

THE CANADIAN REGIME

PART ONE: INTRODUCTION

Chapter One: Canada's Regime

1.1 Political Regimes

- To political scientists, the political institutions of this, or any other country, have an inner logic that ties them all into a coherent whole, a *regime*
- Regime is derived from latin term *regere*, meaning to rule, the latin root developed *regent* and *regulate*
- Regime is sometimes used to refer to a particular group of rulers

Regime: The form of government *and* the underlying political principle that provide the legitimate basis for the form of government

- What sort of political institution a state out to have will logically flow from what sort of regime it has
- Principles of the regime must support principles of the political institution
- Aristotle's Politics on the classic discussion of regime types has been an excellent starting point
- Aristotle generated a typology that included six regimes (three just, three unjust)

Who Rules?	Common Good	Own Interest
One	Kingship	Tyranny
Few	Aristocracy	Oligarchy
Many	Polity	Democracy

- Aristotle calls a monarchy of the first type *kingship* and one of the second type *tyranny*

Aristocracy: An elite few ruling for the sake of the common good- has not been seen in history too much

Oligarchy: Political power is in the hands of the few, they use it for their private economic advantage, an unjust regime- seen in many developing countries where rich elites use political power to maintain and increase wealth

Polity: Aristotle's analysis that a regime in which many rule for the sake of the common good- argues that it is non-existent

- Society is divided into two classes; the many *poor* and the few *rich*
- The fact that something is democratic does not necessarily mean that it is right

Democracy: Has come to mean rule by the majority that respects the rights of all individuals, including those who may be in the minority

- Canadian Regime = A Democratic Regime
- Our democratic regime has been carefully crafted to avoid tyranny of the majority

Regime Principles

1. Equality
2. Liberty

1.2 Equality and Democracy: Direct versus Indirect Government

- Democracy grants political power to all citizens equally (excluding children) because democrats believe that no one has any special title to rule
- The democratic principle of equality is a political principle, not a social or economic one
- Democracy→ People share equally in political rule, not that they share equally in wealth or social status

Direct Democracy: Regimes in which all of the citizens were directly involved in political decision making

- Based on the assumption that all citizens are equally capable of exercising political power

Parliamentary Democracy: A regime in which political decisions are made by a representative body called parliament, thus indirect

- Assumed superior to direct democracy precisely because it was a more limited form of direct democracy
- Crown is given a role as a last-chance safety valve

Representative Democracy: Instead of managing political matters themselves, equal citizens of modern democracies delegate the responsibility for public matters to a smaller group of elected representatives.

- Modern democracies are too large to be governed by people directly
- Minimizes the mob rule because candidates have to convince voters that they are the best person for the job and thus, they are accountable to the people through elections
- When the Fathers of Confederation borrowed from our regime, they borrowed heavily from the US in most respects
- In an American regime- the president, governors, and some of the judges were chosen directly by the people, thus subject to the dangers of mob rule
- Through a process called responsible government, the prime minister and ministers of the cabinet are indirectly chosen

Republican Regime: Established by the Constitution of the United States, a regime in which full and final authority is placed in the hands of the people's elected representatives and officers

- Fathers of Confederation rejected the work of the US to avoid the "evils of republicanism"
- Canadian regime is a relatively limited form of democracy
- What makes our regime a fundamentally democratic one is the notion that *the regime belongs to us all equally*
- Canadian political equality is an equality of citizenship, implying...
 1. We have an equal right to run for public office
 2. Whoever is elected or appointed to political office must in some way be accountable to the people as a whole for their actions

1.3 Liberty

- Democracy and liberty are two key political principles of our regime

Liberal Democracy: Combines the political principles of liberty and democracy

Liberty: There is a sphere of human thoughts and actions that is private and within the private sphere

Liberalism: We are free to do whatever we wish providing that there is no prohibiting law

- In liberal democracies, there are two schools of thought that predominate: natural rights and utilitarianism

Natural Rights: Human rights, individuals possess certain rights simply because they are human beings (i.e. right to life) they are rights that cannot be given up or taken away

- Establishes limits of political power

Utilitarian: Usefulness as a means of promoting human happiness

- Rights are created within each regime in response to circumstances

Harm Principle: John Stuart Mill, governments cannot interfere with actions of individuals so long as those individuals are not harming others

The Harm Principle provides...

1. The onus of proof is always on the government to show why any law that limits our individual liberty is necessary
2. Such a law will be valid only if it is necessary to prevent some direct harm to other human beings
 - In Canada, our liberalism was historically the utilitarian type, however, with the adoption of the Charter the idea of natural rights have increased

Protection of the Private Sphere

Public Sphere: Areas of human activity where governmental regulation of our conduct is necessary to protect the rights of everyone

Private Sphere: Includes everything else, and liberals insist that governments may not interfere in these areas of our lives

Respect for Minority Rights

- A liberal regime will proscribe all discrimination on the basis of race, religion, and other politically irrelevant characteristics
- Principle that those in power must assure equal treatment for those in the minority

The Rule of Law

- The government itself is not above the law, the law must be applied equally and impartially
- Every action taken by the government must be grounded in some legal authority

Constitutionalism: The idea that the regime itself must be ordered in accordance with agreed-upon rules that will be supreme

1.4 The Canadian Regime

- Every liberal democracy will apply equality and liberty in different way
- The rules of responsible government are the mechanism we use in Canada to apply the principles of democracy in general and parliamentary democracy in particular
- The constitution is a framework of the regime

Chapter Two: The Constitution

2.1 Constitutions and Their Functions

Constitution: A set of rules that authoritatively establishes both the structure and the fundamental principles of the political regime, the rules that 'constitute' the regime

Functions

1. Establish what person(s) will exercise the various forms of political authority

Legislative Power: Power to make law or policy

Executive Power: Power to 'execute' or administer that law or policy

Judicial Power: Power to settle questions about specific violations of the law

- Every constitution will assign these powers to specific persons / bodies of persons
 - The constitution of a political regime will set down these types of rules...
 - It will stipulate that legislative power is to be exercised by a “parliament” “congress” or an “assembly” etc
 - It will dictate the composition of the body and some basic ground rules for functioning
 - Determines whether the executive power will be at the hands of the president, prime minister, cabinet, or perhaps a monarch
 - Establish the broad outlines of a judicial system by stipulating what kind of courts the country will have and by setting down rules for the selection of their judges
2. Provide an authoritative division of powers between national and regional governments in federal countries

Unitary: Regimes that have one government for the entire countries (i.e. France)

- In large countries, or countries divided into distinct ethnic or cultural regions, it is common to establish two independent levels of government, national and state or federal and provincial
- Federal constitutions provide clear divisions of power and areas of responsibility for each of the two levels of government, which may become difficult due to overlapping areas of jurisdiction

Residual Power: Power that is retained by the government after other powers were distributed to other authorities in the course of elections or by the process of delegation.

3. Describe the limits of governmental power
- The idea of constitutionalism implies that the constitution is supreme and the government is subordinate to it
4. Provide an orderly way to make changes to it
- Political regimes do not remain static, so constitutions must accommodate the structure and change

2.2 Constitutional Forms: Conventions and Laws

Rule: A principle or condition that customarily governs behaviour, they may be written or unwritten, legally enforced or enforced by political opinion and political custom

- Fundamental rules that make up a regime’s constitution are of two basic types: conventions and laws

Conventions: Political rules, laws are judicially enforceable rules typically followed because one fears the consequences punishment

Statutory Law = written down

Common Law = not written down

- Conventions are enforced by politics, constitutional laws are rules enforced by courts
- Constitutional laws → organic statutes and entrenched constitutional laws

Different Forms of Constitutional Rules

1. Constitutional Conventions

Constitutional Convention: A gathering for the purpose of writing a new constitution or revising an existing constitution

- Courts have been occasionally called upon to give a better definition to conventions, but they are unable to enforce them because *the courts are courts of law not courts of conventions*

- Legitimacy lies in the perception that there are good reasons for such a rule, not on how constitutionally ingrained it is
- The voting public is enforcing constitutional conventions and thus they will be followed for the fear invoking the wrath of the voters
- *Constitutional conventions can be applied with a certain amount of flexibility*
- *A convention can be ignored, but only for the right reason*

2. Constitutional Law

Constitutional Laws: Rules of a constitutional nature that are enforced by courts

Organic Statues: Statutes establishing constitutional rules

- The classical parliamentary model using these constitutional rules is found in Britain
- A good deal of the British Constitution is actually written out in the form of organic statutes, laws passed by the British Parliament to spell out certain constitutional rules in black and white

Two basic reasonings for adopting some constitutional rules as organic statues rather than conventions

1. Some rules are probably too complex and detailed to be left to the realm of unwritten agreement
 2. Organic statutes provide a more effective means of introducing substantial innovation to the existing constitutional order
- Statutes unlike conventions, can be enforced by the courts
 - Authority of organic statute derives from the fact that it represents the will of the body that exercises legislative power, the authority is always somewhat precarious because any body that has a right to adopt a statute must have the right to repeal or amend it

Entrenched Statutes

- Entrenched constitutional acts are also written and enforceable by courts, but they differ from organic statutes in two ways...
- 1. Tend to be more comprehensive, more comprehensive codification of a wide variety of major constitutional rules
- 2. Authority an entrenched constitution act is more absolute because entrenched acts are not as easily changed as statutes
- John Locke, government can be legitimate only if it is based on the consent of all those who are governed, the regime has to meet with the approval of its citizens
- Approval comes in a two way process, the social contract
- 1. Human beings who are naturally free and equal decide to come together in “civil society” and establish a political regime to govern themselves
- 2. Establish the ground rules of the regime by majority vote
- It is not the institutions that have to be democratic for government to be legitimate but the underlying contract that establishes them
- The legitimacy of the government’s existence depends on that contract

Entrenched Constitutional act: A kind of fundamental pact emanating from the will of the people which provides the foundation for the entire regime, thus higher status than ordinary laws

- Supreme law of the regime
- Best way to ensure the inviolability of principles is to entrench them
- Founding Fathers insisted that the Constitution of the United States take the form of a fundamental law emanating from the will of the people- the approach most consistent with the Lockean Theory

- It would have been impractical to establish a federal division of powers in the form of a constitutional convention because a federal division of powers has to be formulated in more precise, detailed, and rigid terms than can be managed in unwritten agreements
- Entrenchment of a constitution provides the most effective means of guaranteeing citizen's rights and liberties
- Acts have a higher status than any particular political institution
- In a constitutional system based on convention and statute, politicians can adopt the most oppressive measures as long as they have the support of a majority of votes
- Politicians cannot legally adopt measures that violate an entrenched guarantee

2.3 *The Canadian Constitution*

- Like the British, we also rely on constitutional conventions and organic statutes for a substantial number of our constitutional rules
- Our entire system of responsible government, for example, is embedded in constitutional convention rather than constitutional law

1. CA 1867

- Act served to create a union of three British colonies into a new political entity called the "Dominion of Canada"

Dominion: A regime that was too self-governing to be considered a colony but not entirely independent of the mother country

- The status of the CA 1867 as Canada's supreme law depended on the fact that it was an act of our colonial mother country and on the fact that we Canadians, being less than fully independent of her, had no right to disobey her laws
- In the preamble, the intro states the reasons for the act that follows, it notes that Canada is to have a Constitution similar in principle to that of the UK
- The preamble serves notice that many of these conventions are to be incorporated
- Parts III and IV sketch the fundamental outlines of executive and legislative power in the federal government
- Description of the legislative authority of the federal government in section 91 and the list of provincial jurisdictions in section 92
- Act contained no comprehensive amending formula- a formal request for an amendment to the British Parliament had to be sent, which became quite unsatisfactory

2. CA 1982

- 1867 provided difficulties in a constitutional amending formula for when constitution's provisions need amending to be updated or are problematic
- Entrenched constitutional acts almost always contain an amending formula

Amending Formula: A rule explaining how the law can be changed, parliament + seven provinces with 50% of the population

- Everyone agreed the patriation was a good idea, but various parties insisted on using the patriation negotiations to pursue other agendas
- Pierre Trudeau, proposed project of his own, the adoption of an entrenched bill of rights would, among other things, provide constitutional protection for the bilingual regime of language rights he favoured

- The overall negotiations resulted in a compromise agreement that obtained the support of every provincial government BUT Quebec
- Most noteworthy section is 52, which gives a legal definition of the Constitution of Canada and proclaims in no uncertain terms its status as Canada's "supreme law"

Five Amending Formulas

Sections of CA 1982	Amending Formula
General Procedure	Parliament = seven provinces with 5-% of the population
Unanimous Agreement	Parliament + all provinces
Some Provinces	Parliament + relevant provinces
Parliament	Parliament + relevant provinces
One Province	Province

2.4 Amending Canada's Constitution

- Formula ensures that no single province can veto a proposed amendment, but at the same time it ensures that no amendment can be adopted without widespread support (including Ontario or Quebec)
- If an amendment involves a transfer of some part of provincial jurisdiction over education or culture, the federal government will now take up those responsibilities in all the other provinces, must offer financial compensation to the province that is retaining them

