

## Chapter 3: Responsible Government

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We have seen that one of the chief functions of a constitution is to determine who will exercise legislative, executive, and judicial power. It is therefore not surprising that this should be one of the very first topics addressed in *CA 1867*. In the preamble to that act, it is stipulated that Canada is to have "a Constitution similar in Principle to that of the United Kingdom." Above all else, this phrase means that legislative and executive power are to be organized in accordance with a set of principles that may be summarized by the term **responsible government**. The purpose of this chapter is to explain the meaning, the application, and the rationale of those principles.

### 3.1 The Emergence of Responsible Government

The British regime is one that has evolved through a number of different forms. In its earliest stage, which may roughly be described as absolute monarchy, the Crown wielded both legislative and executive power. In other words, the king or queen both made the laws and administered them. But the possession of so much power by unelected (and hence, unaccountable) monarchs inevitably led to abuses of that power. In reaction

to such abuses, the English nobles and commoners were gradually able to compel the Crown to turn legislative power over to their assembly, which they called Parliament.

By the mid-eighteenth century, the political philosopher Montesquieu could cite the British regime as an example of the principle of the **separation of powers**. Following an argument first made by John Locke, Montesquieu claimed that the best way to protect freedom and to prevent the abuse of political power is to ensure that legislative and executive powers are assigned to separate people or bodies. Since any tyrannical act would ultimately require the application of both legislative and executive power, placing those powers in different hands would minimize the chances that such acts could be taken. Because it assigned executive power to the Crown and legislative power to Parliament, the British Constitution of his day was held by Montesquieu to be the very model of a free political order.

The principle of the separation of powers also became one of the cornerstones of the American regime. The American Founding Fathers were well versed in the ideas of Montesquieu and Locke, and their experience with British "tyranny" made them keenly concerned with the control of political power. They therefore opted for a constitution which placed legislative power in the hands of an assembly known as Congress and executive power in the hands of a president. Indeed, the Americans extended Montesquieu's principle. Not only did they place legislative and executive power in separate hands, but because both the president and the Congress were elected democratically, each would to some extent be in competition with the other for public favour. It was thought that this competition or rivalry would reduce further still the chances of tyrannical collusion between the two branches of government.

In the early years of British rule, the colonies of what would later become Canada were ruled by imperial governors appointed by the British Crown. As early as 1748, the subjects of Nova Scotia gained the right to elect legislative assemblies with authority to legislate on most internal matters. The subjects of Upper Canada (Ontario) and Lower Canada (Quebec) received the same right late in the eighteenth century. Yet, since executive power remained in the hands of the governors and their advisors, our colonial constitutions were based on a kind of separation of powers, such as that set out in the American Constitution. The difference, of course, was that we had a separation of powers for imperial reasons (i.e., to ensure British control) rather than for the liberal reasons advanced by Montesquieu and Locke. These colonial constitutions were unworkable precisely because of the separation between legislative

and executive power. When those powers are placed in different hands, friction between the two branches of government is inevitable. Such friction is tolerable when each of the branches is elected, as is the case in the United States. But when only the legislative branch is elected, as was the case in our colonial constitutions, conflict between the two branches comes to be seen in terms of democratic rights.

The experience of Upper Canada provides a good illustration of the problem. In the early nineteenth century, political life in Upper Canada centred on the attempts of "reformers" to break the power of the so-called "family compact," a small clique of wealthy citizens who controlled much of the colony's political and economic life. Even when the reformers won control of the Legislative Assembly, they found the governors unwilling to cooperate in the implementation of the reform program, because they had appointed as their advisors an executive council composed almost exclusively of members of the family compact. For Upper Canada's reformers, the separation of legislative and executive powers amounted to a constitutional subversion of democratic self-rule. Discontent with this constitutional order led to armed rebellions in both Upper and Lower Canada in 1837. These were easily crushed by British troops, but they showed the British government that some kind of reform was necessary. The government therefore dispatched to the Canadas one of the leading political figures of the day, Lord Durham, asking him to investigate the situation and to recommend appropriate measures. The central recommendation of Durham's famous *Report* was that the colonial constitutions be amended so as to replace the principle of separation of powers by the principle of responsible government. The fundamental feature of responsible government is that it makes the executive responsible for its actions to a democratically elected legislative body. Instead of choosing as his advisors anyone he liked, the governor would have to choose them from among those who had been democratically elected to the Legislative Assembly. This principle had recently been incorporated into the ever-evolving British regime, and the Canadian rebels of 1837 had demanded that the same step be taken in the colonies. The British government hesitated at first, but agreed in 1848 to introduce responsible government first in Nova Scotia and then in the other colonies. By the time of Confederation, then, responsible government was well established as a fundamental principle of Canadian political life.

