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## **The Devaluation of Responsible Government**

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I am sure we are all familiar with the concept of the "Democratic deficit" made popular by Paul Martin who had a certain amount of credibility when it came to speaking about financial deficits. Another financial metaphor was popularized by Professor Bill Cross in his recent project known as the "Democratic Audit."

I have some problem with using such metaphors when it comes to our political institutions and practices. But I will not belabour this point instead let me jump on the bandwagon with my own financial metaphor.

I will argue that we are seeing the devaluation of responsible government some 160 years after it was achieved (161 years if you are from Nova Scotia). I will give five examples of how I think responsible government has been devalued. Some of these have been around for a long time. Others are fairly recent.

- (1) Playing fast and loose with the Confidence convention
- (2) Infiltration of some congressional thinking
- (3) Irrational fear of constitutional change (as relates to Senate)
- (4) Increase in support for the values of populism at the expense of elite accomodation
- (5) A philosophy of "end justify the means" replacing "fair play" as the working hypothesis of parliamentary government.

These all played a role in the events that led the recent suspension of Parliament after only 13 sitting days and in the face of a non confidence motion.

The main principles of Responsible Government are well known

- the Governor General acts on the advice of the Prime Minister; (essence of self government)
- the government holds office as long as it maintains the confidence of a majority of the House. (orderly succession)
- adherence to certain well established, albeit unwritten principles, evolved over centuries.

But as we saw in December we have not mastered all the subtleties of this very sophisticated form of government.

## **Playing fast and Loose with the Confidence Convention**

In April 2005 Paul Martin, facing a possible defeat, addressed the nation and took the extremely unusual step of promising to call an election within 30 days of the Final Report of the Gomery Commission. (Unprecedented to tie the calling of an election to an external event).

The opposition reacted by trying to use one of their upcoming supply days to introduce a non confidence motion in the government. The government responded by postponing every Opposition Day until June and even undesignating one such day. The opposition responded by trying to attach a non confidence motion to a committee report.

This series of events led to “The Curious Case of May 10, 2005” as Professor Andrew Heard called it. After much procedural wrangling and Speakers Rulings a vote was held and the non confidence motion attached to a committee report passed by a vote of 153 in favour and 150 opposed. The government ignored this claiming it was a procedural motion.

Professor Heard and others concluded that by any meaningful definition this had been a valid non confidence vote.

All three opposition parties had stated well in advance that they believed this vote to be a test of confidence. While the wording was convoluted the content still clearly inferred that supporters of the motion were in favour of the Government’s resignation.

The Government did hold a second and “definitive” confidence vote nine days later and it survived but only after inducing Belinda Stronach to defect

When the House resumed in September 2005 the Government once again postponed opposition days until mid-November. On the first opposition day, November 21, 2005 an NDP motion was carried by a vote of 167 (representing all three opposition parties) to 129. It called on the Prime Minister to wait until the week of January 2 and then ask the GG for an election to be held on February 16 so as to avoid a Christmas campaign.

The NDP motion was rejected by the Government and rightly so from a traditional point of view. You cannot at the same time say you have no confidence in the government and then ask them to stay in Office for a few more weeks or months.

But the motion does raise the question of whether Canada has taken too parochial an understanding of confidence. The Westminster model is not the only approach to making and unmaking governments. Some countries have provisions for caretaker governments after a vote of non confidence. Others require a constructive vote of confidence meaning that you cannot simply defeat a government and force an election but must also propose an alternative government.

If we are going to have more minority governments it is incumbent on our leaders to at least consider alternative ways to deal with implications arising from the parliamentary combinations that the people have elected. A few days later the government was defeated and the election held on January 16 returned the first Harper minority.

## **Infiltration of Congressional Thinking (Fixed Election date)**

There is nothing inherently wrong with having fixed dates for elections. If municipalities and some provinces want to do that, good luck to them. Introducing fixed election dates for the wrong reasons and violating the spirit if not the letter of the law can only have negative consequences for responsible government.

Mr. Harper's plan was to end the constitutional improvisation of the Martin government and also to address the perceived unfairness of calling snap elections as Mr. Chrétien and Martin had done when they had majorities.

Some traditionalists who appeared before a Senate Committee on the bill were much more critical. Professor David Smith argued that fixed election dates fit neither the theory or practice of parliamentary government. Instead it transferred responsibility from the Prime Minister to the Leader of the Opposition for setting the election date. On several occasions the Government, with an eye on the polls, challenged the Official Opposition to bring them down.

The Official Opposition repeatedly spoke against government bills and then abstained from voting to avoid an election. Following the Throne Speech to start the Second session of the 39<sup>th</sup> Parliament the Prime Minister, frustrated by delays on his agenda, stated that virtually every vote on government business was going to be a matter of confidence. Again the responsibility for choosing an election date fell to the Leader of the Opposition with the same result.

The genius of parliamentary government is that it fixes responsibility in very clear and obvious ways. A Prime Minister bears ultimate responsibility for a functional or dysfunctional parliament. Abstention, except in the most unusual circumstances, is simply not an option in a parliamentary system.

