

Why Canadian democracy is superior

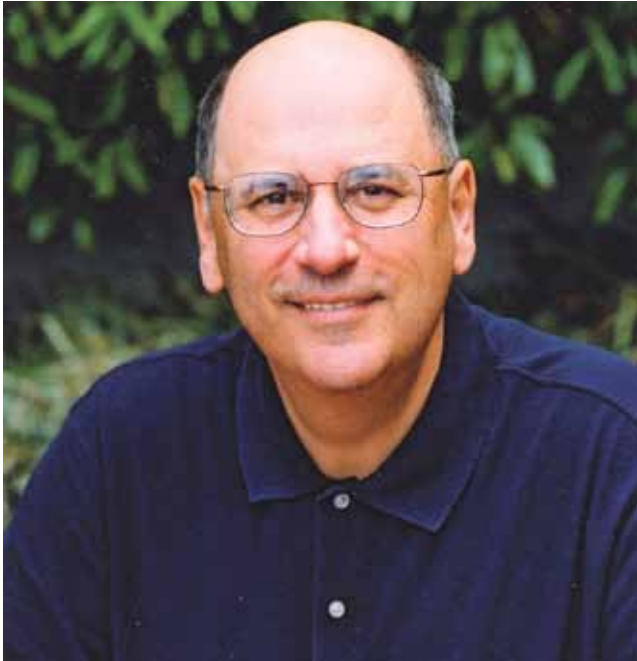
F.H. Buckley, a Canadian professor teaching in the US has written a revealing new book titled 'The Once and Future King' that debunks many of America's founding myths. In this excerpt, he argues that parliamentary regimes such as Canada's are generally freer than presidential ones and that the American presidency has evolved into a too-powerful form of Crown government. (Notes from the author in italics)

F. H. Buckley (book excerpt)

Over the last 250 years there have been four American constitutions, and each has resulted in a different form of government. We have seen three thus far, and now are on the cusp of a fourth constitution. The first constitution, in the pre-Revolutionary thirteen colonies, was one of Crown government in which Royal governors were enormously powerful. This was swept aside by the Revolution, and (after the interregnum of the Articles of Confederation) the Framers at their Conven-

tion in Philadelphia in the summer of 1787 produced the second constitution, one designed to correct the flaws of Crown government and the Articles of Confederation. What they proposed was a form of Congressional government, with power centered in the Senate and House of Representatives.

The third constitution was one of separation of powers, of power divided between the legislative and executive branches. Its seeds were found in the second constitution and emerged over



George Mason Professor F.H. Buckley Photo: Katherine Wetzel

the next 50 years, as the president came to be popularly elected and his office emerged as the modern executive, commanding, decisive and possessing all the authority of the only person elected by the nation at large. Contrary to popular belief, this was not what the Framers had intended. It was not even what James Madison had wanted at the Convention, although it is often called the Madisonian constitution because of his defense of separationism in *The Federalist Papers*. Instead, the separation of powers between the executive and legislative branches is much more a creature of the unexpected rise of democracy.

We have now entered into a fourth constitution, one of strong presidential government. The president has slipped off many of the constraints of the separation of powers. He makes and unmakes laws without the consent of Congress, spends trillions of government dollars, and the greatest of decisions, whether to commit his country to war, is made by him alone. His ability to reward friends and punish enemies exceeds anything seen in the past. He is *rex quondam, rex futurus*—the once and future king. And all of this is irreversible.

The British Constitution also evolved, over the same period:

As in America, there have been four British constitutions since the time of the American Revolution. First came the “personal government” of George III, who chose his ministers and was

supported by a large block of “King’s friends” in Parliament. While sharing power with parliament, the King dominated the government, and the American Revolution was itself a consequence of his unpopular resistance to the colonists’ demands. George III was not a tyrant, however. His rule did not represent a sharp break from the constitutional practice that had prevailed after the Revolution Settlement of 1689, and his ministers could not long survive when opposed by a determined majority in the House of Commons. Nevertheless, this was still a form of Crown government.

