

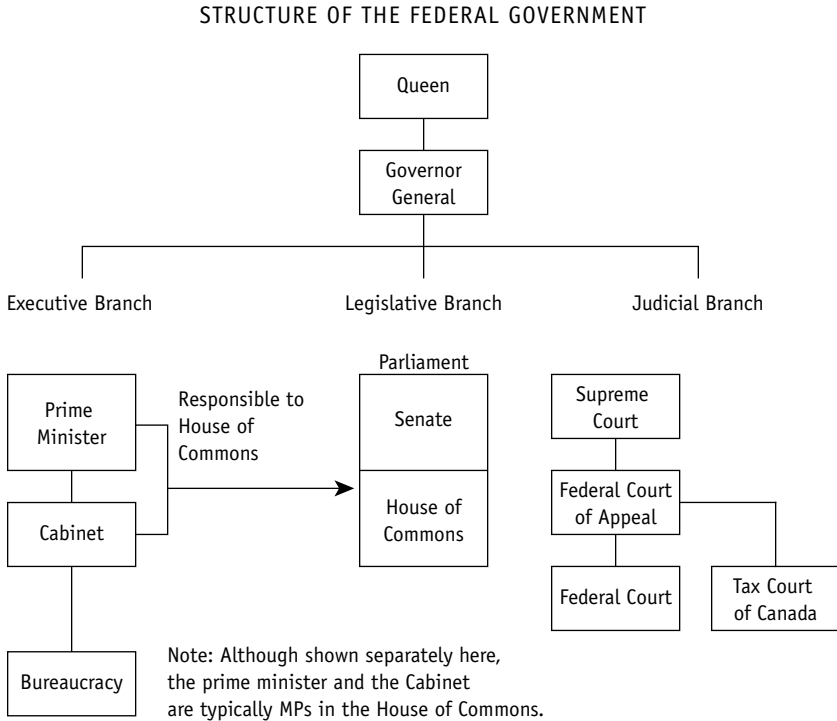
CHAPTER ONE

Introduction: A Fundamental Democratic Problem

A Uniquely Canadian Problem

The Canadian system of parliamentary government faces a fundamental problem that has been allowed to undermine Canadian democracy. The prime minister wields too much power over the operations of the House of Commons. The House of Commons is the parliamentary assembly of the people's elected representatives, the pre-eminent democratic institution of representative government (Franks 1987; Smith 2007). Too much power in the hands of a prime minister over the House of Commons in a parliamentary democracy is always a problem. Unconstrained power in any form of government invariably leads to the abuse of power. When power is abused, democracy is diminished.

The potential for unconstrained prime ministerial power has always been a risk inherent in parliamentary democracies, like Canada's, that are based on the British, or Westminster (after the name of the Gothic-



style building in which the British Parliament meets in London) model. The prime minister occupies a crucial position in this structure. The prime minister is both the political head of the executive government *and* the leader of the governing party in the House of Commons. As the political head of the government, the prime minister advises the governor general to summon Parliament after an election, to prorogue Parliament for a period of time, and to dissolve Parliament in advance of an election. These decisions are not subject to the approval or consent of the House of Commons. They are separate executive powers. At the same time, the prime minister and his or her government, in order to retain office, must maintain the confidence of a majority of the members of Parliament—the people's elected representatives in the House of Commons. The tenure of the prime minister, as well as the life of the

government, is thus subject to the control of the House of Commons. In this way, the constitutional system of parliamentary government is democratic.

In this book, we focus specifically on the capacity of the Canadian prime minister to control the operations of the House of Commons, including using the powers legally assigned to the governor general. Prime ministerial control of the operations of the House of Commons weakens the House's responsibilities and capacities:

- to review and approve or reject the government's legislative proposals;
- to scrutinize the government's administration of public affairs;
- to hold the prime minister and other ministers to account for their performance (collectively and individually);
- to withdraw its confidence in the prime minister and government when a majority wishes to do so; and
- to replace the prime minister and government with an alternative prime minister and government that has the confidence of a majority.

Prime ministerial control of the operations of the House risks an abuse of the basic premise of responsible government, namely, that the House be *in session* in order to carry out these responsibilities. The House cannot do so when it has not been summoned, has been prorogued, or has been dissolved.

The Canadian problem has two dimensions. One dimension is constitutional; the other is a matter of parliamentary government. The constitutional dimension concerns the capacity of the prime minister to abuse the constitutional powers to summon, prorogue, and dissolve the House of Commons to advance the partisan interests of the governing party. For example, there are no firm rules for the governor general to refer to when the prime minister has lost the confidence of the House of Commons and then wants to dissolve it. This was demonstrated following the March 25, 2011 defeat on confidence of the

Harper government. As far as we are aware, Governor General David Johnston did not consult with the leaders of the opposition to see whether a new government could be formed from the opposition with the confidence of a majority. This would be standard procedure in Australia, Great Britain, and New Zealand, where it is fully accepted that the House decides who forms the government.

