

## AUDITING FEDERALISM IN CANADA

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In these early years of the twenty-first century, disenchantment with democracy is growing in Canada. It is telling that the disenchantment is not confined to a few academics in the ivory tower. It finds expression in the editorial pages of the newspapers; in the neighbourhood communities struggling to save their schools from the chopping block; among the protestors on the streets who oppose globalization; and among members of Parliament who find themselves with nothing useful to contribute to the policy-making process. Even senior political figures make easy reference to the “democratic deficit,” the catch-all phrase now used to describe the problem.

Since Canada is classed as one of the world’s democracies, as well as one of the top countries in which to live, one can be forgiven for wondering what exactly is the problem here. While it is impossible to be sure, the problem appears to be dissatisfaction with the traditional practice of democracy. The traditional practice can be summed up in the term “representation.” Canadians possess a representative form of democracy. For the most part unquestioned for decades, representative democracy is now held by many to be inadequate, insufficient, or simply not democratic enough. Canadians also live under a federal system of government. The question addressed in this volume is whether federalism is part of the democratic problem or part of the

solution to the problem. Before turning to federalism, however, it is worth considering representative democracy a little further.

Representation is the key to Canada's democracy and every other democracy in the world. In its simplest form, democracy means a government in which the people rule rather than one person or a few. For the people to rule, they must be political equals. Representation enters the picture when the people choose not to govern themselves directly but instead to elect individuals to govern them. Those who are elected are said to represent the people and to have a mandate from the people to govern them. The people get to hold them accountable for their record of governing at the next election.

One clear reason for using representative democracy rather than direct democracy is population size. The oldest democracies – usually referred to as liberal democracies – are mass societies. To cite an extreme case, the United States has a population of 290 million and rising. Even Canada, with a mere 31.6 million souls, exhibits the phenomenon of population density because so many of them live in a few metropolitan centres scattered across the country. The election of a tiny number of individuals to govern seems an obvious way to organize a democracy in such circumstances. Even in a technocratic era that permits telephone or Internet voting, the citizenry as a whole cannot be involved directly in governing on anything other than an intermittent basis. But there is a price to pay for representative democracy, and the price is less democracy. Representative democracy is a highly organized, structured affair. This is true whether it takes the form of the Canadian parliamentary system, the American congressional system, or the mixed parliamentary-presidential system used in France. In the end a very few individuals end up doing the governing, which makes the system elitist. The phrase “democratic elitism” is sometimes used to describe this situation.

Democratic elitism is not necessarily or inherently intolerable, although the formal structures of government are indeed exclusive rather than inclusive. In Canada until recently, there were only 301 elected members of Parliament, each representing an electoral district or riding. A small percentage of them will become cabinet minis-

ters, and one the prime minister. The number of ridings – and therefore members – was increased to 308 in time for the 2004 general election, in accordance with the representation formula currently in use. In the US Congress, which consists of the Senate and the House of Representatives, the Senate comprises only two senators elected from each state, while the House seats 435 members elected in accordance with the population of the states. There is one president. The obvious exclusiveness of such systems is made tolerable by various formal rules and informal processes. Among the formal rules are regular elections; voter equality or one person, one vote; free and fair electoral procedures, including the use of the secret ballot; open competition among candidates for office; and the establishment and maintenance of individual freedoms, like the freedoms of speech and association that enable public debate and criticism, especially criticism of the politicians. Then there are the informal processes.

The informal processes are so called because they are not required by the law in the way that, say, courts and legislatures are required to exist. They might, however, be regulated by the law. The informal processes are the ways in which citizens communicate for political purposes with one another and with the elected politicians. They do so through political parties (see Cross 2004) and through interest groups and social movements (see Young and Everitt 2004). Their strategies range from quiet consultations held behind the scenes to efforts to influence public opinion through the media to open protest on the streets – and everything in between. The informal processes flourish, in part, because of the political freedoms of expression and association that are the standard requirements of liberal democracies everywhere.