This changed in 1782 after the fall of George III’s prime minister, Lord North, when the King’s power lessened and that of the House of Commons increased, and this I call the second British constitution. It was one in which power was shared between King and Parliament, and looked at from the distant prospect of Philadelphia it seemed to the Framers to feature a separation of powers between the executive branch in the form of the King and the legislative branch in Parliament.

Over the next 50 years, as the American constitution evolved from Congressional government to the separation of powers, the British constitution also changed, though in the opposite direction. By the time of the Great Reform Act of 1832, the King and House of Lords were well on their way to political insignificance. What there was of a separation of powers was abandoned, and of Britain’s third constitution all that remained was an all-powerful House of Commons. There was a similar evolution in Canada, with a movement from rule by Governors General and fractious Assemblies to government by the House of Commons alone. The three countries had crossed paths, with America moving from legislative government to the separation of powers, and Britain and Canada moving from the separation of powers to legislative government.

Looking backwards in 1867, it seemed clear to Walter Bagehot in *The English Constitution* that the “efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers.” Time’s arrow moved always in the direction of democracy, but while it dispatched separationism from Britain it delivered it to America.

A fourth constitution is now emerging in Britain and Canada, one that parallels the move to the strong presidentialism of America’s fourth revolution. In Britain’s third constitution its government was led by the ruling party’s principal politicians, and was labeled “cabinet government” by the nineteenth century essayist Walter Bagehot. This has now given way to rule by a prime

minister who dominates his cabinet and Parliament.

What more than anything explains the move towards Crown government in all three countries is the growth of the regulatory state, where the role of legislation has diminished and that of regulatory rule-making expanded, with the regulators responsible to the executive and not to the legislature. Modernity, in the form of the regulatory state, is the enemy of the separation of powers and diffuse power, and insists on one-man rule. As in America, moreover, this is unlikely to change in Britain and Canada.

Given a choice between the American constitution and the ordered British liberty to which they had become accustomed, the Canadian Fathers adopted the parliamentary system of Westminster, and proved that its organic constitution could be exported.

Some Canadian radicals wanted to adopt an American constitution, with a president and a separation of powers. Most Canadians disagreed, however. They valued the British connection and the British traditions of liberty with which they were familiar. They also feared that, were they to adopt the American presidential system, this would lead the country down the slippery slope to outright annexation by the United States. Why have a separate country, if the political principles are the same? More than anything, they were familiar with the American system of government and didn't like what they saw. The United States had split apart in a Civil War, and the Canadians thought that states' rights delegates at the Philadelphia Convention had created a country that had become far too decentralized and unstable. They also observed the costs of the American separation of powers, in the inefficiency of its government, and wanted none of it. In their debates, the Fathers of Canadian Confederation anticipated Bagehot and articulated reasoned arguments for the superiority of parliamentary government. In the end, they showed how an organic constitution created over centuries in one country could be grafted onto a different country, one quite different in its religious, linguistic and social institutions.

The Canadian example of a peaceful accession to independence with a Westminster system of government came to be followed by 50 countries with a combined population of more than two billion people, and that is no small thing.

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For all the puffery of American politicians and political theorists, Canada has a superior constitution. When exported to other countries, the American system has bred presidents-for-life.

Most Americans subscribe to the idea of "America Exceptionalism." When polled, 80 percent of respondents report that, because of its history and Constitution, America "has a unique character that makes it the greatest country in the world." For this, our thanks go to the Framers, who gave the country a presidential system that secured the blessing of liberty.

While that's a nice story, it lacks the added advantage of accuracy. Parliamentary governments, which lack a separation of powers, rank significantly higher on measures of political freedom. That's not to deny that America is one of the freest countries in the world. It's simply to assert that it wasn't the presidential system that made the difference. What makes America exceptional is that for more than 200 years it has remained free while yet presidential.