The parliamentary government dimension concerns the capacity of the prime minister to abuse the rules and procedures of the House of Commons that are meant to allow the government to manage the business of the House in an orderly and efficient manner. It also concerns the prime minister's powers as party leader to run roughshod over parliamentary practices meant to advance parliamentary democracy; for example, by imposing excessive party discipline on the governing party's own members of Parliament who are not ministers—the backbench MPs who sit behind the ministers in the House.

In both of these ways the prime minister governs in bad faith, allowing the government's partisan interests to subvert the opportunities for backbench government MPs and opposition MPs to perform their basic parliamentary responsibilities properly. Public opinion, at least in theory, especially the threat of electoral defeat, should induce the prime minister and MPs to act in good faith when they are inclined to act otherwise. But there is little evidence from the practices of several prime ministers in recent decades to support an assumption that public opinion and elections are sufficient constraints.

The Constitutional Dimension

When the prime minister abuses these powers—to summon, prorogue, and dissolve the House—in order to shut down the House of Commons, the House is either not in session (not yet summoned or has been prorogued) or it no longer exists (it has been dissolved). Shutting down the House to protect the governing party strikes at the very foundation of responsible government as parliamentary democracy. The House is the democratic foundation because it is composed of the people's

directly elected representatives. The people directly elect only their MPs; they do not directly elect the prime minister and government. Who becomes prime minister is determined by the decisions of the political parties in the House according to the numbers of MPs each party elects. When one party elects a majority, the decision is simple. When no one party has a majority of MPs, the matter is necessarily more complicated, but it is still the House that decides by a majority.

Parliament needs to be summoned so that the people's representatives, their MPs in the House of Commons, can perform their critical functions. MPs have no power when the House is not in session. Parliament is prorogued so that the government can efficiently organize sessions, allowing it to conclude one session when its legislative program has come to an end and it wishes to introduce a new legislative program. (Each session begins with the Speech from the Throne, when the governor general reads the government's new legislative program.) Parliament is dissolved for the election of a new House when the government has concluded its agenda or when a new election is required after the government has lost the confidence of the House. The life of a parliament cannot exceed five years. The norm for elections in Canada has been about four years.

The prime minister can abuse these constitutional powers, however, by using them for mere partisan advantage. When this occurs, Canadian academic experts, pundits, and politicians disagree over whether these abuses are constitutional. The most glaring abuse of the power to summon Parliament after an election occurred when Prime Minister Joe Clark's government did not summon Parliament for 142 days, after the 1979 election that brought his Progressive Conservatives to power. As a new minority government, the Conservatives went for more than four months fully exercising the powers of government without having had the confidence of the House in this new government confirmed by a vote in the House. This would not have been acceptable in Australia, Great Britain, or New Zealand, where Parliament is summoned very quickly after an election. In 2010 in Great Britain, for example, Parlia-

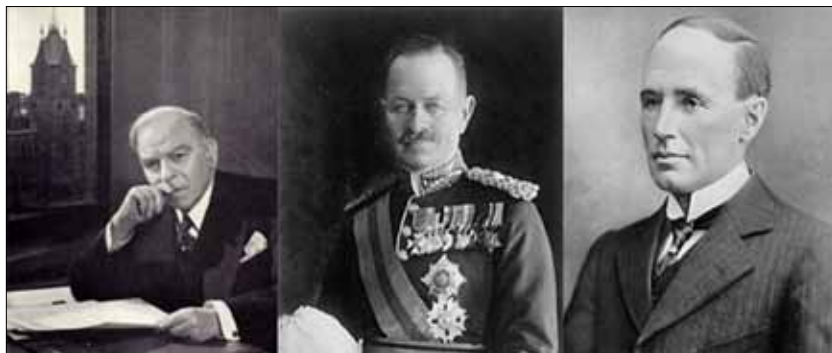
ment was summoned two weeks after the election, an election that brought a new government to power, and a coalition government of two parties at that. Two weeks was also the time it took to summon the Australian Parliament after the 2010 election, even though it was uncertain for a number of days which party would form the government. The Australian constitution requires that Parliament be summoned no later than 30 days after the election day. The New Zealand constitution sets the limit at six weeks.

Abuse of power also occurs when the prime minister prorogues Parliament in order to postpone a vote of non-confidence against the government or to escape being questioned, scrutinized, and held to account for the maladministration of public services or public moneys. Again, Prime Minister Jean Chrétien abused this power in November 2003, forestalling the release of the auditor general's report to the House on the sponsorship scandal—a major scandal that occurred during Chrétien's tenure as prime minister. Prime Minister Harper went one step further in December 2008 when he prorogued Parliament in order to postpone the publicly declared intention of the three opposition parties to defeat his government on a vote of non-confidence. The following December he again prorogued Parliament, this time for several weeks, to postpone being questioned and held accountable for allegations the government had misled the House on matters relating to the handling of detainees in the war in Afghanistan.