Legal rules and informal processes can help to modify the elitist nature of representative democracy – to democratize it, so to speak. Nonetheless, some elitist features of the system can harden, a tendency that frustrates citizens' democratic expectations, which are reputed to be higher than ever (Nevitte 1996). Examples abound of these hardened arteries that contribute to the democratic deficit. The centre of power in the federal government is said to be concentrated

more and more in the office of the prime minister (see White 2005; Savoie 1999). MPs, who are the political representatives of the people, appear to have little role in the making of public policy (see Docherty 2004). They even have a tough time representing the views of constituents when those do not coincide with the position of the political party to which they belong. The political parties are the organizational anchor of the parliamentary system in Canada and in Parliament they are highly disciplined, probably the most disciplined of any in the countries that use the parliamentary system. This gives MPs little room to act independently of the parties on behalf of their constituents. All of this makes the system hard for ordinary citizens to penetrate. Of course they can easily join a political party, but that is hardly a guarantee of influence over public policy. On the contrary, the successful political parties are essentially vehicles for choosing the party leader, not for engaging the members in policy deliberation.

Despite much talk about the democratic possibilities of the technological revolution in communications, this revolution has not led to a closer relationship between the citizens and the government or even between the citizens and the political parties. There are no e-voting developments of any note. Secrecy exists everywhere in government, so that citizens often are forced to use the slow processes of the law to ferret out even mundane bits of information. Meanwhile, some interests – the big battalions, like business and professional organizations – appear to have more access to the government than others – like environmentalists and antipoverty groups. This inequality persists despite the efforts that the government makes from time to time to consult widely with Canadians. In addition to the established interests, newer identity communities based on gender or sexual orientation find themselves inadequately represented in the political institutions. And old identities as well, notably the Aboriginal communities, have been long unrepresented and marginalized and only now, with the help of the courts, are beginning to carve out some self-governing space for themselves.

The dilemma of representative democracy in Canada today, then, is how to invigorate it. Representative democracy is not going away.

The 31.6 million Canadians are not about to engage in a fury of direct self-government. The chaos would be unbearable. And in any event most people believe they have better things to do, like earning a living or pursuing their pleasures. They would rather leave the governing to the elected representatives and the public servants. Public dissatisfaction with the current system cannot be ignored, however. All parts of the system, including federalism, need close analysis in order for us to get a clear grasp of the reasons for this dissatisfaction and what can be done to improve matters. That close analysis is the function of this democratic audit.

An audit requires instruments of measurement. The democratic audit under way in this series uses the concepts of inclusiveness, participation, and responsiveness to measure the robustness of the country's democratic life. Inclusiveness raises the issue of which citizens are likely to be included in political and governmental activities and which citizens are not likely to be included in them. In other words, who is in? Citizens need not participate in political life, but should they choose to participate then they need to know what they can do. Participation refers to the kinds of activities in which citizens can engage should they be so inclined. What can they do? Responsiveness refers to governments. The concern is the extent to which governments can respond to the demands and concerns of the citizens and the ways in which governments respond. What can the citizens expect?

While public attention – and dissatisfaction – is often focused on institutions in the news such as Parliament and the office of the prime minister, it must be recalled that many other institutions and processes are crucial to the quality of democratic life in the country, such as the electoral system, the political parties, interest groups, and the judicial system, to name a few. Our system of government is complex, being composed of interrelated elements, each of which is subject to this audit. One of these elements is federalism.

Canada has a federal system of government, which means it has a lot of governments. Canadians deal with municipal or local governments, provincial and territorial governments, Aboriginal governments, and

the federal government. Being used to this state of affairs, Canadians probably see nothing odd about the federal system at all. Indeed, given the vast size of the country and the heterogeneity of the population, they might say that it would hardly do to organize the governing system any other way. They might even wonder why it merits a book. But federalism is relevant to Canadians because it is relevant to the quality of their democracy. Obviously the federal system has an impact on the country's democratic life. Common sense alone would suggest as much. One of the purposes of this volume is to identify systematically the ways in which the federal system affects democracy. This is not as easy as it might look, however, mainly because federalism is not a fixed and exact thing.

