
Parliamentary Government

Its inherent weakness and the Canadian corrective

The inherent weakness

Baron Montesquieu, the philosopher most associated with the doctrine of the separation of powers, in his book entitled *De l'esprit des Loix*, states:

Political liberty is to be found ... only when there is not abuse of power. But constant experience shows us that every man invested with power is apt to abuse it and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the very nature of things that power should be a check to power. ¹

The weakness of the British Parliamentary system of government became glaringly apparent following the Regicide in 1649 when the members of the House of Commons, left alone to govern England, could never seem to find the right time to dissolve parliament and renew their authority to govern the people.

The monarchy was restored in 1660; but the causes that led to the English civil wars between the King and the people remained. The blame for the King's abuse of powers was understood to rest on the King's advisers. In 1688–89 parliament forced King James II to abdicate. They invited William of Orange to accept the throne on condition that he agree to certain reforms. The most important reform to emerge from this Glorious Revolution was that parliament would choose the King's advisers from among its members. This completed the line of authority from the people to the King such that by the advice of his chief advisers the King exercised the prerogative by authority of the people — thus, with the consent of the governed. ²

The relative power of the House of Commons and the House of Lords varied over time, achieving a rough balance in the eighteenth century. During this era, the British Cabinet was composed of members of both Houses who brought the support of their friends to Cabinet through certain abilities but also through a view on certain issues that they were expected to honour and to conciliate within their ministry. Each House had a Leader in Cabinet whose primary duty was to manage the support of the House to maintain a majority for the Ministry. This was achieved generally through the attribution of portfolios within the ministry and through agreements regarding the stand their Ministry would uphold, which sometimes were to do nothing at all regarding certain issues. Should the Cabinet adopt a policy contrary to the stand upheld by a minister, or should a Leader lose the confidence of the House, he was honour-bound to resign.

Thus, through the most intense period of the Seven Years' War, Britain was governed by the Pitt-Newcastle ministry, a coalition in which the Duke of Newcastle served as Leader

in the House of Lords and William Pitt, the “Great Commoner,” served as leader in the House of Commons.³

In light of the receding legitimacy of the House of Lords, the Reform Act of 1832 marked a turning point, tipping the balance permanently in favour of the House of Commons, although it was another eighty years or so before the eclipse of the House of Lords was complete. The need for coalitions and the role of the monarchy in conciliating the interests of the two houses declined.

Baron Stockmar, constitutional mentor to Queen Victoria and her consort Prince Albert, provided a clear-eyed description of the problems that arose as the supremacy of the House of Commons became entrenched:

Now the most stupid of Englishmen knows that, up to the present hour at least, his country is governed by only one party, and that consequently the premier of the Cabinet for the time is and can be nothing else but the Chief of the Party then in power. Out of the very character of this Party Chief it ought to be demonstrable to the narrowest capacity, that every Premier, even were he a patriot of the most far-seeing views, and absolutely exempt from prejudice, must suffer from two drawbacks inherent in his office, which demand a constitutional corrective, and for which none can be sought or found, except in the true position of the Crown towards the Cabinet, and in the way it deals with it in the exercise of its prerogative. The first of these drawbacks consists in the temptation, to which the Premier is directly exposed by the obvious insecurity and brief duration of his tenure of office, to give to the personal selfish and transitory tendencies of the dominant majority precedence over the substantial interests of the country. The second arises from the instinctive struggle of party (without reference to whether, so far as the State is concerned, they are in right or not), to strengthen their majority, and to weaken the minority by every possible official resource.

Ministerial Responsibility in these days, for such Ministers as are incapable, and at any rate for such as are unscrupulous, is a mere bugbear. The Responsible Minister may do the most stupid and mischievous things. If they are not found out, he may even continue to be popular...⁴

[The Canadian Corrective](#)

Following the insurrections of Upper and Lower Canada against their colonial governments, they were united to form the Province of Canada in 1840.

Robert Baldwin and Louis-Hippolyte LaFontaine had been contending for Responsible Government. They wanted the very transcript of the British Constitution for the government of Canada⁵ to ensure that the “rule of government shall be the well-understood wishes and interests of the people”.⁶

The Union Act entitled Upper and Lower Canada to the same number of representatives in the House of Assembly. Both then argued that they were each entitled to a chief adviser in the Governor's Council so that the people of both Upper and Lower Canada would have a leader in whom to confide their government.⁷

Their ideas of the British Constitution, however, predated the Reform Act of 1832, whose effects were only beginning to be felt. So, what they were proposing, a coalition government formed and directed by two first ministers, was not all that radical at the time.

In 1847, Lord Elgin was dispatched to Canada as Governor General. He was authorized to establish Responsible Government in the following terms:

This country has no interest whatever in exercising any greater influence in the internal affairs of the colonies, than is indispensable either for the purpose of preventing any one colony from adopting measures injurious to another, or to the Empire at large, or else for the promotion of the internal good government of the Colonies, by assisting the inhabitants to govern themselves.⁸

Lord Elgin conceived the primary function of the Governor General to be “that he should identify himself with no party, but make himself a mediator and moderator between the influential of all parties; that he should have no ministers who did not enjoy the confidence of the Assembly, or, in the last resort, of the people, and that he should not refuse his consent to any measure proposed by his Ministry, unless it were of an extreme party character such as the Assembly or the people would be sure to disapprove.”⁹

Following the election, Lord Elgin asked LaFontaine, as one he believed could command a majority, to form the government. LaFontaine agreed on condition that Baldwin have an equivalent position in Cabinet. Lord Elgin accepted and asked both leaders to negotiate the representative composition of their Cabinet and a common political platform they would implement upon the approval of the united Assembly.¹⁰

This uniquely Canadian form of the British constitution, characterised by a coalition government formed and directed by two prime ministers sitting in the Governor's Council, endured until the time of Confederation. At the Quebec Conference in 1864, the Fathers of Confederation sought to create a similarly balanced system in the new structure they were designing. Toward this end, in the 14th of the Resolutions establishing the scheme of Confederation, they proposed a Senate in which “all provincial political parties are as far as possible fairly represented.” But this provision was never implemented.