Further abuse occurs when prime ministers call early or snap elections (so-called because they are called at the snap of the prime ministerial fingers) at a time that favours their governing party, usually in the first two or three years after the previous election. Liberal Prime Minister Lester Pearson called an early election in 1965 and Liberal Prime Minister Jean Chrétien called early elections in 1997 and 2000, in all three cases to take advantage of the political situation then favouring their party. In 2008, Conservative Prime Minister Stephen Harper called an early election, two years after the 2006 election, also for partisan reasons. He did so even after Parliament passed his government's own law to elim-

inate the power of the prime minister to call elections at will, fulfilling a 2006 election campaign promise. The reform fixed election dates to a specified date every four years but, as is discussed in Chapter 3, the legislation contained an important loophole that limited its effectiveness.

The previously mentioned 2008 prorogation was significant for a second reason. Because it merely postponed the vote of non-confidence in Stephen Harper's government, the question arose about what would happen if the Conservatives, who did not have a majority in the House, lost the vote when Parliament was back in session. The opposition parties, with a majority of the MPs, had already publicly proposed, in an open letter to the governor general, that a new Liberal–New Democratic coalition government, led by the Liberals, be installed, with the support of the Bloc Québécois, instead of holding another election. This government would have had the confidence of a majority of the House. Prime Minister Harper attacked this proposal as undemocratic, claiming that only the people through an election should determine who forms the government. His claim sparked a major public debate about the constitution of Canadian parliamentary democracy, a debate that has reached no conclusion because the constitutional conventions in Canada, as interpreted by academic experts, politicians, and pundits, provide no firm rules on this matter.



The three key players in the King–Byng affair (left to right): Prime Minister Mackenzie King, Governor General Lord Byng, and Conservative leader Arthur Meighen.

Unwritten Rules

Canada has not developed clear rules, guidelines, or expectations on the use of these powers when the prime minister has lost the confidence of the House. New Zealand, for instance, has adopted guidelines to establish that if a government loses the confidence of the House, the governor general is to ascertain whether an alternative government can be chosen from the same House. A prime minister who is defeated in the House has no right to demand that the House be dissolved. This reflects what should be a basic reality of responsible government: that, absent the confidence of the House, the prime minister is just an ordinary member of Parliament. A defeated prime minister must respect the authority of the House to form a new government as long as the House commands the confidence of a majority of MPs. In Canada, the absence of clear rules in this situation has given even defeated prime ministers tremendous power.

The uncertainty about the exercise of the governor general's reserve powers began in 1925, when the governor general, Lord Byng, denied dissolution to the prime minister of a minority government, a Liberal, Mackenzie King, who had not been defeated in the House on a confidence vote. King was facing imminent defeat and was trying to preempt it with an election. When Byng rejected his advice for dissolution, King was forced to resign¹ and Arthur Meighen was appointed by Byng to form a Conservative minority government with the support of a majority in the Opposition, without an election. It was soon defeated in the House, however, and Byng accepted Meighen's request for dissolution without consulting the opposition parties. In the subsequent election in 1926, King challenged the governor general's 1925 decision not to grant him dissolution. King won the 1926 election by campaigning, not against his opponent, Conservative leader Meighen, but the governor

1. Although agreement is not unanimous on this assertion, it is suggested that constitutional convention requires that a prime minister whose advice is refused by the governor general must resign.

general, by implying that Meighen had governed illegally with Byng's help, thus unleashing a rising Canadian nationalism, and winning enough seats to form a minority government.

Since that time, the debate has been polarized between opposing views on whether Byng or King was correct. The debate has never been resolved. However, since then, no governor general has ever denied dissolution to a prime minister or refused any other advice, even in cases where the government has been defeated on a vote of confidence and the prime minister's government thus no longer commands the confidence of the House—the prerequisite to being the government.

Accordingly, at present, constitutional scholars still disagree about the appropriate use of the prime minister's prerogative powers to summon, prorogue, and dissolve. Some argue that there are qualifications on, and exceptions to, the prime minister's use of prerogative powers and that the governor general can use his or her personal discretion to decide whether to refuse the prime minister's recommendation, at least under certain circumstances. The prime minister must go to the governor general to request the use of the powers to prorogue and dissolve Parliament. But there is an absence of clarity—not to mention outright disagreement and political dispute—as to what these qualifications or exceptions are, and when (if ever!) they might be applied by a governor general in refusing such a request.

This means that there are no firm rules to govern the use of the governor general's powers in summoning, proroguing, or dissolving Parliament. All experts claim that there are some guiding principles. Some even assert that matters are clear. But others challenge them. Without the clarity of firm rules, however few in number, politicians will inevitably put their own partisan political spin on their interpretation of the constitution to advance their own interests.

For example, in 2009, the University of Toronto Press published an edited volume called *Parliamentary Democracy in Crisis* in response to the controversial prorogation of the House of Commons in December 2008. The authors who wrote the chapters were among the most

respected constitutional scholars in the country. Among them there was significant disagreement about the following issues: whether the prime minister actually held the confidence of the House of Commons when he requested prorogation in 2008; whether the governor general made the right choice in granting his request; whether the governor general ought to have considered political factors, such as the viability of the proposed coalition, when reaching her decision; and whether the event constituted a true constitutional crisis. Further disagreements exist about the functioning of the other elements of the Canadian constitution.