Federalism should be fixed and exact. After all, it can be defined under the Constitution in terms of levels of government, each armed with specified powers and responsibilities. Despite this legal precision, however, federalism has a fluid, even elusive quality. For one reason, there is no one, perfect type against which all others can be measured. There is no standard. Instead there is a range of federal systems, each uniquely composed of a different package of features. For another reason, the democratic credentials of federalism are contested, some analysts seeing democratic virtues and others seeing undemocratic flaws, both looking at the same thing, of course. The reason for the contest is that federalism is a structure with the potential to enhance democracy or to diminish it. Which way federalism leans depends a great deal on the way that political and bureaucratic actors, and citizens, use the structure.

The democratic audit can tell us how federalism is used in Canada now. By applying the concepts of inclusiveness, participation, and responsiveness, the audit can tell us whether the federal system enhances or diminishes democracy. Does federalism encourage an inclusive democratic process? Does federalism serve to boost the participation of citizens in democratic politics? Does federalism enhance the prospect that governments will be more responsive to citizens than they would be in the absence of federalism? These are the questions

that need to be asked and answered in order to assess the democratic credentials of federalism.

In preparation for the audit, Chapter 2 offers some important background considerations about federalism. The oldest federal systems are identified, and the common definition of the term is developed at some length. Then the origins of the earliest modern federal system – the United States – are reviewed briefly. Federalism as we know it is an American product, and therefore it is instructive to inquire whether the Americans latched on to the idea of federalism in order to pursue democratic objectives or for other reasons. Some writers say that there were other reasons, and that in any event the federal structure has antidemocratic aspects. In contrast, other writers contend that, origins notwithstanding, the federal structure is well suited to the enhancement of democracy. These alternative lines of thought are explored in the chapter.

Once the antidemocratic and democratic possibilities of the federal structure have been laid out, we turn to the Canadian system, which is the subject of Chapter 3. Canadian federalism is a slippery business, not just because it is full of quirks and peculiarities but because it is both changing and unchanging, both in flux and in cement. In order to undertake an accurate democratic audit of it, it is vital to distinguish between the changeable aspects of the system, on the one hand, and the patterns or institutions that never seem to change, on the other. The chapter begins with a salutary reminder of the thinking of the leading figures at Confederation on the subject of democracy and then shows how that thinking is reflected in the central features of their handiwork, the country's federal Constitution.

The audit itself is the subject of the next three chapters, which are devoted to the measures of inclusiveness, participation, and responsiveness. Chapter 4 analyzes how Canadian federalism includes citizens in political life and how it works to exclude them. Chapter 5 analyzes the ways in which Canadian federalism encourages those who are included to participate in politics and the ways in which it discourages them from doing so. In Chapter 6, on the responsiveness of

governments, the issue is whether the dynamic of the relationship between governments that the federal structure establishes has the effect of making them more responsible to the citizens or not.

Chapter 7 summarizes where Canadian federalism stands in terms of the audit, and suggests that it could do with a little more democratization. But not a lot more. This is where the discussion in Chapter 2 on the antidemocratic and democratic potentials of federalism bears fruit, in setting parameters for the democratic expectations of federalism that Canadians can reasonably maintain. The proposals advanced here are few in number, but they are aimed at making the system more inclusive without incapacitating it; at enabling the included to participate more in the conduct of political life without immobilizing it; and at exacting more responsiveness from the elected governments to the electors, without requiring the governments to pander to public fads and fashions any more than they do now.

While few in number, these proposals are bound to be challenged not only on their merits but on the grounds of feasibility. Readers will want to know if there is any realistic possibility of implementing them. Accordingly, Chapter 8 discusses the challenges to be faced in making changes to the federal system to make it more democratic. In fact, the challenges are enormous. It is extremely difficult to get widespread agreement on proposed changes to the federal system in a country as large and diverse as Canada. The last attempt was the referendum on the Charlottetown Accord in 1992, which failed. The Charlottetown Accord aimed at sweeping changes to the federation. As is argued here, a limited number of carefully crafted proposals might prove a better bet, especially if they are driven by the desire to improve Canadian democracy *and* Canadian federalism. In other words, they must reach federalism through reforms to enhance democracy.