2.5 Judicial Review of the Constitution

- Constitutions have to regulate every aspect and activity of a political regime
- It is often difficult to know how to apply general rules in specific cases
- The interpretive task often falls to the judiciary

Judicial Review Of the Constitution: The judiciary's task of defining constitutional terms and determining whether laws or actions taken by government are consistent with them

2.6 Constitutional Politics Since 1982

- The result of those negotiations was the Meech Lake Accord, this accord would have declared Quebec to be a distinct society and would have given Quebec and all the other provinces a veto over constitutional amendments
- The accord proposed a change in the amending formula
- Its adoption required the consent of all the provincial legislatures
- The new governments that replaced the old governments were reluctant to proceed with the Meech Lake Accord
- An aboriginal member of the Manitoba legislature effectively killed the accord by opposing a crucial procedural motion that require unanimous consent

- One of the reasons for the defeat of the Meech Lake Accord was that it focuses almost exclusively on the constitutional concerns of the government of Quebec
- The 1992 negotiations produced a new proposal → The Charlottetown Accord

Charlottetown Accord: Designed to address the concerns of not only Quebec but other constituencies as well

- It added to that formula a constitutional commitment to Aboriginal self government, a new Senate designed to meet the demands of Westerners and women for better representation in Ottawa
- Federal government announced that it would not be willing to support a parliamentary resolution adopting it unless a majority of voters in each province gave their approval in a national referendum
- There were many complaints of an undemocratic process that produced the Meech Lake accord
- Majority of voters in six provinces voted against it
- The court held unanimously that the constitution does not permit unilateral declarations of independence

Clarity Act: The right to determine whether a “question” and a “majority” are “clear” is reserved to Parliament itself

- In the years since the adoption of the Clarity Act, support in Quebec for separation had declined significantly

PART TWO: THE PILLARS OF THE CANADIAN CONSTITUTION: RESPONSIBLE GOVERNMENT, FEDERALISM, AND THE CHARTER

Chapter Three: Responsible Government

- One of the first topics addressed within the CA 1867 is the chief function of a constitution is determining who will exercise legislative, executive, and judicial power.
- In the introduction of the CA 1867, it is specified that Canada is to have a Constitution similar to that of the United Kingdom; meaning that, legislative and executive power must correspond with a set of principles that fall within the term, *responsible government*

3.1 *The Emergence of Responsible Government*

British regime: A monarchy that has vastly evolved

- Early stages of the regime: The Crown exercised both legislative and executive power (made laws and administered them) Possession of so much unelected power inevitably led to abuse of power. In conform away from the abuse, English nobles and commoners led the Crown to resort to legislative power over their assembly, the Parliament
- Mid eighteenth century: Montesquieu, a political philosopher, and theories of John Locke, cited the British regime as a separation of powers; *the best way to protect freedom and prevent political abuse is to allocate legislative and executive powers to separate people and bodies.*
- Any tyrannical act requires both powers, thus, placing both legislative and executive powers to separate parties minimizes abuse of power.
 - o Executive Power → the Crown
 - o Legislative Power → Parliament
 - o British Constitution → A model of a free political order

- The principle of separation of powers was implemented within the American regime. They were familiar with the political philosophers and the British colonial rule concerned them of their division of power.
 - o Executive Power→ President
 - o Legislative Power→ Congress
- *Both the president and Congress are elected democratically* and thus, the Americans feel that this competition implements the public's favour and diverts from abusive power
- **Early Years of British Rule:** Colonies of what would later become Canada were ruled by imperial governors appointed by British Crown. Since executive power remained in the hands of the governors and their advisors, Canadian colonial constitutions were set out as the same separation of powers as the American Constitution
 - o American Constitution→ Separation of Powers for liberal reasons advanced by Montesquieu and Locke
 - o Canadian Constitution→ Separation of Powers for royal, relating to an empire, reasons (i.e. Ensure British Control)
- Colonial constitutions were unworkable, there was friction within the hands of power
 - o Tolerable friction within the United States: Each Branch is elected
 - o Non-tolerable friction within Canada: Only one branch is elected, conflict is seen in terms of democratic rights

Conflict Example

- Early 19th century: Political life in Canada strived to break the power of a small clique of wealthy citizens who controlled a majority of the colony's political and economic life. When reformed won control of legislation, governors were unwilling to cooperate with the implementation of the reform program because they appointed members of the Family Compact as their advisers and executive council.
- **1837:** Rebellions in both Upper and Lower Canada, as a result of the constitutional order and separation of power. They were crushed by the British but established that change is needed.
- Lord Durham was appointed by the British to establish the change necessary.
 - o *Report on the Affairs of British North America:* Amendment of the colonial constitution to replace the separation powers via *responsible government*

Responsible Government: Makes the executive responsible for its actions to a democratically elected legislative body. Could not choose anyone to be his advisor, the governor had to choose from someone who had been democratically elected into a legislative body (parliament)

- By the time of Confederation, responsible government was established as a fundamental principle of Canadian political life

3.2 The Conventions of Responsible Government

- *Responsible government makes the executive accountable to the House of Commons.* The executive is required to defend its actions in the House and demand approval for their use of that power. Responsible government allows for meaningful democratic control of executive power.
- Responsible government is obligated to conform to the *five conventions of responsible government* that create political order and thus makes political personnel accountable.
 1. The ministers themselves exercise executive power, their "advice" to the Crown is a command

2. Crown usually appoints ministers or advisers that are Members of Parliament, facilitates executive accountability, there is flexibility, senators can be appointed as ministers, or neither at all (this individual is obligated to take the first opportunity to run for a seat within the House of Commons, and if they lose they must resign)
 3. Ministers act as a team led by the prime minister, all members are responsible for policy decisions, **collective responsibility**
 4. Crown appoints ministers that maintain the **confidence** of the House of Commons
 5. When the ministry loses confidence of the House, the prime minister must resign or request for a new election
 - o **By law** = executive power is vested in the Crown
 - o **By convention** = executive power is modified
- Crown in effect delegates its executive power to a ministry of MPs (the cabinet), if they do not withhold the confidence, they must resign or hold a new election; thus, meeting the standard of democratic accountability that was sought by reformers

Figure 3.1

Crown (appoints)--> Cabinet (accountable to) → ← (appointed to) Electorate (elects) → House of Commons

3.3 Responsible Government as “Cabinet Government”

- Could conclude that *the principle of responsible government substantially weakened the cabinet by subordinating it to the control of the House*
- Responsible government could be referred to as *parliamentary government*, but more accurate for it to be referred as *cabinet government*

In theory → Responsible government makes the House of Commons the ultimate authority for executive and legislative action

In actuality → Responsible government strengthens the cabinet’s power

- The rise of strong political parties allowed for the transfer of effective legislative power from the House to the cabinet
- **Cabinet** = composed of MP’s that have a confidence of the majority of government. If that majority consists of members of the same party within the cabinet, the majority will support the measures proposed by the cabinet to keep their party in office, thus, enabling the control of the legislative activity of the House
- The cabinet becomes the dominant political institution
 - o Under Law: No power
 - o Under Convention: Responsible government enables control over both executive and legislative power

Fusion of Powers: In the hands of the cabinet

Responsible Government: A regime in which legislative and executive power are fused together in a cabinet that is accountable to an assembly of the people’s elected representations

3.4 Forming a Responsible Government

- Essentially, we do not elect our government, we elect a local Member of Parliament, then, people play an indirect role of who governs

- Government must be accountable to the House, but through a direct election, the Government is accountable to the people as well (different demands = inevitable friction)
- The Crown, the prime minister, and the House of Commons work collectively to provide Canadians with a government that has the confidence of those elected

Four Conventions for the Formation of a Government

1. Ultimate responsibility for choosing the government rests with the Crown
(Crown selects a prime minister who nominates other members of the government)
 2. When appointing the prime minister, the Crown must appoint the individual that the government is most likely to have confidence in.
 3. Government remains in power until the prime minister resigns on its behalf
 4. Prime minister must resign if their government has lost the confidence within the House of Commons
- After Kim Campbell (PC) took over after Brian Mulroney (PC) resigned, she was defeated despite the majority government. She resigned because she knew she would not be able to gain back the confidence that her opponent, Jean Chrétien (Liberal) already had within the house
 - Several opposition parties with a majority of the seats between them can publicly agree to a *coalition*
 - **Coalition**: Formal sharing of the cabinet, the governor general then appoints who the prime minister is of the two parties

3.5 Majority and Minority Government

- **Majority Government**: Refers to a situation in which the party that forms the government controls over half the seats in the House
- **Caucus**: The group of MP's that are members of that party that have essential votes to sustain the House's confidence in the government
- **Minority Government**: Refers to a situation in which no single party controls a majority of the seats in the House. The Governor General then appoints the individual that will maintain confidence within the House

Neither Minority nor Majority government are subordinate to one another, they both have their own advantages and disadvantages that are circumstantial

- It is the government, not the voters that decide the future of the government.
- It is NOT up to which party leader has the most seats, but which party leader has the confidence of the House of Commons
- In Canada, majority governments are more commonly seen than minority governments
- The defeat of a minority government requires two parties to combine for a majority of votes within the House.
- Normally, elected representatives will not feel confident to fight in another election campaign; they are comfortable, campaigns are costly, and would they really be able to gain such a difference of seats
- A minority government that wants to stay in power has to keep the opposition divided
- Majority government rests on greater stability, longevity and energy
- Minority governments are often compelled by their need for support from outside their own party to govern in a more moderate, less arrogant

3.6 Institutional Implications of Responsible Government

Regime: Used to emphasize the extent to which political rules and institutions form a complex web with an internal logic of its own

- Arrangements with respect to legislative and executive power are highly complex in comparison to those found in the Constitution of the United States. The logic of Canadian's responsible government permits this.

Responsible Government and Separation of Powers determine many of the regime's institutional features

Key Institutional s	Regime	Regime

<p><i>Elections</i></p>	<p>Regime of responsible government</p> <p>The timing of parliamentary elections has been traditionally decided by the prime minister</p> <p>The prime minister advises the Crown to hold an election</p> <p>Section 4(1) of CA 1982 specifies no interval between elections can exceed five years, traditionally prime ministers call an election after four years</p> <p>Timing gives the prime minister an advantage over the opposition (called when polls are most favourable or other party is in disarray)</p> <p>Fixed election dates are not compatible with responsible government, the prime minister and cabinet are not directly elected and therefore have no direct mandate</p> <p>Their legitimacy relies on their ability to withhold confidence, confidence can be lost at any time</p>	<p>Principle of separation of powers implies that each branch of government is elected separately</p> <p>Each branch has their own mandate (they don't rely on measures of confidence)</p> <p>Presidential election allots a four-year mandate</p> <p>Two years for House of Representatives</p> <p>Six years for the Senate</p> <p>Held at fixed and predictable intervals</p>
<p><i>Appointments</i></p>	<p>Referred to as cabinet ministers</p> <p>Prime minister is restricted to choosing an individual within the House of Commons or someone to be elected when possible</p> <p>Little flexibility</p>	<p>Referred to as cabinet secretaries</p> <p>President can choose virtually any citizen (restriction, if they are a member of congress they must resign)</p> <p>Flexibility allows for the president to choose a very talented individual</p>
<p><i>Head of government of state</i></p>	<p>Draws a distinction between the head of government (the prime minister) and the formal head of state (the queen)</p> <p>Responsible government must be reflected through the exercise of democratic legitimacy so that the house withholds its confidence</p> <p>The governor general must be there to intervene in areas of confidence in which the prime minister cannot</p>	<p>No distinction exists where the president fulfills both roles</p> <p>No office corresponding to that of a governor general</p> <p>In a regime based on separation of powers, democratic legitimacy is maintained automatically through the system</p> <p>No one is required to ensure that one branch has confidence in the other</p>

discipline	<p>Quite strong, so strong that it is common that Canadians complain about their MPs going along with their parties</p> <p>Responsible government creates a strict form of party discipline</p> <p>If members of the party in power do not stick together, they will lose the confidence of the House</p>	<p>Both members of the Senate and House of Representatives are freer to vote as they wish, it is not uncommon to vote against their party</p> <p>Can afford to have weaker party discipline because their separation of powers</p>
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- Just because certain practices work well in the United States, doesn't mean that they will in Canada
- Practices imported from other regimes must be consistent with internal logic of responsible government in order for them to work

3.7 Responsible Government and Separation of Powers Compared

- Responsible government comes from British origin, now forms to most liberal democratic regimes
- Executive must be responsible for its actions to a legislative body consisting of elected representatives
- The most influential constitutional model has been the United States, rather than Britain
- Principle of separation of powers is liberty, separation of powers is inefficient
- Regimes based on the principles of responsible government are noted for their efficiency, specifically majority governments
- Efficiency of responsible government limits political liberty, it is difficult to stop a cabinet that has a majority of the House
- Activity of the government is subject to the authority of the Constitution, especially the Charter of Rights and Freedoms
- The House of Commons allows opposition governments a wide range of opportunities to question and attack the government thus creating a sense of liberty. This is not foreseen within the United States.
- Democratic accountability appears to be stronger under a separation of powers because both the leading executive and legislative officers are elected by the people, as opposed to responsible government in which only the legislative officers are directly elected
 - Within a separation of power, legislative officers can respond more directly to their wishes because they are not restricted by party discipline
 - Within responsible government, MP's have to choose between their party or the wishes of others, they are restricted via party discipline
- Responsible government *offers substantially greater accountability than separation of powers*- it is understood which branch does what within responsible government, whereas within a separation of powers, it is not
- Thus, accountability to the voters is better foreseen within regimes based on responsible government