Since then, the situation has gotten no better. A 2011 workshop led by Professor Peter Russell that included a number of Canada's leading constitutional experts, as well as individuals connected to the major party leaders, sought to address the lack of consensus on many of the fundamental aspects of the constitution. The group failed to come to consensus on a number of the fundamental aspects of how our democratic system is supposed to work, including: what factors a governor general should consider in responding to a request for dissolution in the early months of a new Parliament; whether a change of government between elections is democratically or even constitutionally legitimate; how a governor general should ascertain who is likely to have the ability to command the confidence of the House following an election when no party has a clear majority; and whether, and if so how, to suitably constrain confidence votes to reduce brinkmanship and increase the stability of minority governments. We no longer have a touchstone reference that grounds the Canadian constitution in practice or in principle.

By not addressing the disagreement engendered by the King–Byng debate, even with the election in the interim of several minority governments, Canada has allowed the disagreements that have broken out since the 2008 prorogation to spread confusion and uncertainty about the basic principles and rules of Canadian parliamentary democracy, effectively undermining our system.

By contrast, as noted, New Zealand took steps nearly two decades ago to prevent this from occurring, when everyone realized that the

adoption of a new voting system for its House of Representatives (the equivalent of the Canadian House of Commons) was likely to produce party standings in the House where no single party would have a majority. As part of its *Cabinet Manual*, New Zealand has set out in writing the procedures that the prime minister, the governor general, and the party leaders are expected to follow if a government loses the confidence of the House before the next scheduled election. Great Britain started the process to do the same when the outcome of the 2010 election appeared likely to produce what the British call a “hung parliament,” a House where the election has not provided a single party with a majority of seats. In Australia, governors general have exercised discretion in a few cases, most notably in a 1975 case somewhat akin to the Canadian King–Byng case. But even there, the behaviour of the political party leaders following the election of 2010, when no one party won a majority in the House, also confirmed the same constitutional understanding of parliamentary democracy articulated in New Zealand and Great Britain. This shared understanding has three basic rules:

1. The Queen in Great Britain and the governor general in both Australia and New Zealand do not intervene politically in the exercise of the powers of summoning, proroguing, and dissolving Parliament.
2. The House of Commons (House of Representatives in Australia and New Zealand), through its party leaders, is consulted on which party leader is prime minister and forms the government.
3. The Queen or governor general is not to be dragged into partisan politics by the party leaders, including the prime minister who has lost the confidence of the House, in any fashion (New Zealand 2008; Hazell and Yong 2010, 5; Twomey 2011).

The experience in these three parliamentary democracies does not appear to have had had much, if any, significance for the Canadian

practice. There is scant evidence that more than a precious few among the Canadian media, politicians, and the experts even knew about the New Zealand development when the 2008 debate erupted. By 2011, the British development—the transfer of power from the Labour Party to the Conservative–Liberal Democrat coalition government—was known by many more. That did not inhibit Prime Minister Harper, standing alongside the new prime minister, David Cameron, after the British election, from putting his own political spin on what had happened, including describing the Liberal Democrats—one part of the coalition government—as “losers,” Harper’s definition of every party that does not elect the most MPs. Harper also claimed that only a coalition formed by the party that won the most seats was legitimate. That was definitely not the understanding of the British constitution articulated before the 2010 election, which stated clearly: “It is for the Monarch to invite the person who appears is most likely to be able to command the confidence of the House of Commons to serve as Prime Minister and to form a government” (United Kingdom 2010).

The Parliamentary Governance Dimension

The second dimension of the democratic problem concerns the Canadian prime minister’s capacity to exercise excessive power over the day-to-day operations of the House—powers easily abused purely for partisan purposes. There are several ways a prime minister is able to abuse power with respect to the operations of the House. These include:

- The prime minister can declare all government legislative proposals (bills) to be matters of confidence for the government’s MPs, thus forcing government MPs to vote with their party and thereby diminishing the prospects for serious review and examination by House committees of ways to improve such bills.
- The prime minister can decide to have all government bills go to committee only after passing “second reading” in the House,

which means that no amendments can be considered in committee that would go against the basic principles of a bill as accepted by the House at second reading. This too reduces the effectiveness of House committees.

