

Notes for an Address

“Reflections on Appropriate Governance Structures for Canada's Future”

2003 APEX Symposium

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It strikes me that the issue of what governance in a democracy should look like in the months and years ahead just might strike hard working underpaid senior public servants as just a touch theoretical. The daily pressures you face in terms of today's programmes, fiscal constraints, intergovernmental pressures and political transitions are more than enough to fill any job jar.

So, my purpose today is not so much to "blue sky the future", but to reflect with you on the critical area of legitimacy as it relates to the processes of governance and administering government in our present democratic society, and the kind of democracy we are likely to see evolve in the decades ahead.

For over a decade I have taught a Policy Seminar in Governing Instruments to graduate students at the Queen's School of Policy Studies. That seminar is made up of younger recent undergraduates seeking their first graduate degree and mid career public servants from all levels of government, the police, military, and many non profit organizations; the seminar often has students from Japan, China, Mexico, Europe at both the mid career and full time student level.

In examining how instruments are designed, how they are evaluated and why instruments work in different ways in different contexts, I spend a lot of time on the issue of legitimacy. The reason for that is quite compelling.

As long as we do not live in a Police State, the order in our society, and all the legislated, regulated and other public rules that define our behavior and relationship with government are all dependant on voluntary compliance. Simply stated, there are not enough police officers to police every corner, not enough tax auditors to assess every return, not enough inspectors to check every cow, not enough customs officers to open every piece of luggage. Without voluntary compliance, most laws, rules, programmes and mandates would be meaningless.

Voluntary compliance is utterly dependent on legitimacy. If the vast majority of our fellow citizens do not believe that government's overall intent is constructive, and that those who work in government are, by and large, honest, and that they do, as citizens and voters, have some way of influencing change when they choose to, then legitimacy and voluntary compliance are seriously threatened.

In extremis, we can look to essentially lawless failed states in Africa, or failed economies in South America to see how quickly law and order and even the most minimum levels of public and private safety can dilute down to zero, when legitimacy evaporates.

And before we get too smug, let's just reflect back to the initial days after the introduction of the GST here in Canada. There was a noticeable increase in "cash" transactions where Her Majesty's percentage seemed to disappear from the equation. Home repair scams, software that deleted cash register amounts automatically to fool auditors plus a host of other creative attacks on the legitimacy of the tax system at all levels ensued. What is instructive here, and the pulverization by the voters of the government that brought the GST in is further proof, doing what may seem right, when profoundly unpopular, and not well explained, will test even the most polite and understanding of populations - in which I number my fellow Canadians, except, of course during the NHL Playoffs!

So the kind of questions we need to ask ourselves going forward, are not so much about the role of government, the size of the state, or the back and forth tension between private and public sector.

What we should be asking ourselves about is the mediating capacity of democracy - to interpret the public's wishes and judgement in a fashion that influences how we govern ourselves as Canadians in a way that strengthens legitimacy and integrity. And here, I use integrity in the context of a system of laws, regulations,

governing institutions, public democratic vehicles, citizen views and choice that is fully linked and mutually re-inforcing. In this context, and particularly weak link, threatens the integrity of the entire chain.

If we assume that the chain should be characterized as open and honest government, elected by well informed citizens, whose views and concerns are expressed through our parliamentary institutions in a way that keeps government attuned to public interests and preferences in an ongoing way we clearly have some holes and gaps to address.

When less than sixty percent of our electorate votes in a federal election (and that is what the number is if we count the American way of comparing the number of voters to the number of eligible adults of voting age) and the government is chosen by 40% of those who voted, we need to be brutally frank about what a 24% Government can count upon in terms of legitimacy at any time of difficulty or controversy. And while it is fair to say that it is neither the job of the incumbent Party or public servants to either increase public interest in or the competence of, the opposition parties, there are issues of civic literacy and its relationship to turnout that we can and should consider as matters of public policy.

Research done for the IRPP's Strengthening Canadian Democracy Project [Milner, IRPP/02] revealed clearly that voter participation reduced measurably as societies moved from newspapers to Television for their primary news sources. In societies where TV viewership was up, voter turnout was down. In countries that had programmes to encourage, especially among young people, newspaper literacy, voter participation levels were holding at reasonably high levels.