- Responsible government is superior to separation of powers with respect to the capacity to manage the tensions that arise in countries that decided to embrace the principle of federalism

Chapter 4: Federalism

- CA 1867 indicates that the Dominion of Canada is to have a constitution similar in principle to the UK, a reference to Canada's adoption of the British tradition of responsible government
- Their new dominion was to be a federal union

4.1 *What is Federalism?*

Unitary System: A system in which all sovereign authority of that nation-state resides in one governing body, the national government

- National government decides how much power it will delegate, it gives and can take away power
- State governments become servants of the national government
- The country has one sovereign government
- Modern federalism was invented by American founders when they designed the Constitution of the United States

Federal System: Authority is constitutionally divided between two levels of government

- Neither level can be understood to have sovereign authority, each receives its authority from the nation's constitution and is subordinate to it
- Constitution gives legal jurisdiction over national and state legislature matters
- In a federal system, the province or state governments are not beholden to the national government
- In a unitary system, the authority flows from the centre out
- In a federal system, the authority is constitutionally divided
- Municipal governments fall within provincial government's jurisdiction
- Provincial and Federal government are equally subordinate to Canada's Constitution, made clear in the constitution itself

4.2 *Why a Federal Union?*

- Politicians from the Province of Canada were eager and desperate to reform the system of government
- It seemed most logical to the founders to unite the British colonies within North America under one government
- Dominion of Canada could provide a coordinated plan of economic development of railways, canals, and roads as well as greater security for the small colonies
- British believed that it was time for Canada to stand on its own
- Canada was confronted with two serious political divisions; the split between French and the English and a division between the centre and the perimeter
- Canadians were reluctant to organize the government on the federal principle
- Federalism and the assertions of states' rights were associated with war and slavery
- Often argued that federalism creates a divided system of government and weakness of the national government
- Federal government could be more costly than a unitary system
- Federalism could weaken the regime

- Federalism would mean that each Canadian would be apart of provincial as well as the federal community

4.3 *The Original Design of the Federal Union*

- John A. Macdonald argued that the Fathers of Confederation gave all the subjects of great legislation to the federal Parliament
 - Section 91 → Establishes the exclusive legislative jurisdiction of the federal government
 - Section 92 → Establishes the exclusive legislative jurisdiction of the provinces

Residual Power: Anything not specifically reserved for the provinces is to be apart of general federal power to legislate, thus, in the hands of the federal government

Lieutenant Governor: Representative of the Crown for each of the provincial governments, given the right to reserve provincial legislation

Disallowance: Federal government can annul the provincial legislation of which it disapproves

- The powers of reservation and disallowance make the provincial level subordinate to the federal in a certain sense
- CA 1867 establishes not a federal system but a **quasi-federal system**, in which the *federal government is the dominant partner*

4.4. *The Historical Development of Federalism in Canada*

- *Canada now has one of the most decentralized federal unions in the world*
- Federal systems are not rigid, they *evolve overtime in response to a number of factors*
- The meaning of the constitution depends on judicial review
- Health care, provincial jurisdiction makes provincial governments more important than they were in 1867
- Most influential factor shaping the relative strength of the two levels of government is public favour
- The interplay of the various factors has left us with remarkably different balances between federal and provincial power

Five Basic Periods:

1. Quasi Federal (1867-1896)
 - John A. Macdonald
 - National governments proved much stronger than the provincial governments
 - Provincial legislation was occasionally reserved of disallowed
2. Classic Federalism (1896-1914)
 - Wilfrid Laurier
 - The balance of power clearly shifted to a more equal relationship
 - Judicial Committee of the Privy Council (then Canada's highest court) stated that provincial governments are subordinates of the federal government
 - The Judicial Committee declared that the Constitution would be henceforth interpreted in the light of the principles of classic federalism

Classic Federalism: Each level of government is sovereign in the jurisdiction assigned to it

3. Emergency Federalism (1914-1960)
 - The balance of power swung back and forth toward the federal government
 - The two world wars required strong and decisive leadership and command of the economy and society could be provided only a national government

- The Great Depression fostered increased centralization
- 4. “Cooperative” Federalism (1960-1995)
 - Post-war era
 - Canada’s provincial governments now have a much greater ability to raise revenues and exercise power over their respective jurisdictions
 - Federalism because a system of federal-provincial “cooperation”
 - The two levels of government constantly bargained and coordinated their actions
 - Sometimes referred to as executive federalism
- 5. “Collaborative” and “Open” Federalism (1995-present)
 - The federal government has still occasionally been interested in working with provinces to realize its collective goals
 - Setting mutual expectations and standards collaboratively rather than imposing federal norms upon the provinces with the lure of increased transfer funds

“Open federalism”: Leaving governments to do their own thing in their own jurisdiction despite the reality that effective policy making at either level requires some interaction between the two governments

4.5 *Financing Government and Federal-Provincial Relations*

- Major problem associated with federalism is the need to balance a government’s responsibilities with its ability to finance its role
- A federal system will not work if the balance is not attained to
- The jurisdiction rights and responsibilities of government are mere legal precision if the government lacks the will or the means to act
- Our federal system was designed to create an imbalance so that the provinces would always be subordinated to the federal government

Fiscal Federalism: Federal and provincial politicians have developed an elaborate web of financial relations

1. Taxation

- The federal government was given both a much greater ability than the provinces to raise revenues and the power to spend money within areas of provincial jurisdiction
- The federal government can raise money by any mode or system of taxation, the provincial government has only the more specific jurisdiction over direct taxation within the province

Direct Tax: The taxpayer is taxed directly by the government (i.e. income tax)

Indirect Tax: Tax is not collected directly from the taxpayer (i.e. excise taxes that are built into the retail price of goods)

- The federal government has historically been ahead of the provincial government in occupying and thus dominating these fields
- Difficult for the provincial governments to raise provincial income taxes when the federal tax is already widely perceived as burdensome enough
- Joint occupancy of what are now major fields of taxation requires constant negotiations between the two levels of government over “tax room”

2. Federal Spending Power

- Major factor in determining how the federal system operates
- Allowed the federal governments to wield policy influence in areas that constitutionally belong in provinces

- The federal government is not exercising direct legal control over an area of provincial jurisdiction it can establish substantial influence over the shape and outcome of programs

Unconditional Grants: The transfer of large blocks of funds to each province, which allows for greater provincial discretion in how the monies are spent, the provincial government that receives them may spend the money on any area within its jurisdiction

3. Equalization Payments

- The federal government is also responsible obliging to a precedent providing money to provinces whose tax revenues fall below the national average economically
- Federal government is required to provide subsidies to the provinces for the expense of their governments
- Ensures social and economic conditions across the country remain roughly equal and that regional disparities do not become too great

Equalization Payments: A redistribution of federal tax revenue to provinces whose tax revenues fall below the national average standard in order to ensure that Canadian citizens have roughly the same level of government services and taxation

Fiscal Capacity: The amount of revenue a government can raise through taxation

4.6 *Others Orders of Government: Territorial, Municipal, and First Nations*

Territorial Government

- The territorial governments take responsibility for many of the same matters that are handled by provincial governments elsewhere in the country
- While provincial governments are sovereign, the territories exercise only those powers that are delegated to them by the federal government
- The federal government is the main source of the revenues and has the authority to change their powers, boundaries, or even abolish them all together

Municipal Governments

- CA 1867 assigns each provincial legislature sovereign authority over “municipal institutions in the province”
- Each province will determine what powers its municipalities will have
- Municipalities will also seek financial support from the federal government

First Nations

- CA 1867 assigns to the federal government authority over “Indians and Land reserves for Indians”
- Although land-based First Nations have a presumed entitlement to self-governance, those communities enjoy self-governance only because the federal government devolves its authority to individual communities

4.7 *The Challenge of Canadian Federalism*

- Fathers of Confederation imported the federal element of the Canadian regime from the constitutional design of the United States
- Federalism is not as important an issue in American political life
- The American regime has evolved into a much more centralized federation and the governments of the states are clearly less important and less controversial

- A majority of Quebecers believe that the current division of powers does not give the state of Quebec sufficient control over those matters that are essential to the protection and development of the Quebec people
- Federalism does not work as well with responsible government as it does with a separation of powers
- Duality leads to a dilemma: Should political representation within the national government be based on the principle of the equality of all individual citizens or on the principle of the equality of all the states of provinces

Bicameralism: Power is shared by two separate chambers so that neither can act without the agreement of the other

- Legislature (Congress) representation in one chamber was based on the principle of the equality of all individual citizens
- House of Representatives, equality of the states (Senate)
- In the House of Representatives, states with larger populations have more seats, and states with smaller populations have fewer seats; based on the principle of equality to all Canadians
- In the Senate, all the states have the same number of seats; based on the principle of the equality of the regions
- Responsible government makes it difficult for the two chambers to be equal in power
- Bicameralism allowed the Founding Fathers to give fair weight to both claims, so neither the small states nor the large states would dominate
- Council of the Federation: Serves as a vehicle for promoting the view that Ottawa should transfer more money to the provinces and allow them to decide for themselves how it will be spent

4.8 *Current Controversies: The Pressure to Decentralize*

- A strong federal presence in key provincial jurisdictions is essential for the defence of national standards of service in health care, welfare, and education
- If Ottawa retreats from these areas, Canadians will end up with dramatically different levels of services in the different provinces
- A federal retreat from provincial jurisdiction would make Canada less of a country and something more akin to a patchwork quilt

Asymmetrical Federalism: An approach to federalism in which different provinces could have somewhat different powers

- Asymmetrical federalism is unlikely to provide a solution to the problem of Canadian federalism
- Alberta and British Columbia routinely feel a sense of alienation, similar to Quebec nationalists
- Catalyst of decentralization has been the federal debt and deficit
- Federalism is a system of divided loyalties; each of us is a citizen of both a province and a country, ruled by two different governments

Chapter 5: The Canadian Charter of Rights and Freedoms

5.1 *What Is a Charter of Rights?*

- Constitutionally entrenched document that marked a profound transformation of the Canadian regime
- Canada is not just a democracy but a liberal democracy
- Our regime is devoted to the protection of fundamental rights

- The two fundamental principles, majority rule and fundamental rights are not always in harmony
- The purpose of a charter of rights is to prevent democratic majorities from using political power to violate rights, especially the rights of minorities
- Any statute that is inconsistent with the Constitution can have no force or effect

5.2 *How the Charter Works: Gosselin v. Quebec*

- Program sought to arrange the incentives to encourage young people to get off welfare and into the workforce
- Gosselin argued that the program discriminated against her and others on the basis of age
- Although the program made age-based distinction, these were to help, not hurt, young people
- The program, they argued, was based on a faulty assumption that young people have fewer needs than older people and are particularly given to laziness
- Appeal courts sit in panels of three to nine and a case is decided by a majority vote of the panel

5.3 *Remedies*

- According to the old common law rule, where there is a right, there is a remedy

Section 52 Remedy: Any law that is inconsistent with the Constitution is of no force or effect

- It is up to parliament to decide if and how to amend the legislation so as to make it consistent with the Charter as interpreted by the courts
- The working of section 24 gives Canada's courts leeway to determine for themselves what remedies are available to them when they find legislation in violation of the Charter
 - A court can strike down a law
 - A court can add the right words to the law to solve the problem

Reading In Approach: Used when a law fails to extend protection of rights to those who have a legitimate constitutional claim

- The judiciary can strike down a law but delay the effect of that declaration so as to allow the government to revise legislation

5.4 *The Adoption of the Charter*

- Charter was primarily a new mechanism for the protection of rights that were already well established in the Canadian political tradition
- The British Parliament is legally able to pass legislation that violates those rights, but the inescapable necessity of keeping the support of the voters, coupled with the presence of an official opposition in the House of Commons, makes it difficult for any government to go very far in terms of violating rights

Ultra Vires: Beyond jurisdiction

- The Diiefenbaker government moved to address the human rights issue by adopting the Canadian Bill of Rights
- Fundamental flaw in the document: it was merely an organic statute
- Bill of Rights, as a federal statute, did not apply to the acts of the provincial governments and legislatures, it was not clear that it could even be used to annul federal legislation
- Canadian Bill of Rights presented the courts with a constitutional dilemma they never resolved
- Charter would apply to all levels of government and that would be manifestly superior in status to ordinary legislation

Charter may be said to have three elements

1. It entrenches the most basic rights that were included in the Canadian Bill of Rights

2. It guarantees fundamental freedoms and includes a number of language rights
3. Includes various specific provisions for which there was no precedent in the Canadian Bill of Rights