### 3.2 The Conventions of Responsible Government

In the British and Canadian regime, responsible government makes the executive accountable to the House of Commons. This accountability implies firstly that the executive is required to defend its actions in the House. But accountability is meaningless if the House before which the executive defends its actions is unable to do anything about executive actions it finds unacceptable. The principle of responsible government therefore demands of those exercising executive power that they obtain the approval of the House for their use of that power. In this way, responsible government allows for meaningful democratic control of executive power.

The achievement of responsible government requires the adoption of a number of rules, which take the form of **constitutional conventions**. There are five such conventions which are of particular importance.

1. The *first convention* is that the Crown, which still has formal title to executive power, will act only "on the advice of" its ministers. In other words, it is the ministers themselves who exercise executive power; their "advice" to the Crown is really a command, and the Crown is thus a mere figurehead when it comes to the use of executive power.
2. The *second convention* is that the Crown normally appoint as ministers or advisors only persons who are members of Parliament (MPs). This rule is intended to facilitate executive accountability: putting the Crown's ministers in the House itself makes them more accessible to MPs who wish to question or criticize them. A certain amount of flexibility is always shown in the application of this rule. It is generally acceptable to appoint one or two senators as ministers. It is also possible to appoint people who are neither senators nor MPs, as happened in 1996 when Université de Montréal political scientist Stéphane Dion was named Minister of Intergovernmental Affairs. In such cases, however, the persons appointed must take the first possible opportunity to run for a seat in the House of Commons; if they lose that election, they must immediately resign their position as minister.
3. The *third convention* is that the ministers will act together as a team or "ministry," led by a prime minister (or "first" minister), with each minister sharing in the responsibility for all policy decisions made by any member of the ministry. This third rule is known as the convention of **collective responsibility**.

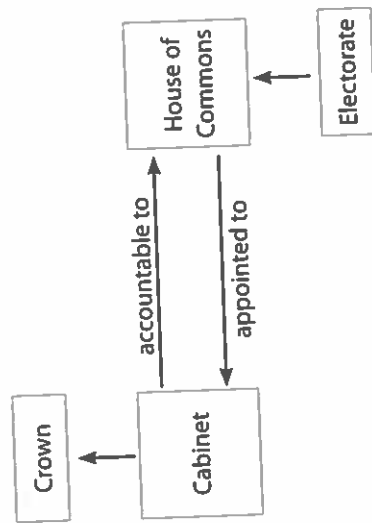
4. The *fourth convention* is that the Crown will appoint and maintain as ministers only people who "have the **confidence** of" (that is, the support of) a majority of members of the House of Commons. Without this rule, responsible government would not necessarily be democratic, for the Crown could appoint a ministry consisting only of MPs from some minor party whose views were representative of only a small minority of the electorate.

5. If the House of Commons expresses a lack of confidence in a ministry (either by adopting an explicit motion of non-confidence or by voting down a proposal that the ministry deems a matter of confidence), responsible government has in a sense broken down, because the executive is no longer acting in a manner that reflects the wishes of a majority of the people's representatives. In order to keep responsible government going, then, either the ministry or the House must be replaced. Therefore the *fifth convention* of responsible government is that when the ministry loses the confidence of the House, the prime minister must either resign (which entails the resignation of the entire ministry) or request new elections. The first of these options clears the way for the formation of a new ministry, one in which the House will have confidence. The second option (elections) will resolve the problem by producing one of two possible results. One is that the voters will take the side of the ministry and return a new contingent of MPs who will be more favourably disposed towards it. (This is what happened in the 1974 elections. The Trudeau ministry had lost a vote of confidence in the House, but in the subsequent elections, the voters elected a large majority of MPs who supported that ministry. Trudeau therefore remained in office.) The other possibility is that the voters will take the side of the House and elect a majority of MPs who do not support the existing ministry. (This is what happened in the elections of 1980, when voters elected a House with a strong majority of Liberal members who would not support the Progressive Conservative ministry headed by Prime Minister Joe Clark. Clark, seeing that he would not have the confidence of the House, promptly resigned.)