- The prime minister can select the chairs of all the committees chaired by a government MP. This includes all but a few committees chaired by an opposition MP because those committees, such as the public accounts committee, examine the government's administration of program and financial resources. This power invariably means that these chairs do the prime minister's bidding in chairing committees, especially when they operate under strict directions from the prime minister's political staff.
- The prime minister can undermine the work of committees by constantly changing the government MPs on committees as a way of keeping them under tight control.
- The prime minister determines, through the government's expenditure budget, the level of budgetary resources for expert staff and operating costs provided to House committees. All recent governments have been reluctant to provide committees with the resources they need to perform their responsibilities at an effective level.
- The prime minister, as party leader, is able to use his or her power to approve all party candidates to arbitrarily interfere in local nomination contests, including "parachuting in" preferred candidates. Combined with the inability of party caucuses to appoint or dismiss party leaders, this power reduces the likelihood that governing party backbench MPs will play any kind of serious role in scrutinizing and holding the government to account or constraining the prime minister, especially in committees.
- The prime minister has a major say in the scheduling of the business of the House and can use this power to postpone so-called opposition days, when the opposition is able to put

forward non-confidence motions and to raise issues that the government does not want examined in the House.

- The prime minister is able to determine in some instances what actually constitutes a vote of non-confidence and to decide when the government has been defeated on confidence.

House committees are now the primary forum for MPs to do their legislative review and administrative scrutiny and accountability work. Prime ministerial abuse of any or all of these powers means that MPs cannot help but fall short in fulfilling their responsibilities to citizens of effective democratic representation (Samara 2011). The need to bring the parliamentary process into the 21st century requires many new approaches, but none will have their intended effect if parliamentary reform does not diminish the powers of the prime minister over the people's elected representatives in the House of Commons.

The past 50 years is littered with failed efforts at reform precisely because this prerequisite of reduced prime ministerial power over the House was not met. There were some achievements: the strengthening of the mandate and independence of the auditor general in 1977 under the Trudeau Liberal government; the introduction of the *Access to Information Act* with its information commissioner in 1985 under the Mulroney Progressive Conservative government; and the creation of the parliamentary budget officer in 2007 under the Harper Conservative government. The last two have not fared as well as expected, because governments have failed to implement these reforms in ways that allow them to be fully effective.

The Prime Minister and Responsible Government

Prime ministers have always been more than first-among-equals in their Cabinet of ministers and have had the power to impose party discipline on their MPs. Canadian prime ministers have had greater control over their ministers and MPs than in Australia, Great Britain, and New Zealand ever since the Liberal, and then the Conservative parties, removed

the power of their party caucus to select and dismiss their party leader. Instead, the parties, beginning with the Liberals in 1919, adopted the practice of national party conventions, with delegates from across the country, ex officio party officials, and the party's MPs, to select the party leader, including when the party leader would become prime minister after the party was in government.

Since at least the 1960s, prime ministers in all Westminster systems have become more powerful in relation to their elected parliaments and, with few exceptions, the constraints or checks on their power have weakened. Several developments have enhanced the power of the prime minister in relation to the House of Commons. Among them, two stand out.

First, the federal government has expanded its roles into almost every aspect of society and the economy. This has required an enhanced capacity for coordinating government policy-making and thus managing the government's legislative agenda in the House of Commons. This enhanced capacity is located at the centre of government under the direction of the prime minister.

Second, television had a significant effect on personalizing party leadership, with election campaigns becoming even more leader-centred and focused (Savoie 2010). In addition, the Canadian prime minister, as the government's "chief executive officer," has greater control over non-partisan public service executives and has the largest partisan political staff among the Westminster democracies. It is not surprising that Canadian prime ministers have not been inclined to reduce their powers. Why would they if the main objective is to be in power and stay there? The two most recent prime ministers, Martin and Harper, both expressed interest in reform before they gained office. As discussed in Chapter 4, neither succeeded after he became prime minister.

In 1997, between periods in his career as an elected politician, Stephen Harper co-authored an article with his one-time adviser, Professor Tom Flanagan, entitled "Our Benign Dictatorship." They argued: "We persist in structuring the governing team like a military regiment under a single commander [the prime minister] with almost total power to appoint,

discipline and expel subordinates [Cabinet ministers and members of Parliament]” (Harper and Flanagan 1997). In 1999, Professor Donald Savoie wrote a widely cited book, *Governing from the Centre: The Concentration of Power in Canadian Politics*, in which he portrayed the concentration of power under the prime minister as a governance structure resembling a powerful monarchy, with the prime minister surrounded by a cabal of courtiers, all dependent for their influence in “the king’s court” on the personal whims of the prime minister (Savoie 1999). In 2001, Jeffrey Simpson, *Globe and Mail* columnist, penned a book about Liberal prime minister Jean Chrétien, whom he described as a “friendly dictator” (Simpson 2001). And, in 2010, Simpson’s colleague at the *Globe and Mail*, Lawrence Martin, published a bestseller called *Harperland: The Politics of Control*, in which he describes how Stephen Harper, now prime minister, has taken prime ministerial power to even greater heights (Martin 2010).

We will argue that the abuse of these and other constitutional powers by the prime minister is more damaging to parliamentary democracy than the much publicized practice of recent prime ministers centralizing government decision making in their own office. The consequent bypassing of the structures of Cabinet government and individual ministerial responsibility has received far greater attention to date. Even Prime Minister Stephen Harper’s two controversial prorogations are seen as simply part and parcel of highly centralized and tightly controlled prime ministerial government, rather than abuses of power.

