies, but it does not strike me as dominant in any of them. The elected official is generally recognized as having

the right, if not the obligation, to make unpopular decisions if she considers them to serve the common good. Her task, at election time, will be to convince her electors of her judgment as a leader. The current Canadian political system favours the expression of such leadership and permits the electorate to sanction it.

It is true, however, that we do not want these leaders we elect to behave like dictators between elections. The power of elected officials is subject to law in a democracy. That is why there is no democracy without the rule of law. It is through the law that we determine electoral procedures, relations between the executive and legislative bodies, the independence of the judiciary, the division of jurisdictions in a federation, the charters that safeguard rights and freedoms, and so on. There is certainly room for improvement, but I think we can say that the rule of law is doing well in Canada.

In a democracy, we also hope that the actions of our leaders are not only bounded by the law, but that they are accompanied by fruitful and ongoing consultation and dialogue with the population. A leader must make decisions on the strength of a deep understanding of the various opinions that prevail among citizens, groups, experts and so on. Hence the hearings of parliamentary commissions, white papers, ministerial tours, etc.

We also require of elected leaders in a democracy the most transparency possible. Nothing they do must be concealed from the public, except what is kept secret out of respect for privacy and the public interest. A democracy such as Canada is constantly refining the mechanisms that foster this transparency: access to information laws, the reports of auditors general, ombudsmen, and so forth. The important act on the financing of political parties, the introduction of legislation protecting whistleblowers, and Prime Minister Martin's recent announcements regarding his intention to extend the Access to Information Act to most crown corporations, move in the direction of more transparency and accountability.

There are many such mechanisms in Canada and they certainly show no obeisance to the political authorities. But while they are very useful in a democracy, they may sometimes produce flawed criticism that may worsen the Canadian public's cynicism about the probity of our political system. This is especially the case in a context in which, as one scholar has observed: "*politicians and officials can routinely be charged with failure, but not auditors.*"^[x] My former colleague, Jane Stewart, was certainly unfairly accused of wasting one billion dollars when she was Minister of Human Resource Development Canada, on the basis of a 2000 internal audit of management controls that "*was so abstract and poorly executed that nothing whatever can be concluded from the work.*"^[xi] As David Good wrote, while the media's reports would begin with a bang – the so-called billion dollar boondoggle – "*they would eventually end with a whimper when HRDC claimed that it had made overpayments in organizations amounting to \$85,000.*"^[xii]

Democracy is a work constantly perfecting itself. I am not arguing that our political institutions are just fine as they are. I am simply saying that democratic leadership is something that they provide and that we need. We should bear this in mind in considering their improvement. It is with this understanding that I will now review the proposals that our main federal parties are contemplating with respect to party discipline, electing Senators, and proportional representation.

2. In search of a proper use of party discipline

Those who say that our parliamentary institutions are outmoded take issue particularly with party discipline, which they claim prevents M.P.s from defending their opinions and the interests of their constituents. They argue that the confidence of the Canadian public in the political system would be considerably enhanced if each M.P. would be set free to be the true representative of his constituents in Ottawa, instead of the representative of Ottawa in his constituency.

Yet, one wonders then, why disenchantment with elected officials is so widespread in the United States, a

country where there is little or no party discipline. Barely one fifth of Americans say they have “*a great deal*” or “*quite a lot*” of confidence in Congress. [\[xiii\]](#)

Properly used, party discipline is a strength of our parliamentary system. There is an indisputable validity to the principle that candidates who are elected as a team, under a particular party banner and on a common platform, should work as a team once they are elected. If we were to abandon this principle, I am sure our democracy would be no better off and the public would not have more confidence in it.

As for the mantra that an M.P. should be the voice of its constituents in Ottawa rather than the other way around, make no mistake, certainly, my constituents expect that I will be their voice in Ottawa, but to be their voice does not mean caring only and exclusively about them. They do not want me to represent them as selfish voters who care nothing for the people in the 307 other ridings across Canada. They ask me to behave as a Canadian parliamentarian, who cares about their country, Canada, as a whole. To be their voice in Ottawa is to work for Canada, and it would be difficult for me to do this alone, without the help of my party, my caucus and my leader. And there is no way that I will enjoy this help if I do not accept the discipline that comes with it.

