

Perverse incentives,
parliamentary conventions, and
the selection of a Prime Minister

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Introduction

- In my remarks today I would like to contribute to the discussion about new conventions by
 - First, identifying some criteria new rules should meet and then apply them to my proposal.
 - And, secondly, throwing into the mix of new rules under debate a proposal for changes in the conventions surrounding the determination of who gets to be Prime Minister that I think would make our existing incentive system somewhat less perverse.

Criteria for new conventions or rules

1. Comprehensible to Canadians

- In particular, make clear the relationship between the executive branch and the elected legislature
- Current conventions mystify the relationship

2. Require Prime Minister to take responsibility for own actions

- Not allow them to hide behind the skirts of our Governor Generals
- Language of the Leclair & Gaudreau-Desbiens article: our conventions should prevent PMs from “instrumentalizing” the Governor General
- Should protect GG not PM – need to protect the institution of the GG for times when reserve powers really needed– not political backside of the PM

3. Oblige all MPs to take responsibility for governing

- Conventions should make politicians feel an obligation to make the House of Commons work that the electorate delivers
- They would need to address an important problem with our existing conventions which result in a government in a minority situation being a negative option

Government as negative option

- In minority situation, party governs by virtue of having not yet been defeated
- It could be defeated at any time – it is always, as Michael Ignatief tells us, “on probation”
- In that sense, the notion of a government having the “confidence” of the House is misleading
- It is “confidence” by default – or passive and temporary support
- Need a way to have government in a minority parliament rest on positive confidence

Problem of this situation

- Opposition sees its role as only to oppose – we hear this expression often – with no responsibility to govern
- Leads to an inane, boring and predictable level of political discourse: opposition politicians never say anything interesting or positive about anything a government does
- Sees no obligation to tell public what it might do in a similar situation – eg. Liberals – would support the budget if it met needs of Canadians but did not tell us what these were
- Recent reports: won't use convention to spell out policy proposals in case the Conservatives steal them!

Needed: ways to create positive majority in minority situation

- Peter Russell outlines 5 ways to make minority Parliament work (3 under 1 part minorities and two under coalitions of 2 or more parties)
- Of those he outlines, my preference is for a formal alliance (whether a legislative alliance or coalition government) that rests on a written and public agreement

Reason for this preference

- We do not have the kind of social consensus that existed in 1960s that would make informal alliances, especially if they are issue by issue, comprehensible to Canadians – they would not appear as anything other than e than opportunism
- Given the every increasing diversity of political traditions and interests of our population, our elected legislators need to play an active role in developing and articulating a social consensus.
- We are not likely to return to the golden age of the post war consensus any time soon – the need to constantly articulate the basis of agreement in society is an ongoing one.

Proposal

- With these comments as background, I would like to throw into the mix of new rules under discussion a proposal drawn from the German system.

2 elements of German model that I find attractive

1. Chancellor (equivalent of our Prime Minister) is subject to election by members of the elected legislature
2. A Chancellor is normally required to be elected by a majority of the members of the legislature.

Positive incentive

- If elected politicians cannot make the Bundestage work, it is dissolved and another election is held.
- In that election, politicians seen as not cooperating are likely to be punished for failure
- Powerful incentive for politicians make the legislature that the electorate has given them work.

Protection of electorate

- Built into the German constitution is a protection against serial elections:
- If legislature that results from election again fails to find a chancellor capable of commanding majority support, then the President (the equivalent of our GG) has the option of either calling another election or appointing as chancellor the leader with the plurality of support in the legislature.

There is a provision for Confidence votes in German system

- If a Chancellor is not supported by a majority in a vote of confidence, the President may dissolve the Bundestag within 21 days
- However, the right of dissolution lapses if the Bundestage elects another Chancellor by a vote of a majority of its members

Advantages/effects of this model

- Makes the relationship between the executive and the elected legislature clear.
- It puts the onus squarely on politicians to make the legislature work – the President only acts when it is very clear that there is a need and politicians have failed.
- Places powerful incentives for parties to negotiate and come up with agreements Result: negotiated agreements among parties – considered contracts by politicians – current coalition government rests on a 190 page agreement
- Government cannot use threat of dissolution to dominate legislature.

Conclusion

- In my view, the adoption of similar rules or conventions would significantly change the our current incentive system for politicians and have positive effects on political discourse, transparency and accountability.

Not proposed as cure all

- Other changes in rules would be necessary
 - Eg. fixed election dates
 - Provision that Parliament meet within certain time period (30 days as in Germany – as Peter proposes in his “Two Cheers for Minority government”).
- Many other interesting and important proposals (eg idea of constructive confidence motions).

Proposal for forum

- The strength of these proposals reinforces the need for a forum (whether independent body, royal commission or House of Commons report) ‘to study the law, conventions, usages, and customary understandings that guide parliamentary government in Canada’.