Uniting the head of state and head of government in a single person—the president—is dangerous for liberty. In what Buckley calls "Jack Sprat's Law", the lean meat of the head of government's real power should be kept separate from the fat of the ceremonial duties of the head of state.

Republican ceremonies in the United States, centered around the president, mimic those of royalty in a monarchy. In place of a coronation, there is a presidential inauguration, the departing president accompanying the new president from the White House to the Capitol, followed by the Oath of Office, the departure of the former president by helicopter from the Capitol's East Front,

the Inaugural Address from the West Front, the parade down Pennsylvania Avenue, the prayer services and balls. In place of the Royal Family, there is the First Family. In place of God Save the Queen, there is Hail to the Chief. A distinguished career merits a presidential medal, a national tragedy requires a presidential speech.

Turning the presidency into the icon of American identity brings to the fore a different kind of leader, a Weberian charismatic hero with a dangerously exaggerated sense of self. In part, this is a consequence of the rigors of the modern campaign cycle. The democratization of politics, in the form of primary elections, has meant that challengers must raise enormous amounts of money even before the nominee is chosen. Thereafter the regular campaign burns through hundreds of millions more, with a total cost for each candidate of over a billion dollars in 2012. The hypomaniac candidate, who runs for office against seemingly impossible odds, has an edge in the competition. His campaign begins as soon as the last election is over, and continues for four years of fund-raisers, Iowa breakfasts and meet-and-greets in New Hampshire diners. The process winnows out those who lack the royal jelly of inflated self-regard and belief in their special “gift.” It leaves voters with candidates who are superbly qualified to run for office but less able to govern once elected. The president becomes the charismatic leader who surrounds himself with a bubble of admirers, and who once in office finds it difficult to conceal his contempt for members of the other party.

Just what would Weber’s charismatic president look like? He must first be seen to possess more-than-human qualities and offer a transformation, long on emotion and short on facts, that transcends everyday policy questions. Every successful politician must appeal at an emotional level, and this was especially true of the 2008 Obama campaign. The man who told us that “we are the ones we’ve been waiting for” and that “this was the moment when the rise of the oceans began to slow and our planet began to heal” was not speaking the language of politics. Ordinary politicians don’t talk that way, at least American politicians haven’t in the past.

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Second, the charismatic leader must ask voters to identify with him, to see his triumph as their triumph. Faoud Ajami noticed this phenomenon shortly before the 2008 election. He observed the crowds who attended Obama rallies, and was reminded of Third World crowds he had seen at the feet of their demagogic leaders. “There is something odd—and dare I say novel,” he wrote, “in American politics about the crowds that have been greeting Barack Obama on his campaign trail. Hitherto, crowds have not been a prominent feature of American politics. We associate them with the temper of Third World societies. We think of places like Argentina and Egypt and Iran, of multitudes brought together by their zeal for a Peron or a Nasser or a Khomeini. In these kinds of societies, the crowd comes forth to affirm its faith in a redeemer: a man who would set the world right.”

Third, the charismatic leader cannot brook rivals. There can only be The One. Every other source of authority is suspect, both people and institutions. His charisma trumps them all. Sadly, Congress has been given a role of some kind under the Constitution. “What’s frustrating people,” Obama complained, “is that I haven’t been able to force Congress to implement every aspect of what I said in 2008.” When the charismatic leader’s promise of transformational change falls short, as it must, he turns bitterly against his opponents, against anything that would fetter his unbounded will.

The ability of Canadians to dump an unsatisfactory prime minister, without going through the tortuous proceedings of an American impeachment and removal, is proactive of liberty, at a time when the executive has amassed oversized powers.

While spectacularly bad presidents will face a threat of impeachment, in 225 years no president has ever been removed in that way (although Nixon may have saved himself from this fate only by resigning from office). Impeachment, observed Jefferson in his old age, was not even a scarecrow, a judgment seconded by Henry Adams. By contrast, a prime minister may be removed at

any time, once he loses the confidence of the House and must stand for election.