Although party discipline is not the source of Canadians’ lack of confidence in our political institutions, it is true that it should not be too rigid and must be avoided when it is not necessary. Indeed, Mr. Chrétien actually increased the number of free votes in the House of Commons during his tenure. As for me, I support the “*three-line whip*” system that Prime Minister Paul Martin has implemented. Under this system, there is what is known as “One-line” free votes, where all government M.P.s, including ministers, are free to vote as they see fit; a “Two-line” vote is one that is free for all government M.P.s except ministers, who are obliged to support the government’s position; a “Three-line” vote will be a “whipped” vote which all government M.P.s are required to support because they are on matters of fundamental importance for the government. [\[xiv\]](#) I see the implementation of this three-line voting system as a way to move forward in search of the best balance between flexibility and discipline.

In fact it would be preferable if the Canadian Constitution were clearer on this matter. We are one of the few democracies which do not constitutionally define the means by which the legislative branch can censure the executive. I suggest that the Constitution should therefore be amended to state clearly that the Government is not required to give the Governor General its resignation unless it is defeated in the House of Commons on (1) a non-confidence motion, (2) a supply vote or (3) a question of confidence defined as such by the Government itself. Parliament can make this constitutional amendment without having to solicit the provinces’ agreement, since the reform concerns only the House of Commons.

Parliamentary reform involves other issues beyond voting discipline. Under Chrétien, bills were increasingly referred to Committee before Second Reading, thus allowing M.P.s a greater role in their improvement. Paul Martin intends to refer bills to Committee before Second Reading even more routinely. Chrétien increased funding for Members’ office budgets. Martin plans to go further and to provide greater resources to Committees. Chrétien made the appointment of all agents of Parliament subject to House committee review and House approval. Martin is committed to make appointments to certain key positions, including heads of Crown Corporations and agencies, subject to prior parliamentary review.

These parliamentary reforms are welcome. Still, we should not expect too much from a further empowerment of the House and M.P.s as a way to decrease the mistrust and cynicism toward the political system. What would help, though, is if we were able to convince the public to give no credence to the false assertion so often heard that the Parliament has never been weaker than it is today. As Courtney wrote: “*Any romanticized view of the parliamentary system as one in which the two houses of parliament control the policy-making process should long since been laid to rest.*” [\[xv\]](#) In fact, it seems obvious that the House of Commons is more powerful now than it was decades ago. We should not forget that “*it was only after 1968 that the level of committee activity increased when Standing Order amendments gave standing committees*

responsibility for the detailed study of Estimates".^[xvi] It was only in the mid-1980's that standing committees were given the power to examine and report to the House "on all matters related to the mandate, operation, and administration of a specified government department".^[xvii]

During the last few decades, the power of the House also increased through the creation of new agents of Parliament. The Commissioner of Official Languages was created in 1970, the Privacy Commissioner in 1977, the Information Commissioner in 1983, and now there will be a new independent Ethics Commissioner, who will report to Parliament rather than to the Prime Minister. The Auditor General has continuously been empowered: The Auditor General Act of 1977 extended the scope of its responsibilities from financial audit alone to management control systems and value-for-money studies. In 1994, the Auditor General obtained a mandate to report at least three times a year, rather than once a year. In 1995, it was given the mandate to monitor and report on environmentally sustainable development. Its resources also expanded significantly over the years: the full executive-level staff component increased from 42 people in 1981, to 200 in 1995. And there is no audit of the Auditor General's reports. "In Britain, quality control of audit reports is by a standing panel of academic experts. (...) The Canadian OAG has long resisted any such quantification of the usefulness of its recommendations."^[xviii]

I am writing these lines at a time when the headlines in Canada have focused for weeks on an Auditor General's report that claims that \$100 million in federal spending on a sponsorship program couldn't be accounted for. This \$100 million was spent over six years on professional fees, production costs, travel expenses, commissions, subcontracts and media buys through advertising agencies, and the Auditor General could find no real evidence of whether that money was appropriately spent. Police continue to investigate. The Commons Public Accounts Committee, which is chaired by an Opposition M.P., began hearings on this almost immediately. The Martin government has also set up an independent commission of inquiry and appointed a lawyer in order to try to recover the misappropriated funds.