5.5 *Opposition to the Charter*

- Many Canadians see it as the fullest and clearest expression of the moral foundations of our regime
- NDP premier worried that a Charter would be used to assert individual rights against important “collectivist” legislation that forms the basis of Canada’s welfare state
- Charter skeptics argue that the adoption of an entrenched charter has effectively transferred a great deal of political power to the judiciary
- The transfer is said to be a profoundly undemocratic development

Canada is a liberal democracy, the democratic principle of majority rule must always be tempered by a respect for the rights of the minority

- The typical Charter will focus instead on the grey area where the precise meaning of the right is in doubt and where there can be reasonable differences of opinion as to what does or does not constitute a violation of the right

5.6 *The Notwithstanding Clause*

- Prime Minister Trudeau was able to get the Charter passed only by agreeing to an important concession: the inclusion of section 33, the notwithstanding clause
- Parliament or a provincial legislature may pass a law and declare it to be invalid “notwithstanding” the guarantees offered by sections 2 and 7-15 of the Charter
- Section 33 is a flexible instrument that allows us to combine judicial review with parliamentary supremacy: the courts may use the Charter to invalidate legislation, but when Parliament or a legislature think the judges’ decision is wrong, they may use section 33 to reverse the final word for themselves
- From the opposition, skeptics think the Charter seriously compromises the efficacy of the Charter and thus weakens the protection of human rights in Canada
- Section 33 has only been invoked three times
- It is now extremely difficult for a government to use section 33 because Canadians tend to interpret such an act not as an assertion of parliamentary supremacy but as an attack on their beloved Charter
- Canadians are unlikely to see federal parliamentarians use the notwithstanding clause

5.7 *Section 1*

- Rights can be limited in another way other than section 33, section 1
- Enables courts to permit limitations on the rights guaranteed by the Charter
- It is generally accepted that no right is absolute
- Rights conflict, and decisions must be made about their order of value
- Negotiating these “reasonable” limits is all the more necessary in the case of some of the modern rights contained in the Charter (i.e. mobility rights)
- It is hard to hold that they must be absolutely enjoyed, they are subject to limitation
- Section 1 effectively turns most Charter cases into a two-stage process
- Courts must decide whether the legislation in question violates one of the rights guaranteed by the Charter

- The courts must ask whether that violation is a reasonable limitation of the right in question under terms of section 1
- A law in violation of some Charter rights could be saved under section 1 only if it met two tests
 - Purpose or objective of the law → law must be a response to a “pressing and substantial” problem in order to justify overriding a Charter right
 - Proportionality → the suitability of the means used to pursue the law’s objective
 - Are the means rational and non-arbitrary
 - Do the means impair the right in question as little as possible, is there another way to achieve the objective without limiting the Charter right
 - Is the good that will be achieved by these means sufficient to outweigh the deleterious effects they will have on those individuals or groups whose rights are being set aside

Oakes was thus innocent of the charge of drug trafficking

- The Supreme Court decided that section 1 could not be used to save section 8 of the NCA

5.8 *The Political Impact of the Charter*

- Courts now decide many questions that were formerly decided by governments and legislatures
- Charter has made judges more powerful and more active political players
- The Supreme Court’s decision in Morgentaler has thus turned out to be the decisive factor in the decriminalization of abortion
- The existence of the Charter can allow politicians to disclaim responsibility for controversial policy decisions
- The adoption of the Charter has entailed a substantial transfer of policy making power from elected bodies to judges

Court Party: A collection of interest groups who work with the judiciary to use the charter in order to win through the courts changes they would be unlikely to win in the political arena

- The new policy power of the courts in the charter era has created pressure for a more open, accountable mechanism of judicial appointment

PART THREE: INSTITUTIONS

Chapter Six: The Crown and its Servants

- In regimes based on the principle of responsible government, there are no “branches”
- We have a government that exercises both legislative and executive power
- Complex web of interrelated institutions and offices; the Crown, the prime minister, the cabinet, and the civil service

6.1 *The Crown*

- Similar to Britain, in Canada, governmental power is technically in the hands of the “Crown”
- Our head of state is the reigning queen/king
- Legislative power was delegated to Parliament but is technically a power of the crown
- Parliament’s decisions do not have the force of law until they have received royal assent
- British monarchs began to delegate the Crown’s executive power to a prime minister and cabinet
- The executive power remains a power of the Crown, those who exercise it are deemed to do so as servants of His or Her Majesty

- The executive decisions are merely “advice” to the Crown and have no force of effect until they receive royal assent

Constitutional Monarchy: A regime that is monarchical by law but democratic by convention

- By constitutional convention, she delegates her executive power to the prime minister and cabinet
- By law, the executive power of the government is a power of the Crown
- All executive decisions must have the assent of the Crown and must be carried out in the Crown’s name
- Legislative power→ the Queen, the Senate, and the House of Commons
- The Queen asks Her parliament to send Her bills for Her consideration
- Royal assent is necessary for any bill to become law, yet a convention has evolved stating royal assent cannot be withheld

6.2 *The Governor General*

- The monarch shall have a permanent representative in the country since Canada is not her permanent and she cannot govern actively, thus the governor general is her representative
- Governor general’s office term is generally 5-7 years
- When Canada was not yet entirely independent of Britain, the governor general was seen as the british representatives in the country and were typically British nobles

Appointing a former politician...

- Advantages→ Has political experience
- Disadvantages→ May be perceived as partisan

6.3 *The Functions of the Governor General*

- The governor general has very extensive powers
- By constitutional convention, most of the power is exercised by other officials
- Legislative Power→ The governor general must approve any bill passed in Parliament
- Executive Power→ The governor general shall have certain “advisers”- the prime minister and cabinet
- The governor general must always be kept well advised of cabinet’s activities and intentions
- The governor general is occasionally a useful sounding board for a prime minister with a difficult problem

Two important roles in the Canadian Regime

1. The guardian of responsible government
2. Representative for the Queen, our head of state

Guardian of Responsible Government: The official who ensures that we have a government that has the confidence of the House- carried out by reserve powers

Reserve Powers of the Governor General

1. Power to appoint the prime minister

One single criterion: The prime minister will be the person whose government has the best chance of having the confidence of the House

2. Power to dismiss a prime minister who attempts to govern without the confidence of the House
 - The power has never been used but does exist and is essential to be proper to the functioning of responsible government
3. Power to prorogue Parliament or to dissolve Parliament and call elections

- The governor general needs to reserve power to refuse dissolution when a prime minister is about to lose the Parliament's confidence and there is a clear alternative choice for the prime minister in the House
- The governor general granted Mr. Harper's request to prorogue because he was postponing and not preventing the vote

The governor general...

- Must preside over important political ceremonies
- Represents Canada at a wide variety of events
- Is the official head of our armed forces
- A constant reminder to politicians that they are servants of the Crown, and servants of the people, rather than political masters
- The office of the governor general represents all the people of Canada
- People can be loyal to the regime, and embodied in the governor general, without necessarily supporting the politicians who run the government at any given point

6.4 *The Cabinet*

Cabinet: The real seat of government power in a system of responsible government

- Exercises executive power and has decisive control over legislative power

Queen's Privy Council: All-important right to "advise" the governor general in the exercise of his or her powers, thus mere servants of the Crown

- A very powerful body that controls virtually all those powers granted by the Constitution to the Crown or the governor general
- Appointments in the Privy Council are for life
- The power to "advise the governor general will only be exercised by those who have been nominated by the current prime minister
- The subset of the Privy Council is called the cabinet

Parliamentary Secretary: Generally serves as a kind of assistant or even apprentice to the minister

- Most members of the cabinet will spend most of their time "advising: the Crown on the work of one of its "ministries"

Collective Responsibility: Cabinet must function as a team to develop, implement, and take responsibility for public policy

- Mandate for the cabinet to work as a team rather than with individual ministers
- Whether ministers have an idea for new legislation in their area, their proposal must win the approval of the cabinet before it can be taken to Parliament
- By tradition, the cabinet will have at least one member from each country's ten provinces- in recent years it has shown to be even more representative (i.e. gender equality)

6.5 *The Cabinet Committee System*

- System of cabinet committees revolutionized the way cabinet does its business
- Each prime minister has the authority to organize the cabinet committee system, thus, a number of substantially different models have been used
- The basic idea of the system is to divide the cabinet's work and assign it to a number of smaller groups, the cabinet committees
- Committees are usually organized around a particular policy area and study all of the problems/questions that arise in the particular area and make recommendations to the full cabinet

“Super-committee”: Usually responsible for determining the broad lines of government policy
Treasury Board: A cabinet committee that oversees personnel, administrative, and expenditure management

6.6 *The Prime Minister*

- The powers of the prime minister are all based on constitutional convention
- The cabinet is the centre of legislative and executive power
- The office of prime minister control the membership of the cabinet
- Few ministers are willing to resist a prime minister when he or she has a strong opinion on some question
- Prime ministers chair the meetings of the cabinet
- The cabinet’s decisions must be based on consensus, the prime minister is responsible for cultivating the consensus and determining whether consensus has been reached and what consensus is
- Prime minister serves as the leading spokesperson for the cabinet, the prime minister will often be the person who makes the cabinet’s case to the public

Prime Minister’s Powers:

- The right to advise the Governor General on the dissolution of Parliament and the holding of elections
- The right to advise the Governor General on a number of key appointments (i.e, the Senate and judiciary)
- The right to organize the machinery of government
- The number and composition of departments and nature of the cabinet system

Prime Minister’s Office: Partisan, responsible for monitoring the general political situation and giving the prime minister political advice

Privy Council Office: Non-partisan, serves as a secretariat to the cabinet and is thus responsible to the chair of the cabinet, the prime minister

Clerk of the Privy Council: Highest ranking civil servant in the country

Deputy Prime Minister: A member of the cabinet who has a portfolio of his/her own but also serves as a kind of second in command to the prime minister

6.7 *Prime Ministerial Government?*

- The office of prime minister has grown substantially more powerful in recent years
- The cabinet serves as a “focus group” for the prime minister
- The case of Mr.Harper shows the tendency toward prime ministerial government as a function of the regime itself, rather than simply the product of a few individual prime ministers
- Ultimately, prime ministers are dependent on the confidence of the House of Commons, they cannot afford to alienate key sources of support such as their caucus or the cabinet

Caucus: The team of MPs from their party

- Reminds all prime minister that there are limits to how far they can push or how much incompetence or unpopularity their supporters will tolerate
- The prime minister’s power as a prime minister will therefore be directly related to the control he/she has over the party

The control will be influenced by a number of factors...

- Process used to choose its leader

- Party unity: The prime minister will have trouble dominating the government if the party in power is divided into factions
- The prime minister's popularity with the voters

6.8 *The Civil Service*

- The Crown exercises its executive power on the advice of a smaller number of servants (its ministers) who are accountable to the elected representatives of the people

Civil Servants: Non-partisan professionals hired on the basis of merit that carries out the Crown's executive tasks

Civil service is divided into two branches

1. Line Departments: Provide services of some sort to the general public (i.e. ministry of transportation)
 2. Central Agencies: Bodies that engage in the coordination of government policy rather than in the delivery of particular services to the public (i.e. Treasury Board)
- The government must ensure that all civil servants will be accountable for the way in which they carry out their duties

Ministerial Responsibility: The way that accountability is achieved under responsible government

- The minister who heads each department must be accountable to the House for the conduct of each and every servant working in that department
- For opposition members to demand a minister's resignation for much less serious matters or for matters in which the minister was less directly implicated
- A minister cannot be required to resign for mistakes that are not his or her own negligence
- To be politically accountable, it must be ensured that appropriate disciplinary and corrective measures be taken but they are not personally accountable for mistakes made by others

Ministerial Responsibility

Civil Servants → Assistant Deputy Ministers → Deputy Minister → Minister → (answerable to the House of Commons)

- At the top of the ladder in each department is an official known as the deputy minister

Deputy Minister: A career civil servant who usually has advanced technical training and a good deal of civil service experience

- Deputy minister will know far more about the business of the department than will the minister
In theory: The deputy minister is merely the minister's chief adviser
In practice: The deputy's superiority in knowledge can mean that he or she is really the one who runs the department
- The sponsorship scandal was facilitated by the absence of appropriate mechanisms to keep the prime minister and cabinet fully accountable to the House

Reforms Acted Upon:

- Parliamentary committees which review government expenditures should be strengthened
- All secret contingency funds should be placed under the discretion of central agencies where they will be subject to greater transparency
- The governor general

Chapter Seven: Parliament

- Legislative Power, Parliament: House of Commons, Senate, and the Queen

- Canada's senators are appointed by the Queen
- Only the House of Commons can be held as a democratic entity, given that the representatives are elected

7.1 *The Role of Parliament*

- Originally, Parliament served as a body that advised the Crown in its exercise of legislative power
- Parliament's advice came to be understood as binding on the monarch, so that it was in effect in control of the legislative activity of government
- Parliament lost much of its influence because what was said there rarely affected what was done there
- Parliament adopts legislation and formally, Parliament determines whether a cabinet has the right to govern
- The existence of highly disciplined parliamentary parties means that Parliament rarely uses its power in these matters
- Parliament plays a more important role in minority government situations
- If the House votes to withdraw confidence in a government; it is just formalizing a decision made by two or more of the opposition parties to force a change in government or new elections
- The development of party discipline and the resulting transfer of parliamentary power to the cabinet have left Parliament with a new role