Moreover, it is natural to accept that after decades of extolling the virtues of the marketplace as the fulcrum where all important decisions are made, some disinterest in the political process is, perhaps unavoidable. But if we have learned anything from recent disease outbreaks, natural disasters, technical threats like Y2K and the tragedies of September 2001, it is that government's role is different and in some areas more vital than that of the marketplace. Without national security, for example, there is no marketplace and there can be no orderly investment and profit flow.

In this regard all governments fail in this one area:

We are not investing enough in the stories of government, in the role of political parties, in the importance of an honest and well trained public service, and we are not putting the facts out on these institutional realities in the marketplace of ideas. Defence of specific activities at budget cutting time or during controversies or elections is insufficient to build the understanding that is absolutely vital to the evolution of the democratic and programmatic part of the chain.

On the legitimacy front, we need to address the threat of judicialization. Not because it is itself illegitimate -in fact Canadians have a very high regard for the Charter and roles of the Courts in its defence (Howe, IRPP, 01), but because parliamentarians and parliaments should be doing more to consider the charter before legislation is passed. Standing legislative committees on the Charter would allow parliamentarians provincially and federally to consider charter issues before bills are finalized. Public debate on difficult issues may be divisive-but it is also open and reflective of Canadians' issues and anxieties. That is not a bad thing for democracy.

To some extent, while governments and parliaments can make a contribution in terms of supporting civic literacy, encouraging voter participation and increasing the role of parliament in facilitating national debates on important issues-there is also an imperative between governments both domestically and internationally to ensure that the risk of democratic deficit is being addressed; and, being addressed hopefully before the deficits become too corrosive of public legitimacy overall.

For example, at the Summit of the Americas in Quebec City, Canada took a leadership role in addressing both public involvement and social justice as desirable covivants with any FTAA agreement. It is the kind of leadership that serves Canada and Canadians well. What we should and can do now is begin to put creative proposals on the table for how this might actually work. While a white paper may be a bit premature, a green paper suggesting ways for

An Assembly of the Americas, to monitor and reflect upon negotiations between the countries and peoples of the Americas on trade liberalization would be re-inforcing of the democratic legitimacy part of the way ahead. I do not in any way question the right of governments, parliaments, presidents and congresses to make agreements and embrace their ratification. But learning from our European friends about the value of referendums or other public consultations would not be such a bad thing.

If one thinks about what proposed constitutional amendments failed with the public rejection of the Charlottetown accord, it is surely fair to recognize the one defacto constitutional convention that was cemented in concrete on that occasion-namely the convention that constitutional change of substance cannot happen in Canada without public consultation and a precise thumbs up or thumbs down vote. Creative ways of assuring Canadians that this is very much a principle all parties take forward, would be of immense value, both nationally and internationally.

Without getting into the specifics of legislation now before parliament reducing the role of corporate and trade union contribution finances in our electoral process, I believe that it is a step in the right direction. There are other changes to the election act that require no constitutional amendment that would go a long way to modernising and making more accessible our democratic institutions. Lowering the threshold for establishing a party officially from the present fifty candidates would be one; movement on the voting age would be another; finding a way for the total vote a party receives to be counted either in the make up of the house of commons or the senate would also be immensely helpful.

It would also be important to find mediating ways for the many NGO's in Canada to be part of the consultative part of our legislative system, in a fashion not dissimilar from the way in which NGO's are treated at the United Nations. This would also help ensure a clarity and universality of access that might reduce some of the not always unjustified angst about the informal and registered lobby process.

Within this context, and in the cause of democracy as opposed to eighteenth century tax precedents from England, looking at how advocacy groups in our society fund their activities should be one more medium term priority. The notion that Americans should have more freedom to fund advocacy groups under their tax act than we do as Canadians is intuitively problematic. We can do better as a nation and we should.

One of the issues looked at by the Lortie commission on the electoral process in the late 80's and 90's was the role of the policy part of our political parties. Providing some tax incentive for donations to and investment in consultative and policy skill development by policy foundations established by the respective parties would also extend the reach of our democratic system. Giving millions to the auditor general to report to parliament while the parties in parliament have precious little to do their analytical job on estimates and policy makes very little sense at all.

We need to reflect on the relationship within our democratic process between the civil service, our parliamentarians, cabinet and the people. Only the most insensitive would suggest here that all is well. This is a complex area and rapid fire solutions are not likely to hold water or impact constructively. But, some examination of the relationship between the senior bureaucracy and shadow cabinets might very well be in order. Why do changes of government take so much longer after an election in Canada than the UK? What does that say about the adaptability of our bureaucracy and party structure to the express decisions reached from time to time by Canadians?