This affair has been described as a reflection of an inherently weak parliamentary system. For instance, an April 8, 2004 story on CBC's The National news program claimed that such a \$100 million impropriety would be unthinkable in United States because the Congressional committees there have the capacity to appropriately monitor the Executive's expenses. Yet, ironically, only a few days before that report, on March 24, the U.S. government's chief actuary of Medicare told the House Ways and Means Committee that lawmakers had voted for a new Medicare bill in December 2003 based on the false information that the costs were estimated to be \$US400 billion over ten years. In fact, the chief actuary had estimated it would cost \$US150 billion more than what lawmakers had been told. His superior had reportedly urged him not to reveal the true estimate, in order to help persuade the Congress to vote in favour of this important piece of the Bush Administration's Medicare agenda.^[xix] In the face of this \$US150 billion underestimation and the alleged muzzling of a departmental accountant, one may only say definitively that the grass isn't always greener on the other side.

3. The difficulty of Senate reform

Many Canadians consider it an anomaly that their Upper Chamber is made up of unelected parliamentarians. About three out of four Canadians are in favour of electing Senators or simply abolishing this institution, and this pattern is consistent across all regions of Canada.^[xx] It is difficult, as democrats, not to feel a lot of sympathy with that position.

So, why not simply elect the future Senators instead of letting the Prime Minister appoint them? There is a basic problem in that logic -- one that derives from the unequal distribution of Senators per province. To

elect Senators with the current distribution of seats would be unfair for the underrepresented provinces, Alberta and British Columbia, who have only six senators each, whereas New Brunswick and Nova Scotia, with about one quarter of their population, have ten. This inequality is not a major problem now, because Senators, lacking the legitimacy conferred by being elected, generally fulfill their parliamentary role with restraint, albeit often with talent. Elected Senators would not exercise the same restraint and would exert much more influence than the unelected Senators of today. At that point, the under-representation of Alberta and British Columbia in this influential elected Senate would be very prejudicial to these provinces.

I know that the request for an elected Senate comes especially from Alberta, with the claim that such a change would do much to alleviate the sense of western alienation. One cannot see how this may be the case, however, since the six Senators elected by Albertans would be too few to give Alberta the influence its demography would warrant.

So, before electing Senators, agreement would be required on a new distribution of their number per province, something which would necessitate a constitutional amendment. And that raises two other problems. First, it is unlikely that all the partners in our federation would agree to reopen constitutional talks for Senate reform alone. It is to be expected that some of them would put other issues on the table as well, that would make the negotiations much more complex and difficult. I do not know when Canadians will be ready for a healthy step-by-step approach to constitutional reform.

Second, Canadians do not agree on the parameters for the distribution of Senators: Should we have the same number per province? Per region? Some other formula? No one agrees on this. Even the two Albertan "Senators-in-waiting" have different views: Mr. Bert Brown reportedly favours equal distribution by province, while Professor Ted Morton is proposing distribution by region.^[xxi]

I do not know how or when we will resolve this and other issues associated with Senate reform, such as what powers such an elected Upper Chamber would have. But one thing is certain: reconciling these divergent views has nothing to do with a lack of respect for Alberta and the West, and everything to do with the plurality of opinions in Canada.

This does not mean that some improvements cannot be made. The following two proposals would require no constitutional amendment and would likely be well-received by Canadians.

1. The Prime Minister could formally pledge to do his best to appoint Senators who would be recognized by the Premier of that province as highly valuable people who are a credit to their province.

With such a change, the Prime Minister would not simply be committing to consulting provincial Premiers, nor would he be abandoning his decision-making power to them. Rather, he would commit to doing his best to obtain their agreement, and so he would be more inclined to choose candidates with a broader appeal.

Of course, it would likely be easier for a Prime Minister to obtain the consent of a Premier of the same political party. Prime Minister Martin would have a harder time choosing a Senator willing to join the Liberal Caucus in a province where the Premier is from another party. But he can afford to increasingly select eminent personalities who, while not hostile to the Liberal party, are independent of it. At the current rate, the numerical domination of Liberals in the Senate will become more and more embarrassing.

If the Prime Minister committed to making every effort to appoint valued members of society, recognized as such even by a Premier from a different party, Canadians would be more likely to look upon the Senate more favourably.

2. The Prime minister could commit to appointing individuals to the Senate who would agree to a six-year term.

Three years would be too short, twelve too long. Six years is adequate. The Prime Minister cannot impose such a limit because it would contravene the Constitution. He could, however, appoint people who would agree beforehand to this six-year term, through a “gentlemen’s agreement” of some sort.

From a democratic point of view, it is shocking that Senators can remain in their posts for decades, up to the mandatory retirement age of 75, without ever having to account to voters. Canadians would have an easier time accepting the concept of esteemed personalities who come to help serve the nation by devoting six years of their life to Parliament.