The primary operational purpose of the modern parliament is to make the cabinet accountable for its actions to the public

- Parliament provides a forum in which opposition members can oppose the government
- Parliament plays an essential role in keeping the government sensitive to the concerns of the voters

7.2 *The Parliamentary Calendar*

- Parliament has a dynamic schedule and calendar, the schedule is determined first by the timing of the general election
- Each General Election = New contingent of MPs elected to the House, and a new Parliament will be convened
- Upon the prime minister's advice, the governor general will convene its first session- at the end of the session, the government will be decided
- The legislation within the session must be fully completed or else it will be annulled

Prorogation: When the prime minister advises the governor general to end the session

- Historically, sessions have typically been on year in length, each Parliament usually has four sessions - this is not a fixed rule
- Sessions in Parliament are divided into sittings

Sittings: Each time the House meets

- Each session of Parliament begins with a throne speech read by the governor general, prepared by the PMO which outlines the legislative program that the government is proposing to Parliament
- The vote on the throne speech is a matter of confidence

Dissolution of Parliament: Automatically entails the holding of a general election to select another parliament

7.3 *The House of Commons: Membership and Office*

- Each of the 338 MP's have been elected to represent one territorial based constituency, electoral district or riding
- Ridings are constructed on the basis of population so that it is representative of the national population
- Some overrepresentation from smaller provinces and the three territories, as there is a rule noting that there must be at least as many MPs in the House as there are in the Senate, overall, this does not weaken the influence of larger provinces

Government Members: MPs that serve in the cabinet

Private Members: MPs that do not serve in the cabinet

- The largest of the opposition parties becomes the Official Opposition, they must provide criticism to the ruling government, a vital role to play in Parliament
- The central task of the modern parliament is to make the government accountable to the public, the opposition is extremely important component of this

Shadow Cabinet: A team of opposition critics for each of the government's ministries

- Within the Canadian House of Commons, the government and the opposition face each other
- The House requires a number of "parliamentary officers"

Parliamentary Officers: Neutral officials of Parliament as a whole and who ensure that the business of Parliament is conducted in a timely fashion and in accordance with the rules

Speaker: Most important parliamentary officer, an MP elected by the House at the beginning of each Parliament to preside over its debates and take responsibility for its administration, must maintain strict impartiality and are only permitted to vote to break a tie

Clerk of the House: Responsible for doing the official paperwork of the House and providing procedural advice to the Speaker when this is necessary

Sergeant-at-Arms: Responsible for the security of the House

Auditor General: Review government spending

Parliamentary Budget Office: Provides Parliament with independent assessment of the government's financial position, of its budget estimates, and of broader economic trends that may have an impact on the government's finances

7.4 The Business of the House of Commons

Four main elements of the House's business

1. Adoption of Bills
 - Bills = legislative proposals
 - Any MP can introduce a bill for the House's consideration
 - Most of Parliament's legislature is mostly focused on government bills
 - Only a minister can introduce legislation that entails new taxes or the expenditure of public monies
 - A bill is adopted only after it has three readings
 - Each reading must take place on a different day
 - Each reading has a distinct focus or purpose

First Reading: Introduction of the bill to the House's members

Second Reading: Focuses on the basic purpose or principles of the bill

Report Stage: Committee presents the House with the results of its study

Third Reading: The final approval

- The bill then proceeds to the senate where it again, goes through three readings and is then passed to the governor general for royal assent
- Royal assent = legislative proposal, bill, turned into a binding law or statute
- 2. Adoption of Resolutions
 - Resolution differs from a bill because it solely expresses the opinion of the House, not the adoption of a new policy or law
 - Resolution is a means of allowing people for public debate on issues
- 3. Scrutiny of public expenditure
 - Comes in two stages; before and after the expenditure
 - Ensures that the public's money has been spent wisely
- 4. The provision of information
 - In order to hold the government accountable for its work, MPs must have access to relevant information
 - This allows members to submit written questions or requests for information to be answered during times like question period
 - Question period allows for such intense and powerful criticism of government policy and is an essential device for allowing parliament to perform its crucial role of keeping the government accountable to the House, and thus to the public

7.5 The Rules of Procedure of the House of Commons

Proceedings of the House are governed by two types of rules

1. Standing Orders: Parliament has codified basic regulations concerning the organization of its business and the conduct of its debates in a body of rules
2. House also recognizes that a large number of rules are derived from British parliamentary tradition
 - The House is meant to be an adversarial chamber, most parliamentary rules are designed either to facilitate or to regulate the adversarial relationship between the government and the opposition
 - House of Commons follows certain rules that are designed to ensure that the battle between the two is civil
 - The House has a number of rules regarding the use of time that are carefully designed to strike a reasonable balance between
 1. The government's need to get its business through the House
 2. The opposition's role as a check on the government

Closure: Rule under standing Orders, permits the government to cut off debate if it decides that the opposition is taking too much time, closure is a suppression of debate

7.6 The Backbencher

Simple Backbencher: Serve in relative anonymity, only job is to vote when and how their leaders tell them to

Parliament provides three major opportunities for them to voice their concerns

1. Weekly Caucus Meeting
 - Caucus members may speak frankly without damaging their party
 - The prime minister and cabinet can remain in the officer only as long as they had the confidence of the House, which gives the backbenchers leverage
2. House of Commons committees

- Members of these committees develop expertise in various policy areas and are responsible for the clause-by-clause examination of bills that takes place after second reading and for the examination of departmental estimates as well as carrying out studies or investigations on the topic
- 3. The Private Member's Bill
 - Bills do afford backbenchers an opportunity to put their ideas before the public

7.7 *House of Commons Reform*

- Criticism that the MPs conform to their government and lack constituency representation

Attempts at reform have focused on three areas in which the power of individual members might increase

1. The Standing Committees
 - Providing the committees with more substantial research resources and increasing the prestige of the committee chairs
2. Private Member's Bill
 - Providing more time for the debate of such bills would increase the power of individual MPs to bring forward issues relevant to their particular constituents
3. Free Votes
 - Freedom could be accomplished by relaxing the fairly strict rule governing confidence
 - Provides backbenchers with greater freedom would make it clear that the government loses the confidence of the House only if it defeated on its budget, the throne speech, or through an explicit motion of non-confidence
 - Relaxing the confidence rule will encourage Mps from the government side to vote with the opposition
 - Thus, creating a divided government party and completely united opposition parties = potential weak government
 - Cabinet government allows us to establish clearly who is responsible for government legislation and current public policy

7.8 *The Senate*

Senate: Serves as a chamber of "sober second thought" which reviews legislative proposals emanating from the House of Commons

Hopes to look at the legislation in two ways

1. A House elected to the democratic principle might fail to respect the rights of property; the poor majority might use its democratic power to despoil the rich minority
 - Senators must possess real property valued at \$4000 in the province they represent
 - They must also have a net worth of at least \$4000
2. The Senate was intended to pay special attention to the concerns of the less populous regions of the country
 - The principle for allocating Senate seats was the equality of the regions
 - The Senate almost never makes full use of its powers because senators are not elected but instead, summoned, they are appointed by the prime minister
 - Convention of our constitution that the Senate must not oppose a bill that has the support of the House
 - The Senate demonstrated a willingness to confront the House more directly

- Using section 26 of the CA 1867 it gives government the authority to appoint four-eight additionally senators to break a deadlock between the two houses of Parliament
- The only way to enforce a convention is for voters to punish those who violate it

7.9 Senate Reform

Senate Reform: Changing the way one becomes a senator, revising the powers of the Senate, and reforming the relationship between the Senate and the House

- Controversy about the Senate, some believe it should be abolished, but it makes more sense to make minor improvements to the institution instead
- The Senate was intended to be a body that would represent the interests of property
- The body is still not representative of the socio-economic majority
- The most common proposal along these lines is to transform the upper house into an elected legislative body
- The key to making Canada's Senate effective is to elect its members so that they will have as much democratic legitimacy as the members of the House

The Senate is more useful than people realize...

- Cleans errors and oversights in the bills passed by the House of Commons
- Serves as a source of cabinet ministers when a prime minister has no MPs from a particular province
- Serves as a convenient place to which a prime minister might "promote" cabinet ministers whose services are no longer required

Senate Reform Act: Would have changed the Senate in two ways

1. Would have limited the terms of senators to nine years
 2. Allowed for provinces to hold elections for recommendation to the crown
- The more extreme approach to Senate reform-abolition- would require agreement from all 10 provincial legislature
 - Mr. Trudeau's position was that the functioning senate would be improved if senators did not have direct party affiliations
 - He removed all senators from the Liberal caucus, forcing them to sit as independents thus forming an Independent Advisory Board

Chapter 8: The Judiciary

8.1 *The Role of the Judiciary*

- Judicial power is not discussed until three-quarters of the way through CA 1867
 - Since Canada's Judicial system has a federal dimension to it, only after the provisions governing federalism have been laid down does it make sense to introduce the judiciary
 - Fathers of Confederation viewed judicial powers as substantially less important than the legislative and executive power
 - The judiciary greatly expanded
 - In 1867, it had two basic tasks; the adjudication of legal disputes between private parties and the adjudication of cases in public law
 - Now, there are two additional activities; the supervision of inquiries and commissions and judicial review of the Constitution
1. Adjudicating legal disputes between private parties

- John Locke, stated that the primary reason humans create political regimes is that they need someone to settle their disputes in a peaceful, authoritative, and impartial manner

Natural Laws: Universal and Permanent Principles of Justice

- Locke doubted that humans would respect these laws consistently
- Reasonable humans are willing to renounce their natural freedom and put themselves under the command of a political regime that will be able to resolve disputes before they turn violent

Negotiation Mediation: A third party is brought in to facilitate negotiations between the disputants

Arbitration: Disputants agree to allow a third party to impose a settlement on them

Private Law: Laws governing matters such as property rights, contracts, and torts, in the hands of provincial government

Civil Code: A detailed, comprehensive, and massive compendium of all those rules governing matters of property and civil rights

- Common Law is judge-made law as opposed to statutes adopted by legislative bodies

Precedents: Previous judicial decisions on the same point of law

Stare Decisis: “To stand by what has been decided” Judges are to respect any precedent endorsed by courts of authority superior to their own

- England’s judges were able, overtime, to develop a single system of private law “common” to the whole country
- 2. Adjudicating cases in public law
- Judges also have substantial authority in matters of “public law”

Private Law: Governs relationships between two or more parties (i.e. Jones vs. Smith)

Public Law: Creates and regulates relationships between private parties and the government (i.e. R vs. Russel)

- The two main areas of public law are criminal law and administrative law
- It is the judges that decide the specific sentence of a convict, the Criminal code, grants a good deal of latitude

Administrative Law: Broad, refers to any regulator legislation that does not involve the application of criminal sanctions

- A good deal of administrative law is now applied by administrative tribunals rather than the courts
- 3. Judicial Inquiries
- It has become increasingly popular for governments to ask judges to take charge of independent investigations and commissions looking into problematic areas of public policy or alleged misconduct in some part of the public sector (i.e. the Sponsorship Scandal)
- Exercises may be relatively focused and discrete investigations of particular incidents or alleged wrongdoing, or more discursive, wide-ranging, or even speculative inquiries into how public policy can be improved in particular fields
- Government is not obligated to place the direction of inquiries in the hands of judges

There are two reasons why governments frequently look to the judiciary for leadership

1. Judges have professional experience in organized hearings in which parties are able to present evidence in a procedurally fair manner
 2. Judges have a reputation for impartiality
- The individual judge is able to exert a substantial amount of influence on specific political issues

4. Judicial review of the Constitution

- The terms of the Constitution require interpretation of the courts
- The function of judicial review has given Canada's judiciary substantial political power
- Judicial review of the Constitution is triggered by specific cases in private or public law when a ruling on the meaning of some part of the Constitution is necessary for the adjudication of the dispute in question

Reference Procedure: A means of obtaining quick rulings on the constitutionality of proposed legislation

- The courts could be called on to give its opinion on the constitutionality of specific decisions or statutes referred to it by the governor in council
- Most judicial review of the Constitution arises from the adjudication of cases rather than from reference questions, but the reference procedure is the source of some of the more interesting and important cases

8.2 *The Fundamental Principle of the Canadian Judiciary*

- The fundamental principles of the Canadian Regime are inherited from British constitutional tradition

Three fundamental principles that govern the Canadian judiciary

1. Impartiality

Judges must appear free from prejudice for or against any party appearing before them

Attempts to promote impartiality in three specific provisions

1. The potential to appeal a judge's decision to a higher court

The right to seek an appeal promotes impartiality in two ways

1. Knowing their judgements may be subjected to the scrutiny of a higher court gives individual judges an incentive to be fair and objective
2. Parties who think they have been victims of judicial bias get a second hearing
 - The right to appeal is not unlimited
 - When judges adjudicate disputes, they engage in two distinct processes
 1. Decide the facts of the situation in dispute
 2. Determine what the law says about these situations
 - As a rule, they do not hear appeals of a judge's decision about the facts of the case