The other critical question we need to reflect on going forward in terms of democratic governance is the core relationship between the changing exigencies of capitalism and corporate governance within sovereign borders and on a transborder basis. As international corporations move capital and people and work from country to country there are critical governance issues that unavoidably emerge.

While our friends on the left may have a theological problem with this wide range of corporate discretion, we need to be cognizant of the dependency of millions of present and future pensioners on the profit making capacity of corporations in which their pension funds hold shares. The free movement of people, capital, goods, and technology raises issues of international governance. How new international institutions like the WTO will link up with our democratic requirements as societies of voluntary compliance, and requisite democratic legitimacy should engage us all.

We need also to be aware of how democracies have changed recently and are embracing change locally within our own Canadian-provincial family. The French electoral system facilitates two votes, with a run off vote between the two highest polling candidates in each riding and for president-insuring that the winner in each seat and in the presidential contest have 50% plus one of all those who voted. This also ensures against the accidental election result. Our fellow Westminster style parliaments in Australia and New Zealand use a preferential ballot in the case of the former and a mixed proportional and riding seat system in the case of the latter-with New Zealand having had a Royal Commission, and a referendum to achieve its change. Even the stayed United Kingdom embraced proportional representation / mixed systems for the Parliament of Scotland, and the assembly in Wales.

Here in Canada the Premier of Prince Edward Island has embraced a referendum and public consultation on proportionate representation, a Citizen's Commission under independent extra-parliamentary leadership in BC now has a mandate to put electoral reform options to the voters of BC in the next provincial election, whose date has already been set. The Leader of the Opposition in Ontario has committed to a referendum on electoral reform and in Quebec the former PQ government issued a broad paper and conducted wide consultations on proportionate representation just as the new Charest Liberal administration has left the door open to these kind of reforms. Premier Lord in New Brunswick, now in the middle of a provincial election campaign has also indicated an openness to consider proposals for reform. Mr. Harper, the Leader of the Opposition here in Ottawa leads a party for whom electoral reform has been a traditional priority,

While none of this indicates that change is assured, it is more critical mass for change on this issue than we have seen for many decades.

The public policy question here, quite simply, is why?

What is it about our present circumstance that precipitates this kind of momentum?

I will offer three possibilities, and then conclude with a challenge:

A. Public Opinion continues to embrace concern about the political process being about the process itself and the exigencies of the participants rather than the aspirations of those on whose behalf the democratic system should be working; this a structural issue of legitimacy

B. Public participation levels are falling off all across the western world and not just Canada-this at a time when the end of the cold war and the march of democracy seem inexorably linked and generating constructive momentum; could it be that the promise of capitalism and democracy, hyped by the triumphalism of some in the west has produced expectations that, when not met, induce cynicism and apathy?

C. Young people, while very much interested in issues like the environment, business, war, social policy, international development and the rest show less and less interest in political parties in Canada and even voting; could it be because two or three generations have served to diminish the role of political debate, public policy and government decisions in the issues that matter most to the mix of freedom and opportunity that sustain our way of life?

What we can be sure of is that doing nothing will neither stop the drift or re-invigorate our democratic politics.

So let me put the problem to you this way: At the present rate of drift, we face the eventual possibility of turnout levels so low, that governments elected by 24% of the eligible electorate will look overwhelmingly strong by comparison to governments elected by less than 15% of our fellow Canadians with the right to vote. The legitimacy of every regulation, every legislative act will be under serious pressure by a majority of Canadians who may well have turned away from a system they view as too self centered to warrant their interest. Meanwhile, massive litigation against governments, confronting the statutory commitments of legislation establishing ministries and departments, and their failure to observe their own statutes, could well be proceeding through the courts. International sovereignties either around a New Treaty of North America or the next round of FTAA require national ratification; the legitimacy of Parliaments in Canada and elsewhere to do so could be under severe popular and institutional attack in the courts and perhaps on the streets, if turnout continues to fall.

Confronted with that kind of problematic, within the next ten years, how, aside from the Voluntary Sector Initiative, would you suggest present and future governments and Parliaments engage to alleviate these kind of obstacles to democratic legitimacy?

And, when you think about it, are there any problems on your plate...however more immediate, that could, over time be more fundamentally important?