Then there's the accountability of a prime minister, in his responsibility to attend Parliament when it's in session and account for his government during Question Period. That brings a different kind of leader to the fore.

The thin-skinned and grandiose fare better in presidential than in parliamentary regimes. The fall of the Chamberlain ministry in May 1940 was not inevitable, even though the Norwegian expedition had failed. Leo Amery delivered his ferocious “In the name of God, go!” speech on May 7, but the government had a majority of 213 and had seemingly neutralized Churchill by bringing him into the cabinet. What sealed Neville Chamberlain's fate, according to Harold Nicolson, then a National Labour M.P., was the prime minister's response to his critics the next day. When attacked by the Labour front bench for the fall of Norway, Chamberlain responded that the situation was grave and that the attack upon the government “and upon me in particular” had made it graver still.

“This really horrifies the House,” wrote Nicolson in his diary, “since it shows that he always takes the personal point of view. He goes on to say that he accepts the challenge of a [non-confidence motion], since it will show who is with him and who is against him. ‘I have,’ he says with a leer of triumph, ‘friends in this House.’” But when the vote was taken, 41 of his supporters voted against the government and about 60 abstained. Two days later, on the day that the Germans invaded the Low Countries, the prime minister resigned.

In America, by contrast, the imperial style wears better. Presidents do not appear before Congress, to face the brickbats thrown at prime ministers in parliament. Instead, they appear once a year in the quasi-regal State of the Union Address, where the kinds of abuse to which Lester Pearson was subjected would shock American sensibilities to the core. When Justice Samuel Alito seemed to mouth the words “not true” in response to Obama's criticism of the court, he was himself criticized for “flamboyantly insinuating himself into a pure political event, in a highly politicized manner.”

Finally, there's the inefficiency of presidential government. That was supposed to be protective of liberty, but it doesn't even do that. Instead, it's sheer waste. It is a one-way ratchet in which bad laws are adopted and then turned into the laws of the Medes and the Persians.

Getting legislation passed or repealed in America is like waiting for three cherries to line up in a Las Vegas slot machine. Absent a supermajority in Congress to override a Presidential veto, one needs the simultaneous concurrence of the president, Senate and House. In a parliamentary system, by contrast, one needs only one cherry from the one-armed bandit. In Canada, for example, neither the Governor General nor the Senate has a veto power. All that matters is the House of Commons, dominated by the prime minister's party. While his party commands a majority in the House and he enjoys his party's support, the prime minister is immune from the infirmities of divided government.

There is a nevertheless a downside to the dominance of the Prime Minister's Office in a parliamentary system. Since bills require the concurrence of different branches of government, they might be vetted more closely in a presidential system. If the government legislates less under the separation of powers, then, that is no bad thing if good laws survive and bad laws don't. On the other hand, it's harder to repeal a bad law in a presidential system, which raises the question whether pre-enactment screening is more desirable than reversibility.

The answer is that it's not. It is always easier to identify bad laws with the benefit of hindsight. Bad laws, based on bad ideas, with what are conceded to have bad consequences, are enacted everywhere. In dictatorships, bad laws are often bad from the start. In democratic regimes, however, bad ideas are typically recognized only after the fact. When one Parliament reverses a prior Parliament, it does so with more information than the prior enacting Parliament. It will know better what works and what doesn't.

This is Canada's moment. At a time when America is dropping like a stone in measures of economic freedom, when it imprisons more people than any other country, when its people are less wealthy and its government more corrupt than many of its First World competitors, when its tort law regime resembles a demented slot machine of judicially sanctioned theft, when its public debt has ascended to alarming levels, when its president makes laws by diktat and refuses to enforce laws he dislikes, the superiority of Canadian parliamentary institutions should be obvious to everyone. ✦

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