2. Promote impartiality is its "adversarial" character

- In Canada, we give judges more of a passive role
- It is the adversaries responsibility of establishing facts and presenting arguments
- The judges are responsible for serving as referees rather than inquisitors
- Restrict themselves to making rulings on the basis of the facts and arguments presented to them by individual litigants

3. The Doctrine of Political Neutrality

- Decrees that judges must keep silent about political matters
- Judges will often be called upon to hear cases in which they will make decisions of political importance

- It is possible to argue that the judiciary's political impact is, in a sense conservative yet to claim that this constitutes as a lack of impartiality is unfair to our judges
- In the Canadian regime, the primary task of the judiciary is to apply the law, not make it
- It would be inconsistent with the principle of responsible government to expect the judiciary to act as agents of radical political change

2. Judicial Independence

- Guarantees that the tribunals shall be "independent"
- Impartiality is essentially a value or ethic that judges aspire to live up to as professionals with a commitment to professional ethics

Judicial Independence: A set of structures or rules that help judges live up to the principle of impartiality

- The judiciary must be independent of the executive branch of the regime
- The principle of judicial independence entails certain conditions that guarantee that judges will be free of pressure from the political executive
 - The executive must not be able to fire a judge because it dislikes their rulings
 - Salaries of judges must be fixed by law
 - Judges must have control over those aspects of administration of their courts that have an impact on judicial decision making
- Judges may be removed from office only if they are physically or mentally incapable of performing their duties or if they have engaged in activities that might bring the administration of justice into disrepute

3. Equality before the law

- Canada is founded on principles that recognize the supremacy of the rule of law
- One aspect of the rule of law is the principle that the law must be applied to all people equally (i.e. external funding so that both parties have the right to a representative)

8.4 Canada's Courts

Basic Principles

1. Hierarchy
 - Court systems are almost by definition stratified into different layers with some courts deemed superior to the others and one court labelled "supreme"
 - There are several reasons for this structure, one is the division of judicial activity into trials and appeals
 - At some point, there must be a final court of appeal which is deemed to be "supreme"
 - Another reason court systems are organized in hierarchical fashion is that some subjects of adjudication are inherently more important than others

Divided judicial system into...

Superior Courts: In theory, have the most judges

Inferior Courts May have more formal procedures, specializing in small claims

- A court of appeal is to hear appeals from both the inferior and superior trial courts
- A supreme court is to hear appeals from the court of appeal

2. Federalism

- In a federal regime, the design of a court system becomes more complicated because one has to accommodate the claims of two layers of government

Dual System- American

Federal network for the adjudication of cases under federal law

Separate network in each state for adjudicating cases involving state law

- Fathers of Confederation thought that the Americans had made a big mistake in giving so much authority to their state governments

Integrated Judicial System: A single system under the joint custody of the two levels of government

- Provincial governments have the power to create and run whatever courts they deem necessary for the operation of a fair and efficient judicial system; including inferior and superior courts
- Provincial control helps to deal with the different demands placed on their respective judicial systems
- Provincial control also fits with the idea that different provinces may find that situational factors as mundane as size could make a system appropriate for one province but inappropriate for another
- In order to ensure that Canada's criminal law would be applied with some degree of consistency, federal government was to have the authority to appoint the judges of all superior courts
- The province create and maintain the courts according to local need
- Ottawa appoints and pays the judges to ensure national consistency of judicial decision making

Section 92 Courts → Inferior

Section 96 Courts → Superior

Section 101 Courts → Federally create courts with federally appointed judges

- The Supreme court has the authority to hear appeals from provincial courts of appeal, from the Federal Court of Canada and the Federal Court of Appeal
- Prior to the establishment of the Supreme Court, the Fathers of Confederation assumed that Canadians would use a British institution, the Judicial Committee of the Privy Council (JCPC)

8.4 *The Supreme Court of Canada*

The Supreme Court consists of

- Nine judges
- Three judges from Quebec
- By convention, at least one judge is from Atlantic Canada and two are from the Western provinces, with the remaining three from Ontario
- Court hears 80 cases/year
- In some cases, the right to a hearing is automatic, yet for the most part, the court is in control of the cases heard
- To appeal a case, one must persuade at least 2/3 members that the case deserves to be heard

Judges will want to hear a case if...

1. It appears there has been a serious error in the lower court's decision
 2. The case raises an important legal/constitutional issue that needs to be settled by the country's highest court
- Odd number panels generally hear cases- exceptionally important cases must be heard by all nine
 - In Canada, it is customary to have the judges speak in the reverse order of seniority, so there is no pressure to conform

- Supreme Court is virtually an organic statute rather than an entrenched constitutional law

8.5 *The Politics of Judicial Appointments*

- The principles of judicial independence and impartiality have served to keep our judges at arm's length from partisan politics
-
- The Judicial Advisory Committees are only screening applicants and real discretion on appointments is with the federal Minister of Justice and the prime minister
- The aim of the reforms has been to make the process less political, but when it comes to Supreme Court Appointments, reformers seek to make the process more political
- Judges are making decisions that have significant political consequences

Why should a small number of unelected Supreme Court judges have the power to make fundamental, and often irrevocable, political decisions for Canada?

- It is generally supposed that division of powers cases are at least to some extent inherently political rather than legal matters
- Judicial determination seems more political than legal
- If we are choosing political decision makers, citizens should be more aware of the politics of appointees
- In order to be eligible for appointment, one must be a current member of the (Quebec) bar or a member of a (Quebec) high court- in the case of Justice Nadon
- It is not clear that parliamentarians will be able to find out exactly what a nominee's political views are
- The American approach is distinguished by the fact that the president must have the support of the Senate for a nominee to be appointed to the court

Judicial Power and the Charter

- The judiciary as a political institution is the only institution in our regime that has the power to decide unilaterally just how much power it will have
- Courts have an obligation to strike down any law that violates a charter right
- Policy questions are best left in the hands of legislative bodies where the relevant cost-benefit trade-offs can be made by officials who are democratically accountable to the people

Judicial Restraint: Encourages judges to limit the exercise of their own power. It asserts that judges should hesitate to strike down laws unless they are obviously unconstitutional

Judicial Activism: Favours pushing the power of judicial review vigorously, suggests the judge/judges in question are using their judicial power to advance a specific political agenda

PART FOUR: CANADIAN DEMOCRACY IN ACTION: ELECTIONS: PARTIES: AND POLICY

Chapter 9: Elections

- Canadian regime is not a direct democracy but a representative democracy, the central democratic mechanism of our regime is elections
- In responsible government, the regime obtains its democratic legitimacy by virtue of the fact that those who exercise political authority are in some way accountable to the citizens who form the electorate
 - MPs are directly accountable to us in that they must be periodically re-elected in order to remain in office

- The prime minister and cabinet are indirectly accountable to us in that they must always maintain the confidence of the House, which we have democratically elected

Three main concepts of representation

1. Elected representatives are seen as delegates

Delegates: A spokesperson who faithfully transmits the views of the majority of the people who elect them

- Voters may reasonably expect their MP to speak on behalf of its constituents
2. Treats representatives as trustees
 - People whom we “entrust” the responsibilities of government
 - Our representatives are elected for their character and judgement and are free to decide for themselves how to vote on each issue
 - Voters may reasonably expect their MP to speak in accordance with his/her judgement
 3. The role of the representative as a party member
 - The task of our representatives is to be loyal supporters of the policies advocated by their party
 - The cabinet is not elected directly by the voters, it is important that we elect the House in such a way to draw the strongest link possible between the voters and the cabinet
 - Canada’s approach to representation should be a mixture of all three, yet put the most emphasis on the party member theory
 - In general, Canadians tend to punish floor-crossers, which makes floor crossing relatively rare

9.2 Representation and Diversity

Microcosm Theory of Representation: Legislative bodies are fully representative *only* if the assembly is a microcosm of society as a whole, should be inclusive of diversity

Grounded in two arguments

1. Inclusivity as a requirement of fairness
2. Our legislative body needs to be inclusive of the wide variety of Canadian citizens to ensure that their perspectives are heard and their interests can be defended

Two practical questions

1. Who would decide what the politically relevant characteristics of society are? How do we determine which groups should have defined representation and which should not?
2. How is a system to be designed to ensure that those characteristics are indeed represented
 - A system using either multi-member electoral districts or the adoption of a party list form of proportional representation would likely increase the number of women in Parliament
 - An artificially imposed target has a tendency to foster the nomination of token women candidates in the riding the party has no chance of winning
 - Prime Minister Trudeau decided to appoint a cabinet built on the principle of gender parity
 - The best way to advance the cause of inclusivity is to rely on the discretionary appointment powers exercised by our political leaders rather than on specific institutional reforms

9.3 Canada’s Current electoral System: SMP

- Political Institutions are not neutral when it comes out how they structure choices and hence affect outcomes

The design of an electoral system will depend on three main factors;

1. Electoral Districts

2. Number of Representatives
3. The Method of Electing Representatives

Single-Member Plurality (SMP): The country is divided into a number of electoral districts/ridings/constituencies each of which has one representative. The representative is elected by a plurality of votes

- Canada is sometimes said to have a first-past-the-post electoral system: you don't have to have a majority to win you just need to get more votes than the other candidates
- Population will be reflected in the distribution of seats
- The process for determining the specific boundaries of these electoral districts is led by a set of independent electoral boundaries commissions
- Commissions must give due consideration to the principle of community interest (i.e. keeping minority language populations together)
- A province's electoral districts should be roughly equal in population
- It is impossible and in some cases undesirable to insist that every constituency be the exact same size
- The institution of federalism thus affects the principle of equal representation

9.4 *Voting in Canada*

- If the prime minister's party controls only a minority of votes in the House, the House has the ability to force an election at any time by voting a lack of confidence in the government
- No parliament is to last longer than five years
- There is a general expectation in Canada that elections ought to be held in the fourth year of a Parliament
- If the House has no confidence in the crown's ministers, then our government has no democratic mandate
- Once the governor dissolves Parliament, a general election follows immediately

By-election: Held in a single constituency to fill a seat vacated midway through a Parliament by the death or resignation of an MP

- An election campaign must be a minimum of 36 days- there is no maximum
- General elections are administered by a politically neutral civil servant called the Chief Electoral Officer who appoints a returning officer for each of the 338 electoral districts in Canada

Enumerators: Prepare the official voters' list for the poll

- To have their names put on the ballot, candidates must present the returning officer with official nomination papers signed by 100 eligible voters from the constituency and a \$1000 deposit
- Canadian electoral laws place limits on the amount that a candidate may spend
- Third parties wishing to run ads during an election campaign must register with Elections Canada and must respect mandated spending limits
- Elections are normally held on a Monday and the polls are open for 12 hours in each of Canada's time zones
- Each party is permitted to have two scrutineers at the poll all day long to observe the process and to keep the candidates posted on whether known supporters have voted

9.5 *Polls and Electoral Choice*

Polls have become very pervasive

- They are a useful tool of mass marketing

- Mass marketing techniques for determining market demand and advertising can be used successfully in democratic politics
- Interest groups, government departments and agencies, and political parties all use opinion polls in order to determine what issues are important to the public and whether a particular idea, policy, or personality could prove popular
- Public opinion polling is an important resource in modern democracy
- Politicians can get a better read on public opinion and can't give the people what they want by means of public opinion polls

Polling gives rise to two concerns

1. If polls have become instruments of knowledge of public opinion, then they have reduced or replaced the MP as a source of information about voters and issues important to them
2. Polls contribute to conformism by promoting the view that something is good simply because a majority in a public opinion poll think it to be good
 - Polls thus exacerbate a danger that is unique to the democratic regime- granting a kind of superior status to the opinion of the majority

Those who propose the publication of public opinion polls be prohibited in the period immediately preceding an election argue that such polls undermine the electoral process in two important ways

1. The publication of pre-election polls turns elections into the equivalent of horse races.
 - Voters pay more attention to who is winning than who ought to win
2. Pre-election polls affect voting behaviour
 - Often a bandwagon effect is created by voters who want to ensure that a winning candidate in their riding from the party that is most likely to form the government
 - The publication of election polls seems inconsistent with healthy democracy

9.6 *The Effects of SMP*

- SMP divides our voting into 338 separate elections, it then awards seats in the House to only those who came first in each of the electoral districts
- Discrepancies between a party's share of votes and its share of seats
- SMP systematically favours the leading national party with the wildest distribution of voters, "winner-take-all" format of SMP
- If the leading party benefits from SMP, it does so at the expense of the other parties
- Because of the SMP's "winner-take-all" approach, votes are wasted unless the party comes first in an electoral district
- Secondary parties will only succeed if their support is heavily concentrated in key areas
- Smaller parties are clearly disadvantaged unless they have a strong regional base (i.e. Bloc Québécois)