Taken together, these five conventions create a political order which makes those who exercise executive power fully accountable to the elected representatives of the people, and thus, indirectly accountable to the people themselves. (This relationship is expressed schematically in Figure 3.1.) By law, executive power is invested in the Crown. But the conventions described above modify the law of the Constitution dramatically.

Under the principle of responsible government, the Crown must in effect delegate its executive power to a ministry composed of MPs. This ministry (or "cabinet" as it is usually called) must have the confidence (i.e., the support of a majority of the members) of the House of Commons and must resign or face elections if it loses that confidence. In sum, these arrangements provide the kind of democratic accountability sought by the reformers of 1837.

Figure 3.1: Responsible Government Crown



### 3.3 Responsible Government as "Cabinet Government"

From the description of the principle of responsible government given above, one would likely conclude that the introduction of that principle substantially weakened the cabinet by subordinating it to the control of the House of Commons. This is why responsible government is often referred to as **parliamentary government**. In theory, responsible government makes the House of Commons (the dominant chamber of Parliament) the ultimate authority for both legislative and executive action. In reality, however, the introduction of responsible government actually strengthened the power of the cabinet. It is therefore more accurate to think of responsible government as **cabinet government**.

To understand why, it is essential to grasp that the introduction of responsible government entails a transfer of effective legislative power from the House to the cabinet. We have noted that the cabinet must be composed of MPs who have the confidence of a majority of the members of the House. The cabinet and its supporters in the House are thus by definition in a position to control the legislative activity of that body.

This control becomes especially tight if the members of the House have formed themselves into highly disciplined parties—as has been the case in Canada since the late nineteenth century. For reasons we shall discuss below, modern Canadian parties are able to ensure that almost every member elected to the House will vote as his or her party wishes. In such a situation, the cabinet can count on virtually automatic support from a majority in the House for any measure it proposes. It is thus a natural result of the introduction of responsible government that the cabinet comes to dominate the legislative agenda of the House that supervises it.

In a regime based on responsible government, then, the cabinet becomes the dominant political institution. Under the law of the constitution, it possesses no power of its own, but constitutional convention gives it control of both executive and legislative power. Although constitutional law places legislative and executive powers in separate hands, then, responsible government leads in practice to a **fusion of powers** in the hands of the cabinet. Indeed, one may say that **responsible government** is best defined as a *regime in which legislative and executive power are fused together in a cabinet which is accountable to an assembly of the people's elected representatives*.

### 3.4 Forming a Government

To say that Canada is governed by a cabinet is to imply something very surprising about our regime: we do not elect our government—at least, not directly. Canadians often talk about having "elected" the "Martin government" or the "Mulroney government," but in this they are mistaken. In a regime based on the principle of responsible government, the people's role in the selection of their government is an indirect one.

This is no accident. The principle of responsible government is inconsistent with the notion of a directly elected executive. We have seen that at the core of responsible government is the idea that the government must be accountable to the House of Commons. Having the people elect the government directly would necessarily make the government accountable to the people as well. As the old proverb teaches, however, no one can serve two masters because the two masters may demand contradictory things. What if the voters were to elect a Conservative government pledged to free trade and a House of Commons dominated by Liberal and NDP members who were opposed to it? The government would either have to drop its free trade policy (thereby repudiating its accountability to the voters) or it would have to introduce free trade by

executive decree (thereby repudiating responsible government).

In responsible government, then, we do not directly elect our government. It is more accurate to speak of the "formation" of a government. This is a complex process in which the Crown, the prime minister, and the House of Commons work together to provide Canadians with a government that has the confidence of the elected representatives of the people.