We acknowledge that centralization under the prime minister and his or her political staff in the Prime Minister’s Office is indirectly related to the prime minister’s capacities to control the House of Commons. This centralization diminishes the likelihood that the prime minister’s Cabinet colleagues, let alone his or her party’s MPs, will be able to constrain the prime minister from abusing the governor general’s powers or running roughshod over the parliamentary process. But centralization within the executive branch of government does not by itself lead to the abuse of the governor general’s powers. Something more is re-

quired: the willingness of the prime minister to exercise these powers simply and merely to promote and protect the political interests of the governing party. In other words, the willingness to act in bad faith.

A Note on the Effect of Partisanship and the Malaise of Modern Politics

Partisanship, in and of itself, is not damaging to parliamentary democracy. Indeed, it is an integral and positive part of our system of parliamentary government. Our system is one of “party government” in several important respects. Competing political parties are freely organized by citizens. These parties structure the choices for voters at elections by nominating party candidates, offering a party platform, and identifying their party leader. After the election, they organize Parliament into two sides: the government and the opposition. The members of Parliament on the government side support the prime minister and Cabinet ministers as the political executive. By democratic convention, the prime minister and almost all other ministers are also MPs, rather than members of the Senate, the unelected house of Parliament. Since 1867, the Canadian experience has seen the government side always composed of just one party, as is the case at the time of writing, with the Conservative Party in office.² Since the 1920s, the opposition has comprised two or more parties. Today, it is made up of four parties—the New Democrats, the Liberals, the Bloc Québécois, and the Green Party. In all these ways, partisanship serves important democratic purposes.

However, partisans can sometimes be excessive in their partisanship. They can demonize their opponents. They can fail to listen to the arguments of the other side. They can deliberately misrepresent what their

2. A possible exception was the Union government put together by the Conservative prime minister during the First World War that included some Liberal MPs in the Cabinet. But it was not a coalition because the Liberal Party, with the rest of the Liberal MPs, remained in opposition.

opponents have said or stand for. They can portray robust democratic competition as a war between enemies. And partisanship can go beyond simple excess. Partisanship leads to the abuse of the prime minister's conventional powers to summon, prorogue, and dissolve the House of Commons whenever they are exercised solely to protect or advance the interests of the governing party. The prime minister is constrained in the use of these powers only by public opinion and the prospects of voter disapproval in a subsequent election.

The malaise of modern politics encompasses a number of developments, some of which are easily observed but not well understood. These include a general decline of citizen engagement and interest, especially among youth, in the traditional and still basic forms of voting, associating with a political party in some manner (even if only as loosely considering oneself a partisan for one party), and generally being attentive to politics and government. When citizens become disengaged in large numbers, the likelihood of their being concerned about the state of Canadian democracy is diminished. The influence of the mass media, to which the great bulk of the population paid some attention for most of the latter half of the 20th century, has also diminished, in part because the various new electronic media have captured so many of the specialized or niche markets that these other developments themselves helped to fracture.

Citizens, pundits, scholars, and politicians themselves have singled out partisanship and political parties for special criticism. Many would like to see MPs voting more freely, based either on what their constituents want (assuming MPs could know) or the MP's personal conscience. They oppose the excessive party discipline imposed by party leaders that occurs when leaders silence the voices of their MPs and turn them into robots who merely echo the party line. All party leaders have been responsible at times for succumbing to both these temptations, although it is ironic that the Conservative Party has probably been the party most characterized by this practice, despite the fact that the core of the new party is the defunct Reform Party of Preston Manning, a party formed

precisely to advance the ideals of reduced partisanship and party discipline in parliamentary government (Smith 1999).

Many—though not all—of those who support reforming how Parliament works on a day-to-day basis have set their sights on reducing, if not eliminating, partisanship. However, the entire parliamentary process is predicated on partisan politics, which sees institutionalized adversarialism as the best means of securing democracy. Partisanship is thus an essential dynamic of public accountability in our democratic system and any efforts to improve democracy by reducing partisanship are doomed to failure. Efforts to improve democracy should instead be focused on reducing excessive party discipline.

The Need for Reform

As we have indicated and will argue more fully in later chapters, unconstrained prime ministerial power undermines the democratic spirit of the Canadian constitution of parliamentary government as institutionalized by the conventions of responsible government. “Prime Ministers who violate the spirit of the constitution may not understand its requirements or are prepared to violate the norms of behavior it prescribes because of their obsession with winning and holding power. There is a critical issue of character with leaders who are prepared to ignore or violate the rules of the game” (Thomas 2011). These conventions are meant to govern how the democratic elements of the constitution should operate. The logic here is that MPs in the House of Commons are the people’s directly elected representatives. This makes the system democratic: the people have the ultimate control. But they have this control only insofar as MPs are able to constrain the prime minister and government.