SMP electoral system has four major effects on electoral politics

1. It rewards the largest national party with more seats than it "deserves" frequently converting a minority of votes into a majority of seats
2. Handicaps smaller national parties by giving them a smaller share of seats than their share of the popular votes
3. Encourages regionalism by fostering the growth of parties that focus on regional interests and concerns

4. Encourages regionalism by magnifying the regional strengths and weaknesses of our national parties

9.7 Proportional Representation

Proportional Representation: Each party prepares a list of its candidates in rank order, instead of holding 338 elections, only a single nationwide election would prevail. The electorate votes for parties rather than candidates

- The number of seats each party wins is determined by the proportion of the vote it received
- Advocates of the PR argue that it is more fair than SMP
- As opposed to SMP, this electoral system does not distort the electorate's voting pattern by favouring certain types of parties and disadvantaging others
- PR is said to eliminate "wasted ballots"- under PR, every vote has an impact on shaping the composition of the House of Commons
- PR allows for more diverse representation within each party caucus, while SMP tends to magnify the regional strengths and weaknesses of each party

PR also entails certain disadvantages

- Leads to political instability as it would make majority governments extremely rare and minority/coalition government, which are generally less stable, to become the norm
- PR will lead to a more divisive politics by facilitating the emergence of small, single-issue parties and parties with non-mainstream agendas
- In a PR system, local constituencies would no longer have an MP of their own
- Individual who actually form the government would never have been elected as individuals, and instead, are elected as party loyalists, making them less responsive to the electorate and even more subordinate to party bosses

Mixed Member Proportional System (MMP): System that blends a party lists form of PR with SMP, only some of the seats would be elected on the basis of a party system and the rest would be elected using SMP

- Voters would vote twice; once for their local candidate and once for the party list

9.8 Single Transferable Vote

Single Transferable Vote: People do not vote for just one single candidate, they rank all the candidates in order of preference

- If no candidate has a majority of first place votes, then first and second place votes are counted, and so on until one candidate has a clear majority
- The aim of the system is to ensure that the candidates who are elected have the broadest base of support and a clear title to the seat
- By insisting on a clear majority and counting second, third, and fourth preferences to arrive at a clear majority, STV ensures that the candidate who is elected in the candidate with the greatest overall support

9.9 Electoral Reform

- Calls for reform have traditionally been ignored by the parties in power because it is precisely those parties that benefit from SMP
- The issue of electoral reform is now on the federal agenda
- Such a fundamental change to Canada's electoral system would require the endorsement of the people in a referendum, and not just a legislated revision of the Canada Elections Act

- Seems unlikely that any particular proposal would be supported by all of the parties because every system will work to the advantage of some and the disadvantages of the others
- An STV system might make the Liberals the more or less permanent government of Canada
- Debates about Canada's electoral system are usually couched in terms of fairness, not partisan self-interest
- The various parties will therefore emphasize those "fairness" arguments that align with their partisan interests

Chapter 10: Political Parties

10.1 Political Parties in the Canadian Regime

Political Parties: Publicly organized groups of people who are motivated by some common set of political ideas and those whose goal is to have their particular members win public office so that those ideas can be put into practice

- Canadian political life is dominated by political parties
- The dominant role of political parties is not something mandated by the law of the Constitution
- The dominant role of our political parties is simply a matter of need
- Parties are useful to the leaders in Parliament or a legislature who need to musture continuing coalitions of legislators to support (or oppose) legislative programs
- They are useful to voters who appreciate how each party gathers policy positions into a coherent package based on a general vision of the nature of the country, the role of the state, and the meaning of ideas ushc as liberty and equality
- The existence of political parties is a sign of a healthy democratic regime

Liberal-democratic party politics is workable because the parties agree on at least one thing;

- Different political parties have a right to exist, and should one party win an election, it has the legitimate right to rule until the next election

10.2 The Five Functions of Political Parties

1. Recruitment

- Parties recruit people into the party as members and sometimes as candidates

Individualism: A way of life in which people tend to withdraw into the individual lives of work, family, and pay little attention to political affairs

- Democracy means rule of the people

2. Fundraising

- Parties raise money for their organizations and election campaigns
- If we did not have political parties to raise much of the money for elections, the costs would be borne by the taxpayer

3. Interest Aggregation

- Parties identify, represent, and balance the diverse interests of Canadians
- If we did not have political parties to perform this process of interest aggregation, our regime would likely be much less successful in its pursuit of fair treatment for all Canadians

4. Policy Development

- The process of attempting to aggregate interests and integrate them into a national whole, the parties formulate and influence public policy

5. Education

- Parties educate people about political life

10.3 *Parties and Ideology*

Ideology: A political party is usually built on the basis of a loose set of fundamental political principles

- Those principles are then used as a basis for generating ideas about the purposes of government, how it should be organized, and what public policies should be implemented
- Partisanship is a loyal follower of a cause

High Partisanship: Refers to a reasonable commitment to a set of political ideals that are related to the principles of the regime, as well as the hope that these ideals prevail in a fair contest of ideas and argument

Low Partisanship: Refers to the “retail” practical part of politics, to the actions and operations that must be performed to get people into government to achieve the higher ideals

- Some parties are dedicated to grand, elevating principles linked to the general interests of the whole polity, while some small parties, lacking larger noble vision, advance the lower aims of small groups
- There is no point in pursuing ideals that are attractive to only a few voters
- What we seem to want most are practical and pragmatic politicians who have political principles

Those who favour the present and those who favour change is best explained in terms of two factors

1. Some people are more inclined to have conservative dispositions than others
 - Party politics seems to be rooted in the different dispositions of human beings
2. There will always be those who have a vested interest in maintaining things as they are, as opposed to those whose interests would be best served by some new political arrangement
 - The main ideological division between our parties is on socio-economic matters
 - Classic liberals emphasize the importance of individual liberty (freedom from government interference) and a free market economy, they also value equality of opportunity
 - People or parties are labelled “conservative” when they are inclined to conserve the original principles of classical liberalism
 - “Progressive” sees every person’s fate to be bound up with that of the community, and the community, represented by the state, should protect people from the effects of contingencies such as illness, unemployment, and workplace danger that may threaten their ability to fulfill their own sense of purpose in life
 - Progressives are generally less concerned about “liberty” than conservatives are

10.4 *Canada’s Major Parties*

- NDP has once made it to be the Official Opposition
- 1. The Conservative Party
 - The Conservative Party dominated Canadian politics for the first 30 years after Confederation
 - The party traditionally favoured state enterprises

The party currently stands for...

- Lower taxes
- Less government control
- A more decentralized federation in which provincial jurisdictions are disentangled from federal government interference
- Global free trade
- A stronger free-market economy

- Tending to favour capital punishment, and be against gun control and same-sex marriage
 - The Conservative Party supports a foreign policy that stresses the use of force as much as diplomatic activity in international affairs
2. The Liberal Party
 - The Liberal Party has long been the national representative of the rights of French Canadians and therefore developed the tradition of altering its leadership between anglophones and francophones
 - The policies of official bilingualism and multiculturalism were instituted under Liberal governments
 - Liberals are now in favour of global free trade, but they are more sympathetic to government intervention in the economy and are stronger advocates of the welfare state
 - Liberals are generally in favour of measures such as gun control and same-sex marriage
 - They are more likely than the Conservatives to favour diplomacy over the use of force and to prize Canadian participation in UN peacekeeping missions
 3. The New Democratic Party (NDP)
 - Formed as a party to represent the interests of the working class
 - Has had a considerable influence on national policy
 - Over the years many of its progressive ideas (i.e. medicare) have been implemented by the Liberals, sometimes for the NDP support during a minority government
 4. The Bloc Québécois (the Bloc)
 - Dedicated to achieving independence for Quebec
 - It came into existence after the failure of the Meech Lake Accord, when a handful of Quebec MPs quit the PC and Liberal caucuses and joined to form a new party
 - The party has been able to concentrate its efforts and appeal in one province due to the SMP electoral system that Canada uses
 5. The Green Party
 - The party ideology is rooted in the “Charter of the Global Greens” which emphasizes six principles: ecological wisdom, social justice, participatory democracy, non-violence, sustainability, and respect for diversity

Two massive challenges they face:

1. The name of the party suggests that it is focused on a single issue, the environment
 - Implies to many voters that the Greens have nothing coherent to contribute in relation to the myriad non-environmental issues that a government must contend with
2. Overcoming the high threshold of electoral support required to elect candidates to the House
 - Whether one thinks of the green party as a single-issue party or as an ideological party, SMP will work against it systematically
 - An ideologically based national party is unlikely to win many seats unless it has a strong regional base

10.5 *The Canadian Party System*

Party Systems: The number and types of parties that a regime is likely to have given the various factors that influence parties: the electoral system, party finance rules, federalism, political culture, etc.

- Canada has a multi-party system rather than a single-party system

- The idea underlying a single-party system is that the public interest is best served by working out public policy within the party rather than by allowing diverse parties to develop competing alternatives
- Liberal democratic regimes, are based on the principles of freedom of thought, freedom of association, and political participation

We may classify political parties into four categories

1. Brokerage Parties
 - Large, highly pragmatic parties that espouse middle-of-the-road ideologies and try to appeal to every region, every ethnic group, and every social class
(i.e. Liberals and the Conservatives)
2. Ideological Parties
 - Espouse ideological views that are outside the mainstream and more concerned with promoting those views than with winning seats
(i.e. Marxist-Lenisits and the Christian Heritage Party)
3. Single-issue Parties
 - Resemble ideological parties that they are more concerned with promoting a point of view than with electoral success, but in this case, the point of view relates to a single issue rather than an ideology
(i.e. Marjijuana Party)
4. Protest Parties
 - Parties that emerge from time to time among people who believe that the dominant forces in political life systematically ignore them and who are angry enough about it to use their vote as a way of expressing a protest
(i.e. The Bloc)

The Canadian regime is dominated by brokerage parties for two reasons

1. Canada's system of responsible government places a premium on being on the government's side of the House
 - In our regime, legislation is controlled by the party in power
2. Our SMP electoral system systematically promotes majority governments by over-rewarding the national brokerage parties
 - In a regime based on responsible government, it is not terribly useful to be sitting constantly on the opposition side of the House of Commons
 - Given the nature of the Canadian regime, competition between two dominant national parties will probably remain a key feature of our party system

Liberal Resurgence: A desire for "change: among voters

10.6 *The Organization of Political Parties*

- Political parties are organized at the constituency level
- Each constituency has its own party association, with a constitution and an executive charged with responsibility for the association's ongoing business
- Constituency organizations become more active when they must select delegates to a national convention or when an election is approaching
- Because Canada's parties are designed primarily for winning elections, they are organized in a way that gives the party leadership the power to set election strategy

- The leadership convention process is one in which the party sends a fixed number of delegates to a convention, and they in turn elect a leader

The All-Member Vote: A new and allegedly more democratic process of selecting a leader has begun to be used

- Instead of a convention in which delegates represent the views of all the party's members, parties have elections in which each member gets to vote directly for a leadership candidate
- The all-member vote system thus marks a continuation of the trend toward making the leadership selection process more democratic
- Leaders chosen in this mode owe their position to the party membership rather than the party's elite
- In some parties, the organizational links between the different levels are strong; in others, the federal and provincial parties are completely independent of each other

Parliamentary Wing

- Parliamentary Leader
- Caucus

Extra-Parliamentary Wing

- Party President
- National Executive
- Constituency Associations

- The parliamentary wing wields power that far exceeds its size
- Must respond to the ongoing political events in the House
- The parliamentary wing is more responsive to the extra-parliamentary wing
- The parliamentary wing of the party is best positioned to guide the party toward electoral success

10.7 *Financing Political Parties*

- In the early years of Canadian democracy; parties relied heavily on donations from wealthy individuals and larger corporations
- Legislation required parties to be registered with the Chief Electoral Officer, and their names for the first time accompanies the names of the candidates on ballots
- Laws were passed to encourage individual Canadians to donate to political parties, thus reducing the influence of large corporate and union donors could wield
- Donations to parties from corporations and unions were sharply limited
- Parliament instituted a per vote public subsidy to help parties make up the shortfall
- A party would have money based on the votes it garnered, not necessarily on the seats it won
- It encouraged parties to look to the state for funding rather than to their supporters

Regulatory framework for party finance

1. Contribution Limits

- Only Canadian citizens and permanent residents can donate
- In any one year, a person can give \$1,500 to each party

2. Spending Limits

- Persons standing for nomination as a candidate for a party are limited to about \$15,000 in spending, or 20% of the spending limit for a candidate in an election campaign

- Candidate expense limits are tied to the number of electors per riding
- The larger the number of electors, the higher the spending limit
- They are also tied to the length of the campaign; the longer the campaign, the more candidates are allowed to spend
- 3. Reimbursement
 - If a candidate wins at least 10% of the vote in a riding and submits all of their reports to Elections Canada, they can be reimbursed up to 60% of their election expenses
 - The reimbursements go to the electoral district association, not the candidate
- 4. Tax credits for political contributions
 - Persons donating to a political party or candidate are eligible for a generous tax credit
- 5. Reporting Requirements
 - Parties and candidates must submit detailed reports of their donations and expenses
 - They are public documents

10.8 *Party Government and Party Politics*

- The governor general's obligation-to ensure that Canada has a workable government in Parliament- is easy to discharge with a clear division of MP's into parties

Political parties provide us both with...