4. Reforming the electoral system: looking for the best of two worlds

I referred earlier to the great advantage of our first-past-the-post electoral system: it allows a party in power to exercise leadership and assume the consequences at election time. But this system also has some obvious disadvantages. I see four of these.

First, it makes it possible for a party to come to power without winning a plurality of the popular vote, as was the case in many provinces a few years ago. Second, election results can produce an opposition without enough M.P.s to play its proper role. Third, this electoral system seems to have a mildly negative effect on voter turnout, since in a great many ridings the die appears to be cast in advance. Voter turnout is four to five percentage points higher under a proportional representation system.^[xxii]

Fourth, the existing voting system artificially inflates the regional concentration of parties. The Liberals, for instance, are considered to be an Ontario-centric party, gaining almost all the Ontario seats during the last three elections, while in fact roughly one Ontarian out of two did not vote for them. They are perceived as having no roots in Western Canada, as incapable of electing more than a handful of M.P.s there, yet in fact they actually garner one quarter of all Western votes. This artificial regional concentration of parties, which is exacerbated by the first-by-the-post system, is detrimental to national cohesion. I would argue that it is its biggest defect in the context of the Canadian federation. More specifically, I would list it as the main cause of Western Canada’s sense of exclusion.

I think that what is called Western alienation may be primarily a feeling of being at the margins or excluded as a result of the great majority of Western voters always finding themselves in Opposition. One would be hard pressed to find other democracies where a region representing a third of the population finds itself systematically in the Opposition, with very few representatives on the Government side. During the last four decades, Quebecers endured this situation for only nine months, under the Clark government in 1979, when a referendum on sovereignty was just around the corner. Let’s not forget how excluded they felt – support for the Yes side jumped through the roof.

It has been suggested that this distortion could be corrected by using a “topping up” scheme as is used in Germany’s mixed member system. The number of ridings could be reduced to about 200 and these 200 M.P.s would be elected according to the existing (first past the post) voting system. Another 100 seats would be added, to be distributed according to a compensatory proportional system in each province. These compensatory seats would be given only to parties obtaining a least 5% of the provincial vote. This threshold is used in Germany in order to prevent splitting up Parliament into all sorts of small political factions.

With such a system, no party would be in a position to form a majority government with only 40% of the votes. Coalition government would likely become the norm. But from the point of view of the cohesion of the country, it would be desirable to have seats in the House of Commons distributed under this mixed ballot system. Thus, each region of the country would be assured more equitable representation within the Government, thereby reducing the likelihood that one region would feel excluded.

But such a reform would have a potentially negative effect too: it would decrease the strong incentives that the current electoral system provides for political parties to gain electoral support through accommodation of regional demands. It is because of the current electoral system that the Alliance and the Conservatives found themselves obliged to merge in order to match the Liberals as a “catch-all” party designed, to take the words of Professor Courtney, “to bridge regional, linguistic and racial differences, not to exploit them”.^[xxiii]

The ideal would be to find a mixed formula that allows us to preserve the advantages of our electoral system while eliminating its weaknesses. But in the real world, we must keep in mind Professor Courtney’s caution against unrealistic expectations and we should not invest too much hope in electoral reform. The lack of public confidence in politics also exists in democracies that employ proportional representation. And while it is true that proportional representation encourages slightly higher voter turnout, the countries that have adopted it have seen their turnout decline in recent years as well.^[xxiv] They have not managed to escape this unfortunate trend with which we are too familiar here in Canada.

We must also take into account the effects that a change of electoral system would have on our type of decentralized federalism. Most of the countries that have retained proportional representation have only one single parliament that really matters. Here in Canada, there are few things that our federal government can do without having to negotiate with the provinces. When our fourteen federal, provincial and territorial first ministers meet and come to an agreement, they are in a position to honour that agreement. They do not have to renegotiate it later with fourteen parliamentary coalitions.

To take another example, when the Government of Canada took steps to establish the early childhood development initiative, it took almost two years of negotiations with the provinces and territories to come to an agreement. One can only imagine the additional time it would have taken if we had had to negotiate with governments preoccupied with maintaining their parliamentary coalitions as best they could.