This was the democratic spirit that motivated British political reformers in the third decade of the 19th century in Great Britain. The prime minister became responsible to the House of Commons and not the Queen. It was the same democratic spirit that emerged shortly thereafter in the British North American colonies (as well as in the British colonies

in Australia and New Zealand). These colonial reformers also won out, and their structures of parliamentary government adopted the British practices.

One must acknowledge that while citizen, pundit, academic, and political reformers are now active on several fronts and are advancing reform proposals, the effort is scattered and lacks coherence at this time. Although most reformers have the fortitude to keep going, there is a level of frustration that characterizes the reform movement(s) generally. None of the major parties has endorsed a comprehensive and coherent program of democratic reform, although all speak to the issue. Leadership failure on this front cannot but discourage reformers and breed cynicism on the part of citizens who are not active in reform circles yet nevertheless have a low opinion of the state of parliamentary democracy.

The problems that are undermining Canadian democracy demand reform. The problem is not the result of any one governing party. Nor is it the consequence of minority government; majority government, in many ways, enhances the democracy problem even if it gives it a façade of stability or, worse, gives it the veneer of legitimacy (the false god of autocrats) (Russell 2008). The reforms we propose in this book seek to establish firm, clear rules for the practices governing confidence and the summoning, prorogation, and dissolution of Parliament, around which a consensus could build among politicians, analysts, and the public. These rules would constrain the power of prime ministers to silence the House in order to protect their partisan interests. We also seek to advance proposals that would reduce the power of the prime minister and government to dominate parliamentary structures and processes merely to serve their partisan interests.

While it is neither possible nor desirable to prescribe rules for every situation, a complete absence of rules leaves the integrity of the system vulnerable to abuse. It should also be noted that having a few firm rules does not forgo flexibility within, or preclude future evolution of, our parliamentary system.

Outline of This Book

Before we present our case for reform and our proposals for addressing the problem of the abuse of prime ministerial power and the shortcomings of our existing system in Chapter 6, we need to examine the reasons why we face this major problem in our system of democratic government. We need to consider how the system of responsible government emerged and then evolved. We also need to consider the problem from a comparative perspective, especially against the experiences of Australia, Great Britain, and New Zealand. And, of course, we need to consider the recent debates about the current state of responsible government in Canada.

In Chapter 2, we provide a brief comparative account of the principles and structures of responsible government, its origins, and the evolution of its practices to this point in Canada, Great Britain, Australia, and New Zealand. We introduce what we see as the Canadian problem of unconstrained prime ministerial power, when adherence to the spirit of responsible government is diminished or disappears.

In Chapter 3, we examine the critical role of unwritten constitutional conventions in the practice of responsible government. We discuss what happens when conventions become unclear or subject to dispute, and thus ultimately fail to be effective constraints. Whenever this is the case, what may or may not happen when the rules come into play turns out to be uncertain.

In Chapter 4, we describe how the prime minister has come to be able to exercise the governor general's powers at his or her discretion and to use them to give the governing political party a political advantage over the opposition parties that not only serves no public purpose, but actually diminishes the quality of parliamentary democracy. In several critical respects, responsible government has been turned on its head: the prime minister controls the House of Commons, not the other way around. He or she does so as the leader of the governing party *in* the House. In this capacity, the prime minister has the legitimate authority

to dictate to his or her party's MPs, including ministers, how they will vote in the House of Commons. This capacity to impose what is called "party discipline" gives the prime minister enormous leverage against the opposition parties when the MPs who belong to the prime minister's governing party constitute a majority of all MPs. But even when this is not the case—when the prime minister's party has only a minority of the MPs on its side (known as a minority government)—the prime minister can be just as dominant. This has been fully evident most recently in the case of Prime Minister Stephen Harper, who governed between 2006 and 2011 with only a minority of Conservative MPs in the House of Commons. Maintaining power by political tactics that keep the three opposition parties disunited, as Prime Minister Harper did so successfully, is simply good political leadership. Abusing the prime minister's powers of prorogation and dissolution is something else altogether.

In Chapter 5, we examine why periodic elections are a necessary, but not a sufficient, condition of a robust democracy. Neither elections nor the constant pressures of public opinion have been sufficient to constrain prime ministers from abusing their powers. The chapter reviews the indirect role of elections in the formation of government in a parliamentary system. While this parliamentary system of selecting governments functions with relatively little complaint when voters elect a majority of members of Parliament from a single party, the system faces greater complexity when no single party wins a majority of seats. Perhaps the most controversial and contested aspect of Canadian democracy, even among constitutional scholars, is the legitimacy of changing governments between elections.

Some argue that elections should be the only way to change a government from one party to another. This was the argument advanced by Prime Minister Harper and his supporters following the December 4, 2008 prorogation of Parliament (see, for example, Flanagan 2009), facing defeat and the proposed Liberal–New Democrat coalition government. We examine the competing claims of the democratic legitimacy of changing governments between elections. One does not have to

dispute that elections are the cornerstone of our democracy to be able to reject the argument advanced by the Conservatives that only elections can decide who is to be prime minister, and thus which party will be the governing party. In a parliamentary democracy, it is the House of Commons that must decide who constitutes the government after the people have elected their MPs.