- Clear outcomes to elections
- The parliamentary leader who will become the prime minister
- Governments would come and go with problematic frequency
- Party leadership and party discipline are what make for stable parliamentary government
- Within Parliament, the party leader has the power to determine cabinet positions within the government
- In the opposition party, the leader has to power to assign the "shadow cabinet" positions, the high profile positions of critics who follow the issues of particular government departments
- Although the liberal democratic regime is not a direct democracy, the political power of its parties and leaders ultimately rests on the votes, and therefore the opinions of the people

Comparing and Contrasting Brainstorming:

Departmentalized vs. Industrialized Cabinets

Departmentalized:

- Cabinet divided into silos
- Each group has distinct areas of specialization assigned by PM
- No discussion between groups/ministries
- No long term planning or budgeting, uncoordinated
- Democratic Deficit: Cabinet ministers are unelected
- Its “yes” governance and not “good” governance, no actual discussion going on

Industrialized:

- Cabinet organized into committees/subgroups (groups are more integrated)
- Coordination across the entire cabinet to prevent individual departments for acting too freely
- Same interests with expert advice for rich discussion amongst groups and with other groups
- Made finance ministry more proactive (i.e. PCO, PMO, Treasury Board)
- This system is more democratic and accountable because it's the elected ministries making decisions

Evolution of Federalism (QCECO)

1. *Quasi-Federalism:*
 - **Federal** vs. Provincial
 - Provincial government reserved
2. *Classical Federalism:*
 - **Federal vs. Provincial**
 - Sovereign to one another (USA)
3. *Emergency Federalism:*
 - **Federal** vs. Provincial
 - War times, just federal
4. *Cooperative Federalism:*
 - **Federal vs. Provincial**
 - Post war times (worked together)
5. *Collaborative/Open Federalism:*
 - **Federal vs. Provincial**
 - Present day

Types of Federalism (EFA)

1. *Executive Federalism*
 - Cooperative Federalism, 2 levels bargained and coordinated action between federal and provincial executives
2. *Fiscal Federalism*
 - Past issues with balancing votes
 - An elaborate web of financial relations

- Financing responsibilities resolved through organization of responsibilities into 3 branches
 - a. Taxation
 - b. Federal Spending Power
 - c. Equalization payments

3. *Asymmetrical Federalism*

- Different Provinces have different powers
- Territories have little power, Quebec has different courts

Judicial Supremacy vs. Parliamentary Supremacy

Judicial Supremacy

- The charter had “served to judicialize” (allowing courts more political realm) and to politicize the judiciary (power to courts, politicizes policies)
- I.e. section 1 of the Charter: Reasonable Limits Clause

Parliamentary Supremacy

- A peremptory of constitutional laws which gives the legislative branch of government to set the law, as opposed to the judicial branch (the courts)
- I.e. section 33: Notwithstanding Clause

Collective Responsibility vs. Ministerial Responsibility

Collective Responsibility

- Convention that all Cabinet Ministers are collectively responsible for government policy (cabinet and solidarity)

Ministerial Responsibility

- Principle that Cabinet Ministers are individually responsible to the House of Commons for everything that happens in their department

Judicial Activism vs. Judicial Restraint vs Legislative Activism

Judicial Activism

- When courts push the power of Judicial review vigorously, beyond the black-and-white issues and deep into the grey. It suggests the judge or judges in question are using their Judicial Power to advance a specific political agenda

Judicial Restraint

- Encourages judges to limit the exercise of their own power/ it asserts that judges should hesitate to strike down laws unless they are obviously unconstitutional

Legislative Activism

- Refers largely to the Charter review process within the bureaucratic arena, which has been under the direction of the DOJ, in partnership with line departments, thoroughly assess the risk of judicial nullification of proposed statutes and restructure policy proposals to limit the potential for judicial nullification on Charter grounds

Pros and Cons of the Charter

Pros

- Protect rights and freedoms, makes everyone equal, prevents discriminations, keeps everyone accountable, introduces more institutionalized thought to government, causes government to listen, courts are able to make controversial decisions about minorities that the government will not make

Cons

- Charter goes too far, gives criminals and people too many rights, Canadians lose rights to minority groups, judges are not objective, Charter transfers power to unelected, unaccountable courts, Charter supports corporate rights over collective welfare, legalized politics is “conservative and class- based”

PMO vs. PCO

PMO

- (PM Office)
- Partisan political activists responsible for monitoring the general political situation and advising the PM

PCO

- (Privy Council Office)
- Non- partisan career civil servants and serve as a secretary to the cabinet, thus responsible to PM.
- Facilitates work of cabinet by organizing and providing logistical support for cabinet meetings and committees.
- Gives policy advice to PM and Cabinet

Define and State the Significance

Confidence: A vote showing that a majority continues to support the policy of a leader or governing body

Privy Council: Anyone that's ever served in government, they serve the prime minister, they are the watchdog

Amending Formula: The amending formula is the set of conditions required to make changes to the Constitution. In the Constitution Act of 1982 it states that a constitutional change can be made only if seven out of ten provinces representing at least 50 percent of the population of Canada agree with the proposed change

Black Rod:

- Symbol of authority in the Senate.
- Directs all protocol
- Opens parliament
- Responsible for security for the senate
- Leads Senate speaker to and from the chamber

House Mace:

- Symbolizes authority, legitimacy and power
- Sergeant - at - arms is only permitted to handle it
- Has to be present for legitimate meetings to take place
- Performs ceremonial and administrative duties

- Commissioner of votes (swears people in to the house)

Speech of the Throne:

- Statement drafted by the Prime Minister
- Said by the Governor General and Prime Minister (GG says the first paragraph of the speech, and because the GG isn't elected, they can only say that much and the Prime Minister continues to say the agenda)
- A statement drafted by the PM and approved by the cabinet which reviews concisely the state of the nation
- Read by the senate
- First read by GG, then PM regarding the political agenda of that session.

Iron Law of Oligarchy:

- Political parties almost always come to be controlled by a small group of permanent professional politicians and officials who are in charge at policy, finance, and strategy (all organizations including these committed to democratical ideals. Will inevitably succumb to rule by an elite)

Reasonable Limits Clause/ Section 1 of Charter:

- No rights is absolute, there are limitations
- Rights conflicts and the courts (judicial supremacy) decide on which right they should value more (OAKES test)
- Charter section 1 turns into 2 stage process

Notwithstanding Clause/ Section 33.1 of the Charter

- (override clause)
- Government can veto Charter rights
- This veto only stands valid for 5 years
- Only applies to section 2, 7, 15
- I.e. Quebec and religion expression

The Crown

- Power and authority is vested in the crown. PM and cabinet only have executive power because the Queen delegated it to them. Canada's head of state -> the Queen. Laws must have Royal Assent.

Governor General Roles

- Head of armed forces, advised by the PM. 5-7 year term, must approve any bill passed by Parliament, if PM is acting without confidence of the House of Commons is refusing to resign. GG will appoint a new PM from opposing party, swears in PM and cabinet, dissolves parliaments, calls elections, speech from the throne, encourages, advises and warns PM. Foreign and domestic policy plays 2 roles: Guardians of Responsible Government and Representative of Queen. GG has reserved powers:: reserve for their own initiative (i.e. dismiss PM and appointments to senate)

Backbenchers

- Canadian member of Parliament at a provincial legislative assembly who is not a party leader, cabinet minister/ opposition critic.

Organic Statutes

- Statute establishing constitution are organic statutes
- Too complex to be left in a realm of unwritten agreements

- Provide more effective means of introducing substantial information to existing constitutional order
 1. Easily flexible and adaptable to change issues, remaining relevant to changing issues
 2. Authority to organic derives from the fact that it will represent the will of the body that exercises legislative power

Clerk of the House: advises the speaker and all members on the interpretation of parliamentary rules, precedents and practices

Responsible for maintaining records of proceedings and custody of the same records

- No party affiliation → impartial
- Decisions are authenticated by his signature

Senate Speaker: appointed by the governor general on the advice of the PM

Preserve order and decide points of order subject to an appeal to the Senate

- Can participate in debates and votes → unlike house of commons speaker
- Performs diplomatic duties at home

Speaker of the HOC: elected by fellow members of parliament

Supervises gov't and have the government answer questions during the question period

Deputy Sergeant: performs ceremonial and administrative duties; may administer oath of allegiance to newly elected members

- Responsible for taking into custody strangers whom misbehave in the galleries

LONG ANSWERS

Democratic Deficit:

- An insufficient level of democracy in political institutions and procedures in comparison with a theoretical ideal of a democratic government
 - Gap between the *is* and the *ought*

Where do we see it?

- Tyranny of the Minority a very organized group of people that can dominante and distort political preferences and all of this is still democratic
- Quebec passed a law to restrain religious symbol wearing
- State is overstepping powers (legitimate power)
- Trusting the government
- Citizen apathy (voter turnout decline)
- Citizen disconnect, discontent -> disinterest
- Tyranny of the majority (first people become passive and unwitting followers of the opinion leaders of the day) -> grows more probable. Also, people come to have entirely unrealistic expectations of politics. I.e. Meech and Charlotte
- Supreme court appointments

What might cause it?

- Realization
- Lack of reforms (i.e.

- Putting people in power who are unaccountable, unelected and putting bad people in judicial courts (i.e. judges)
- In parliament, they elect 9 of the judges, the PM still elects people who would be in favour to elect their party
- Party discipline (first) party whip
- No matter how non-partisan one claims to be they will always be a bit partisan

Why does it matter?

- Citizen apathy, disconnect, discontent, disinterest
- Fails to represent a political regime in because the required democratic principle 'rule of the people'
- It impacts our system and the election results/democracy
- Challenges nations values
- Affect sovereignty of a nation
- Have the capacity to divide/unite us

A Living Tree:

- Canadian government prides itself on our diversity and society- thus, the constitution should match the diversity

A constitutional metaphor - not a fixed constitution, we evolve, changes as we change

- "Frozen concepts": some people believe the constitution should not evolve or grow it should mean exactly what the constitution stated when it was originally created
 - I.e. the person case → when women were able to sit in the Senate, senators went to court to confirm/fight that 'he' in the charter was applicable to 'she'
 - Supreme court denied the Famous Five; went to the court of last resort (JCPC) - highest court of appeal
 - We use common sense when dealing with the constitution and conflicting rights (discretions)
 - There must be some flexibility when applying the constitution to society since we are ever changing and evolving
 - Provincial gov't has the power to create and run whatever courts they deem necessary
 - Provincial gov't are different for all provinces (asymmetrical federalism)
 - Provincial control helps to deal with different demands placed on perspective judicial systems
 - Something as small as size could be appropriate for one province and not the other

Senate Reforms

- Changing the way one becomes a senator
- Revising the power of the senate
- Reforming relationship between Senate and House
- Some people believe the Senate should be abolished but it makes sense to make minor changes instead
- Senate was intended to be a body to represent the majority but still fails to represent socioeconomic majority
- Key to making canadian senate effective is to elect members so they have legitimacy
- PM Trudeau sought to renew Senate less partisan and thus more effective and legitimate

- Senate may witness a renewed legitimacy with reform

Court Government (Power)

- Power is centralized within a small group of people, kingscourt
- PM Powers:
 - Party leader
 - Cabinet maker
 - Controller of government organization
 - Chair of cabinet meetings
 - Chief Policy- maker
 - Chief personnel manager
 - Lead player in house
 - Adviser to governor general
 - Public persuader
 - Chief diplomat
 - Independent Support from PMO and PCO
 - Leading Cabinet and Spokesperson
 - Present cabinet movement/ cases to the public
 - Promote and demote MP's

- Savoie:

-Thinks it might be happening with the prime minister

Give more power to the backbenchers

Bring influence into the legislature

Bring in the whips

- believes PM's dominate policy agenda and only trust themselves to deal with policy issues
- effect power rests with Prime Minister and Cabinet
 - Why
 - National unity and national fiscal policy focus
 - Globalization
 - Centralization of info/control through institutionalized cabinet
 - Central agencies work for PM

“Cabinet as a focus group”

- Media/public focus on PM
- Lobbyists and holsters as more important than MPs
- Decline of political parties
- Strategic use of political parties by PM
- PM dominates course agenda and permeates government decision making

Critique of Savoie

- System has always been executive centred
- Ministers granted considerable autonomy if PM wants
- Gov more complicated, CAs can't do it all/often coordination / service work
- Those who work w/ PM find them consultative

- Public image is not equal to reality

Focus on PM is not surprising...

- PM as a party leader and has ultimate authority to act; cannot appear weak
- Public identifies with government so government failures are pm failures
- Not able to impose will systematically
- Actors depend on PM but he also depends on them

Power depends on

- Constitutional principles
- Wider context
- Institutional structures
- Formal procedures used
- Personalities of people involved