One may summarize this process in four basic rules.

1. The *first rule* is that the ultimate responsibility for choosing the government must rest with the Crown. In practice, this means that the Crown will select a prime minister, who will in turn nominate the other members of the government. There are good reasons for this rule. To begin, the Crown is uniquely suited for choosing the government. For obvious reasons, the government cannot choose itself: in that case, every member of Parliament might proclaim himself or herself the head of a new government. It would be workable (though perhaps cumbersome) to leave the choice of government in the hands of the House of Commons, but this would be inconsistent with certain aspects of our regime. It will be recalled that, formally speaking, the ministers who compose the government are merely advising the Crown on the use of the Crown's powers. The Crown must, therefore, have a formal role in the appointment of its own advisors.

2. The *second rule* for forming a government is that in appointing a prime minister, the Crown must choose the person who is most likely to have the confidence of the House of Commons. This rule is obviously necessary for the functioning of responsible government, the regime in which the executive is accountable to the legislature. It also brings a democratic element into the process by ensuring that the person who heads the government and chooses its other members has the support of a majority of the elected representatives of the people.

3. The *third rule* for forming a government is that the government remains in power until the prime minister resigns on its behalf.

4. The *fourth rule* is that the prime minister must resign if his or her government has lost the confidence of the House of Commons and has no prospect of winning the confidence of a newly-elected House.

These rules may seem complicated, but working through a couple of historical examples will make them easier to understand.

At the beginning of 1993, Brian Mulroney was Canada's prime minister. He was the leader of the Progressive Conservative party (the PCs), which held a substantial majority of the seats in the House of Commons. Mulroney decided to retire from politics. The PCs called a leadership convention, at which Kim Campbell was chosen to succeed him as party leader. The governor-general, Ramon Hnatyshyn, then had no difficulty deciding whom to appoint as the new prime minister. The PCs still controlled a majority of the seats in the House of Commons, Campbell was their leader, and therefore Campbell would obviously be able to form a government that would command the confidence of the House. In October of 1993, parliamentary elections were held. In those elections, Campbell was defeated in her own constituency, and her party lost all its seats but two. Technically, she was still the prime minister, because governments remain in office until the prime minister resigns. Yet, it was obvious to Campbell that when the new House convened, it would not have confidence in her government. It was equally obvious that Liberal leader Jean Chrétien would be able to command the confidence of the House of Commons. Consequently, within a few days of the election, Campbell resigned.

It is important to appreciate that this was a resignation, not a firing. As the elections of 1972 and 1957 illustrate, it is the prime minister, and not the voters, who decides the future of his or her government. From 1968 to 1972, Pierre Trudeau's Liberal Party held well over half of the seats in the House of Commons. In the elections of 1972, Trudeau and his party won fewer than half the seats, only two more than their main rivals, the PCs. Trudeau suspected that the not insignificant block of members elected for the New Democratic Party (NDP) would prefer his government to the PC alternative, and he knew that this would give him enough votes to command the confidence of the House. He therefore chose not to resign. In 1957, on the other hand, a Liberal prime minister who found himself in virtually the same situation opted to resign rather than to continue. As a result of that year's elections, Louis St. Laurent's Liberals no longer had a majority of seats in the House of Commons, but they did have more seats than any other party. St. Laurent interpreted the results of the election to mean that the voters were not happy with his government. Suspecting that he would not have the confidence of the House, he resigned. The governor-general then invited John Diefenbaker, the PC leader, to form a new government.