If it is dysfunctional he can call an election. The fixed election date, in my view, has eviscerated this responsibility.

Prime Minister Harper himself seems to have come to this view in August 2008 when he met with his caucus to consider the upcoming fall session. He decided to ignore the legislation and declared that parliament had become unworkable. To bolster his argument he met separately and briefly with the leaders of the other three parties and asked them for assurances they would cooperate in making parliament work during the fall session. When he failed to receive such assurances he asked the Governor General to dissolve parliament and set the election date for October 14, 2008, one year earlier than required under his own fixed election statute. No vote of confidence took place in the House.

I am not going to address the correctness of the Gov Gen decision (Professor Dodek may talk about that) but I do think the GG could have provided a singular service to the principles of Responsible government if she had told Mr. Harper in August 2008 that, in light of the fixed election date legislation, he should bring her some evidence, in the form of a non confidence motion, that the House had lost confidence in his government, before she dissolved it and called an election.

## **Inability to reform our Upper House**

The Senate it is certainly part of our parliamentary democracy and the way we have approached Senate reform has devalued our institutions.

I will not dwell on the two year failure to appoint Senators as Mr. Harper finally decided to hold his nose and make the appointments.

I won't dwell on an unfortunate incident that took place in February 2008 when the House of Commons took the unprecedented step of imposing closure on the Senate over some amendments to the criminal code. The Opposition maintained this was contrary to the principle of the independence of the two Houses. However with the Liberals abstaining the motion was adopted by a large majority. This single incident can be put down to political brinksmanship but the precedent, taken to its logical conclusion has profound implications for our system of government.

The devaluation, in my views, pertains to the way we have dealt with, or failed to deal with, Senate reform proposals.

The Harper government presented a fairly simple proposal from Senate reform – term limits. The Bill was less than two pages long and it was debated for nearly two years and instead of getting an up or down vote the Senate insisted the bill be referred to the Supreme court to see if it was an amendment requiring provincial approval as a number of provinces has suggested (after a bit of prodding from the opposition I think).

There is provision in our constitutional practices for references to the Supreme court but this should not be abused. We all know you can get lawyers to argue any side of any issue (and I think that is a strength not a weakness of our system) But the government has its expert legal advisers (Department of Justice) and if they are of the opinion that term limits do not require provincial approval then parliament should limit itself to approving or defeating the measure. It would be up to a province to argue that the measure is a violation of the constitution. Excessive and unnecessary invoking the Supreme Court when you merely want to delay a measure also devalues our responsible government. This is a recipe for endless delay

## **Philosophical assumptions of Responsible Govt.**

The real foundations of Responsible Government are not the constitution or the standing orders. Rather, common sense, self restraint, and the old fashion British sense of fair play are essential. Our institutions are not based on the American assumption that government is an evil force that must be checked and balanced at every turn.

The best example of how this is changing are the two incidents of party switching involving Brenda Stonach and David Emerson. The issue has been on the back burner recently but we should not underestimate the damage these two floor crossing did to the institution. They emphasized one point. -- that the only rule is that there are no rules. In the quest for power anything goes. The “end justifies the means.” That is not a good foundation on which to built sustainable democratic institutions. If the political players are not willing to exercise the self restraint that is necessary for our system, perhaps we need laws to enforce that restraint.

Ironically Canada used to have a law requiring every elected member who accepted a cabinet position to resign and run for re-election. That law outlived its usefulness and was repealed in 1931. Without suggesting a return to such a cumbersome process why not adapt that principle to the modern era to apply only to members who change party to join cabinet. At least one province (Manitoba) and one Territory (Yukon) have introduced legislation to curb this kind of floor crossing.

Federally this could be done by an amendment to the Parliament of Canada act to declare vacant the seat of any person named to cabinet who was elected to the House with a political affiliation different from the Prime Minister. The prerogative of the PM to name whoever he wants to cabinet would be unaffected. The law would have to be drafted in a way to make an exception for the possibility, (very rare in Canada until recently) , of a coalition government.

### **The danger of populism.**

My fifth example deals with the demise of the proposed coalition that resulted from the December crisis. Bill Cross is going to deal with coalition government in more detail but it seems to me the events of December 2008 exposed that “our prevailing constitutional principles and values are poorly understood by the public, and easily manipulated by politicians through wild claims and rhetorical statements that generate plenty of heat but little light for the citizenry.”

Specifically the demise of the coalition can be attributed to the same arguments used by the Reform Party in 1994 when they suggested that the Bloc be denied the role of Official Opposition despite having the second largest number of seats in the House and two more than the Reform Party. Popular opinion may have supported that position but the Speaker of the House followed parliamentary tradition and accorded the Office to the Leader of the second largest party regardless of what that party stands for and where it comes from. If we believe in responsible government we have to be prepared to go where it takes us and not change the rules when it is of temporary political advantage.

To conclude, I would argue that for the last five years we have been devaluing our form of parliamentary government, to the point where we might not be able to muddle through the next crisis. We seem to have become detached from the logic and the genius of our own institutions and I am afraid that nothing good can come from such a detachment.