The Constitutional Balance of Powers

One consequence of reforming the Senate along the lines specified in the 14th Resolution would be to rehabilitate the office of the Governor General.

The Senate so composed would insist upon the full and honest application of section 18 of the Constitution Act as confirmed by section 4 of the Parliament of Canada Act which entitles both the Senate and the House of Commons to the same powers and privileges the British House of Commons possessed in 1867, the most important of which is to enable the Senate to advise the Governor General of the wishes and interests of the provinces regarding their common government in Canada.

This will restore the constitutional balance in the Governor's Council that existed in the Province of Canada and was meant to be renewed under the Constitution Act to ensure the Responsible Government of Canada.¹¹ It is this constitutional balance that provides the Governor General with the influence she requires to effectively exercise the "powers, authorities and functions" of her office.

The Governor General is legally vested with all the power of the State, but it belongs to the people to govern themselves as they will. She does not possess the inherent legitimacy to act alone in any manner whatsoever, and the people know it. She can only influence the political leadership of Parliament in her Council. But if there is only one leader, the Governor General can have no influence. She must act according to the advice of the one leader. The leader therefore proffers the advice that permits him to exercise the powers of the State as he pleases, regardless of either the will of parliament, constitutional principles or the law of the constitution.

But if there are two Leaders in the Governor's Council, each possessed of the equal authority and responsibility to represent and protect the wishes and interests of their own respective constituencies (the Senate and the House of Commons), both vying for the power to govern, neither will accept any less than what is their legitimate due.

Legitimacy, the legitimate constitutional interests of the people, thus becomes the fundamental rule for the attribution of power. The contest between the provinces and the federal government for the power to rule then necessarily depends on the support of the people's representatives which, in turn, ensures their influence in Parliament.

Since the Governor-in-Council can only sanction the exercise of the powers of the State if both Houses of Parliament agree upon how the people wish to govern themselves, and since the Governor General must exercise these powers in accordance with "the well-understood wishes and interests of the people", this constitutional balance of power affords the Governor General an influence in her Council. In this position there are all kinds of recourses open to her to ensure that the executive government remains constitutional, respectful of the law and in the service of the people. Why? Because,

fundamentally, this is what the people want of her. This is her legitimate role. If she must force the issue, she can count on the support of the people to legitimize her action after the fact.

If the Governor General believes the leaders of parliament are demanding powers that are “of an extreme party character that parliament or the people would be sure to disapprove,” she can dismiss them if she can find a leader of the opposition willing to support her decision. If parliament does not approve of the change of government, she can call an election on the question permitting the people to decide who is true. If, on the other hand, the Leaders of Parliament believe the Governor General is abusing her powers, they can resign, provoking an election again ultimately permitting the people to decide.¹²

The consequence of losing the contest is such that the political actors limit their ambitions to those they believe the people would support, thereby creating a self-correcting mechanism to prevent the abuse of powers.

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¹ Charles Louis de Secondat, Baron de Montesquieu, *The Complete Works of M. de Montesquieu* (London: T. Evans, 1777), Book XI: Of the Laws Which Establish Political Liberty, with Regard to the Constitution, Chapter 4.

² Mark Kishlansky, *A Monarchy Transformed: Britain 1603-1714*, Penguin Books, London, 1996

³ Fred Anderson, *The Crucible of War, The Seven Years' War and the Fate of Empire in British North America*, Alfred Knopf, New York, 2000, p. 174

⁴ Theodore Martin, *The life of his Royal Highness the Prince Consort*, Smith, Elder & Co., London, vol. II, p.547

⁵ Leacock, Stephen, Baldwin, LaFontaine, Hincks : *Responsible Government, The Makers of Canada Series*, Toronto, Morang & Co. Ltd., 1907, p. 27

⁶ *ibid.* p, 109: 3rd of the resolutions adopted by the House of Assembly to guarantee a Responsible Government - *Journal of the Legislative Assembly*, Vol.1, September 3rd, 1841, pp,480, 481

⁷ Sir Francis Hinks K.C.M.G., C.B, *Reminiscences of his Public Life*, Montreal, William Drysdale & Co. 1884, pp. 150-155

⁸ Robert Macgregor Dawson, *The Government of Canada*, University of Toronto Press, p18

⁹ Sir Francis Hinks K.C.M.G., C.B, *Reminiscences of his Public Life*, Montreal, William Drysdale & Co. 1884, p.186

¹⁰ Leacock, Stephen, Baldwin, LaFontaine, Hincks : *Responsible Government, The Makers of Canada Series*, Toronto, Morang & Co. Ltd., 1907, p. 285-6

¹¹ John A. Macdonald, *Debates on the Confederation*, p. 33.

¹² Alpheus Todd, *Parliamentary Government in the Colonies*, London, Longman Green & Co., 1880, pp. 404-406