What these examples demonstrate is that the process of forming a government is more complex than it appears. Canadians like to think that they elected a Chrétien government or a Trudeau government; in fact, however, they elect members of the House of Commons. Because no

ministry may govern without the confidence of the House, the choices made by the voters have an important, and usually decisive, influence on the formation of government. Yet that influence is not always decisive. After the 1993 elections, it was obvious that Kim Campbell would have to step down, and it was equally obvious that the new prime minister would have to be Jean Chrétien. As the elections of 1957 and 1972 demonstrate, however, when the voters give no party a clear-cut majority in the House, the prime minister may have the decisive role in determining who will form the government. Alternatively, if several opposition parties with a majority of seats between them publicly agree to a coalition—a formal partnership—the governor-general would have to appoint as prime minister the person they had designated as the leader of the coalition. In this case—which is essentially what happened in the Ontario elections of 1985<sup>1</sup>—the decisive role was played by the opposition parties, not by the prime minister. Finally, should Canadians ever elect a House in which three or four parties have roughly equal strength, the choice of the new prime minister (should the incumbent resign) might well require the exercise of some discretion by the governor-general. Such a situation has not yet occurred, but it becomes a more realistic possibility in times like the present when neither of the two large national parties is dominant and a major regional party (the Bloc Québécois) has a large number of seats.

### 3.5 Majority and Minority Government

In a political order based on the principle of responsible government, the ministry which takes office is said to have either a **majority government** or a **minority government**. The term “majority government” refers to a situation in which the party that forms the government possesses over half the seats in the House of Commons. Because party organizations are able to exercise a high degree of control over the way their members vote, a cabinet backed by a parliamentary majority is almost guaranteed the automatic confidence of the House. This does not mean that such a ministry can do whatever it likes: the cabinet will back away from any measure that is resolutely opposed by its parliamentary “caucus” (the group of MPs who are members of that party) whose votes are essential for sustaining the House’s confidence in the government. But a majority

<sup>1</sup> In that election, the ruling PC party won the most seats, but not a majority. The NDP formally supported the Liberal party, and the Liberals subsequently formed the new government.

government that has the support of its caucus can govern as it wishes.

The term “minority government” refers to a situation in which no single party possesses a majority of the seats in the House of Commons. In such a situation, the government must be formed by some party which controls less than half the seats. In the 1963 elections, for example, 265 members were elected: 129 of these were members of the Liberal party, 95 were PCs, 17 were members of the NDP, and 24 were members of the Social Credit Party. Obviously, no party had a majority of seats. The PC prime minister, John Diefenbaker, did not expect that his government would maintain the confidence of the House, and he therefore resigned. The governor-general called on the leader of the Liberals, Lester Pearson, to form a government. Pearson’s party did not have enough seats to control the House of Commons. Under the rules of responsible government, however, it is sufficient if a government is able to command the confidence of the House. Pearson knew that he would be able to win and maintain that confidence as long as he adopted policies that would either find favour with, or not be opposed by, the members of one of the two smaller parties. In this, he was quite successful: his Liberal government remained in office for two terms totalling five years, despite the fact that it never had a majority of seats in the House.

In Canada, it is much more common to have majority rather than minority governments, but minority governments are not rare: since 1867, there have been eight of them, including the minority Liberal government that emerged from the general elections in 2004. Not all of these governments have been as stable as Pearson’s. Arthur Meighen’s minority government lasted a mere three months in 1921 before the House declared a lack of confidence in it. In 1979, Joe Clark formed a minority government for the PCs, yet announced that he would govern as if he had a majority. By this he meant that, unlike Pearson, he would not attempt to tailor his policies to maintain the confidence of the House. This rather bold stance cost Clark dearly: his government lost the confidence of the House after eight months in office, and new elections were held. In those elections the Liberals won a majority of seats in the House, and Clark was therefore compelled to resign.

It is worth noting, however, that Clark’s government fell only because both the PCs and the Liberals believed that new elections would be in their interest. The PCs thought they had momentum on their side. The Liberals, on the other hand, thought that the electorate had merely wanted to give them a spanking in 1979 and would now prefer to have them back. As both sides hoped to improve their fortunes through new general elections, Clark’s government was unlikely to last very long. Of-