I considered, above, the possibility of Canada adopting the electoral system used in Germany, which allows for significant proportional representation. Germany is by no means a country that has only “one single parliament that really matters,” to use my earlier expression. Even so, German federalism is more centralized than ours. Its constitution or *Basic Law* provides for no fewer than 26 concurrent jurisdictions, not just three as is the case here. It also establishes seven other spheres where the federal parliament can institute framework laws requiring the *Länder* to enact legislation in compliance with those laws. Much of the activity of the *Länder* consists in enforcing federal laws they have helped to shape through the Bundesrat, the equivalent of what in Canada would be a senate of the provinces, if it existed. In Germany, even the salaries of public servants in the *Länder* and municipalities have to comply with rules set by federal framework laws.

I am not saying that we have nothing to learn from German federalism. I simply maintain that even if we applied the German electoral system to Canada, we might not get the expected result because our institutions are different. We must bear this in mind at a time when adopting some kind of proportional representation is under serious discussion, not only at the federal level, but also in many provinces.

Conclusion

It is healthy for our institutions to be continually challenged. This allows us to better understand them, improve them or eventually replace them. In this paper, I have suggested the terms for non-confidence in the Government should be clarified in the Constitution, Senators should be appointed with the support of the Premier of the relevant province wherever possible, Senators’ mandates should be limited to six years, and we should seriously consider adopting Germany’s mixed member system for federal elections.

I remain wary, however, of getting too carried away: we must avoid any ill-considered expectations of institutional change. I would like to see us reflect on improving our institutions, and perhaps eventually

replacing them, in a very open but also very prudent manner, because, as Professor Courtney has forcibly argued, rash reforms would do us great harm.

The strength of our current system is that it provides democratic leadership. Today, with globalization, not only must our federal government negotiate with the provinces, but increasingly it must also take part in supranational decision-making forums. In such a context, Canada finds itself obliged more than ever to exercise leadership, at both federal and provincial levels, if it wants to promote its interests at home and abroad. We do not want a poorly designed reform of the electoral system producing in Canada a situation analogous to what the Germans call a joint-decision trap (*Die Politikverflechtungs-Falle*), that is, an overly cumbersome decision-making system.^[xxv]

We also need to reflect not only on our institutions, but on the values upon which democracy is founded. The optimal functioning of institutions is an important aspect of the future of democracy, but no more so than the need to express civic values.

Let us return to the very worrisome example of declining voter turnout, a trend which is affecting democracies whether their regime is presidential or parliamentary, whether their electoral system allows for proportional representation or not. In Canada, this decline has been found to be statistically verifiable only among young people, that is, voters born after 1970, in particular among less-educated youth:^[xxvi] *"On the contrary, turnout has remained fairly stable among those who were born before 1970."*^[xxvii] The same phenomenon seems to be occurring in the United States.^[xxviii]

Contrary to what one might think, there is no indication these young people are getting involved in alternative forms of political action in great numbers. They are simply less informed and less interested in politics than are other voters: *"The low level of interest and information of those born after 1970 is clearly a crucial source of their high level of abstention."*^[xxix] Similarly, there is a much lower sense of a moral obligation or duty to vote among young people than among older voters.^[xxx] I would not be surprised if this were found to be true in the United States and Europe as well.

What is it then with democratic systems' ability – or inability – to connect with and interest young people? We would all like to know the answer, and different theories have been formulated to explain this phenomenon. I will only offer the hypothesis that I find the most compelling. It is Samuel Huntington^[xxxi] who has written that democracy bears within itself an anti-establishment ethic. The more the values of deference and respect for authority lose their hold on people, to the benefit of the democratic values of liberty and equality, the more people tend to mistrust those who govern them. I believe it is primarily this values dynamic that is the source of the decline in public confidence in democratic institutions. Could it be that this shift in values is particularly pronounced in young people? Perhaps they are more mistrustful of politics than their elders without being any the less democratic?

Whatever the case, I hope that there will be at least as much discussion of the transmission of civic values as there is of improving institutions. Advancing on these two fronts will help Canada to progress towards ever more democracy.

[i] John C. Courtney, *"Is Talk of Electoral Reform Just Whistling in the Wind?"*, *Policy Options*, July-August 2001, p. 17.

[ii] *Ibid.*

[iii]. Pollara Survey, *"Canadian Society Today"*, February 2003. See also: André Blais

- et al.*, *Anatomy of a Liberal Victory: Making Sense of the Vote in the 2000 Canadian Election* (Peterborough: Broadview Press, 2002), p. 55.
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