Because, at times, Canadian voters do not elect a majority of the MPs belonging to one party, requiring an election to be held every time the prime minister and government loses the support of a majority in the House of Commons is simply not respectful of what voters have decided in the election. The only way to respect the democratic wishes of the people when no one party has a majority of MPs is to abide by the founding principle and original logic of responsible government: that a majority of MPs decides who should be the prime minister, even if that means that a majority of MPs replaces one prime minister with another between elections. In a democracy with three or more competitive political parties electing MPs to the House of Commons, this logic is even more compelling now than it was nearly two centuries ago!

Chapter 5 concludes by considering the practical implications of relying exclusively on elections to form government for the conduct of parliamentary democracy, including the requirement to entrench rigid party discipline on all MPs in order to respect the party preferences of voters, as well as the capacity of Parliament to hold government to account between and during elections.

In Chapter 6, we outline our proposals for reforming responsible government in order to democratize the constitution. We argue that the prime minister should not be able to dissolve or prorogue Parliament or to put off summoning Parliament at his or her discretion or to decide when the government has lost the support of the House of Commons. That kind of power held by a single person does not, in our view, belong in a robust democracy.

At the same time, we think that a robust democracy should not rely on the personal discretion of an appointed governor general to con-

strain a prime minister from abusing those powers. But that is exactly what some expect our governor general to do. And they persist in this view even though the conventions of responsible government that guide what the governor general should or should not decide, and under what conditions, are now highly contested. When a consensus on the conventions themselves does not exist, the constitution's unwritten rules are next to useless, allowing the prime minister to drag the governor general into the partisan political arena, as was most dramatically experienced in December 2008. It is also practically unrealistic and democratically inappropriate to rely exclusively on a new election every time a government loses the confidence of the House of Commons. Something else is obviously required.

We offer a four-part reform to address the constitutional dimensions of our democracy problem:

First, to constrain the prime minister from abusing the power to summon Parliament after an election, we propose a requirement that Parliament be summoned within 30 days after the date of an election.

Second, to reduce the capacity of the prime minister to destabilize parliamentary operations and undermine the effectiveness of the House and its committees in performing their critical functions in a parliamentary democracy, we propose that the dates of elections be fixed at four years. Elections would occur every four years on a specific date unless a two-thirds majority of MPs approves a motion to dissolve Parliament for an early election. This would remove what has become the virtual right of the Canadian prime minister to call an election whenever he or she wants, even after losing the confidence of a majority of MPs. It would also eliminate a partisan advantage that can be used against the opposition.

Third, to remove any disagreement about what constitutes a vote of non-confidence and to eliminate the power of the prime minister to dismiss some votes as not actually withdrawing confidence, we propose the adoption of a "constructive non-confidence" procedure. Under this procedure, the opposition can only bring down the government via an

explicit motion of non-confidence. This motion would also identify the member who would become the prime minister and form a new government with the support of a majority of MPs in the House. The motion would have to be supported by a simple majority of MPs. It would require opposition leaders and their MPs to vote non-confidence in the government only when they are prepared to form and/or support a new government from the opposition side of the House. It would also make clear that the House could change governments between elections. This reform would also dramatically reduce the ability of both the prime minister and the opposition to use confidence measures (and elections) as a form of brinkmanship.

Fourth, to constrain the prime minister from abusing the power to escape scrutiny on a vote of non-confidence, we propose that the consent of the House of Commons be required before proroguing Parliament. To be an effective constraint on the prime minister of a majority government, the consent of a two-thirds majority of the House of Commons should be required.

In addition to these first four reforms, we also propose measures that will further reform parliamentary governance. These would constrain the prime minister's power over the House of Commons and strengthen the effectiveness of the House and its committees. In proposing these reforms, we use a simple four-part test that should be applied to all potential reforms.

As we will discuss, the most effective means of enacting the four proposed reforms that encompass the powers of the governor general would be formal constitutional amendments that establish these new processes. These democratic reforms should be packaged for constitutional change separate from any other measures—especially electoral system reform and Senate reform—that bring important and controversial issues of federalism into play. Electoral system reform, from the current first-past-the-post (or single-member-plurality) voting system to any proportional-based voting system, would not adversely affect our proposed changes in any way and could well help to bring about the

desired objectives. The effects of a reformed Senate, on the other hand, can only be considered with reference to fully formed proposals for a reformed Senate. The proposals put forward by the Conservatives since 2006 do not meet these criteria.

Although the changes we propose require the consent of the provinces, they do not affect the legislative powers or rights of the provinces in any way. At the same time, we recognize Canadians' assumed collective phobia of "opening the constitution." This phobia has become an impediment to democratic reform. We thus discuss what reforms might be accomplished, short of formal constitutional change, by looking at what has been done in New Zealand and Great Britain.

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