ten, however, the situation is just the reverse. Minority governments draw a certain amount of strength from the fact that it is rarely in the interests of everyone to fight another election campaign. For one thing, they are quite expensive. Moreover, individual MPs who have just been elected are in many cases nervous about going back to the polls: why risk the seat they have just worked so hard to win? Most importantly, though, the defeat of a minority government requires the collaboration of at least two opposition parties who can combine for a majority of votes in the House. Are there likely to be two opposition parties with good reason to believe that they will come out of fresh elections with more seats than they currently have? Not often. Accordingly, while the three opposition parties made a good deal of noise in the autumn of 2004 about defeating the Martin government, no one ever pulled the trigger. It is not difficult to see why this happened. The 54 seats won by the Bloc Québécois were something of a fluke, coming largely as a protest against the Chrétien government's conduct in the so-called "sponsorship scandal." New elections would probably not have been in the best interest of that party. The Conservatives (a new party consisting of the amalgamation of the former Progressive Conservatives with the largely western-based Alliance Party), having spoken during the campaign of a possible majority Conservative government, had to regard their final tally of 99 seats as a major disappointment. New elections would not have served them well either. As long as either one of those parties was apprehensive about going back to the voters, the Martin Liberal government was perfectly safe.

In reality, minority government creates a fascinating game of political cat and mouse. A government that wishes to stay in power has to try to keep the opposition divided. It typically does so by introducing measures that it hopes at least one of the major opposition parties cannot possibly disagree with. On the other hand, when a minority government feels that public support is swinging behind it, it may try to introduce legislation that the opposition parties cannot possibly agree with. Why? This way, the government not only gets the election it would like, but can blame the opposition for "forcing" the country to go through elections the government will surely present as wasteful, bothersome, and unnecessary!

There is a general (though not universal) opinion in Canada that majority government is better than minority government. The superiority of majority government is said to rest on its greater stability, longevity, and vigour. But this opinion is open to debate; certainly, many Canadians welcomed a return to minority government in 2004 after 24 years of majority government. Moreover, as the examples cited above suggest,

minority government is not necessarily unstable and short-lived. In the right circumstances, and with appropriate leadership, minority governments can last as long as majority governments. Concerning the relative vigour of minority and majority governments, one should consider the arguments made by the distinguished constitutional specialist Eugene Forsey. Forsey notes that sometimes a government backed by an absolute majority of seats may vigorously ride off in the wrong direction. Conversely, minority governments are often compelled by their need for support from outside their own party to govern in a more moderate and less arrogant fashion.<sup>1</sup> In sum, it is probably wrongheaded to ask which regime is superior, minority or majority. It is more sensible to recognize that each has potential advantages and disadvantages, and that circumstances and personalities will do much to determine which form is more desirable in a given situation.

### 3.6 Institutional Implications of Responsible Government

As was mentioned in the first chapter of this book, we have chosen the term "regime" to emphasize the extent to which political rules and institutions form a complex web with an internal logic of its own. Nowhere is this more evident than when one considers the principle of responsible government. For the most part, our arrangements with respect to legislative and executive power are highly complex—certainly much more complex than the relatively straightforward arrangements to be found in the Constitution of the United States. Canadians often wonder why we don't jettison some of our quaint practices and institutions and adopt American alternatives instead. The difficulty, of course, is that the logic of responsible government will not permit it.

It is essential to appreciate that responsible government and separation of powers each has its own internal logic, a logic that will determine many of the regime's institutional features. The decision to adopt responsible government as a fundamental principle will, by the internal logic of the principle, necessitate certain institutional arrangements and rule out others. The same would be true if one opted for the principle of the separation of powers. To demonstrate this point, let us explore a few of the key institutional differences between Canada's regime and that of the United States: elections, cabinet appointments, party discipline, and head of state.

<sup>1</sup> Eugene Forsey, "The Problem of 'Minority' Government in Canada," *The Canadian Journal of Economics and Political Science* 30, 1 (February 1964): 1-11.

1. *The timing of elections.* In the United States, the principle of separation of powers implies that each "branch" of government is elected separately. Congress is chosen by the people in one set of elections, the president is chosen by the people in a separate election. Each branch thus has its own mandate and neither depends on the confidence of the other for its legitimacy; even if the Congress believes the president is doing a terrible job, the president will remain in office for four full years because the presidential election gives him a four-year mandate. Because the term of office is fixed by the Constitution (two years for the House of Representatives, four years for the presidency, and six years for the Senate), elections in the United States are held at fixed, predictable intervals. President George W. Bush was re-elected on the third Tuesday of November in 2004. We know that the next American presidential elections will be held on the third Tuesday of November in 2008, the third Tuesday of November in 2012, the third Tuesday of November in 2016, and so on.

In a regime based on the principle of responsible government, the fundamental logic of the regime makes such an orderly, predictable schedule impossible. In Canada, the timing of parliamentary elections is normally decided by the prime minister. Strictly speaking, it is the Crown (i.e., the governor-general) that dissolves Parliament and calls elections, but the decision to do so is made on the basis of "advice" tendered by the prime minister, advice which is almost always followed. There is one fixed rule governing the prime minister's choice of election date: Section 4(1) of *CA 1982* specifies that the interval between elections may not exceed five years. In the Canadian tradition of responsible government, the prime minister traditionally looks to call new elections after four years.

Of course, leaving the timing of the elections to the prime minister gives him or her a significant partisan advantage over the opposition. The prime minister will typically call elections when the polls are most favourable for his or her own party, or perhaps when the main opposition party is in disarray. Jean Chrétien twice called elections (1997 and 2000) after less than three and a half years in office, primarily because opinion polls indicated that early elections would work to his advantage. Each time, Chrétien's decision led to (somewhat predictable) calls to change Canada's electoral practice in this respect and to adopt the American practice of holding elections at fixed intervals. There is little doubt that moving to fixed election dates would be more equitable. The problem, however, is that the practice of fixed election dates is simply incompatible with the principle of responsible government. Under responsible government, the prime minister and cabinet are not directly elected by the people (as is the American president) and therefore have no direct mandate of their own. Their democratic legitimacy thus depends entirely

on their capacity to maintain the confidence of the House of Commons. Because a ministry can, in principle, lose that confidence at any time (especially if no party commands a majority in the House), it is essential to be able to hold elections at any time; as we have seen, holding new elections is sometimes the only way to resolve the impasse that results when the House and the ministry are in disagreement. The existence of a floating or non-fixed election date is thus an inescapable consequence of the logic of responsible government. While it might be nice for Canadians to have a fixed, predictable schedule of elections from now until eternity, as do our neighbours in the United States, it is simply not possible to graft such a practice onto our regime.

2. *Cabinet membership.* A second important institutional difference between Canada and the United States is the selection of cabinet ministers (or cabinet secretaries, as they are called in the United States). Here the practice in one country is almost the exact opposite of what is done across the border. An American president may choose for his cabinet virtually any citizen of the United States; the only restriction is that if he selects a member of Congress, that person must resign his or her congressional seat. This flexibility allows presidents to seek out the most talented people in the nation to run the government. John F. Kennedy, for instance, plucked Robert McNamara from the presidency of the Ford Motor Company to be his Secretary of Defence. Richard Nixon reached out to Harvard University to bring to Washington the famous international relations expert, Dr. Henry Kissinger, as his Secretary of State. More recently, Bill Clinton selected Harvard economist Robert Reich to be his Secretary of Labour, and George W. Bush, during his first term, chose retired General Colin Powell to be his Secretary of State. In Canada, on the other hand, a prime minister looking for cabinet material is essentially restricted to the membership of the House of Commons; other Canadians might be appointed to cabinet temporarily, but may not stay unless they are able to get themselves elected quickly to a vacant seat in the House. A Canadian prime minister's choice of cabinet ministers is thus restricted to a very small group of people, few of whom have meaningful technical expertise in the area for which they will be responsible.

Here, too, the difference between the two regimes is a direct consequence of the difference between the principles of separation of powers and responsible government. The Constitution of the United States bars members of Congress from holding cabinet posts precisely because its underlying objective is to have the two branches of government "check and balance" each other as a means of protecting liberty. In Canada, on the other hand, it is the logic of responsible government that requires us

to restrict a prime minister's choice of cabinet ministers to members of the House of Commons. Because the prime minister and cabinet are not directly elected to their positions by the people, their democratic legitimacy depends on their capacity to maintain the confidence of the House of Commons. If the prime minister and cabinet were not themselves members of the House, it is hard to imagine how the House would be in a position to hold them accountable for their actions and determine whether they deserve its continued confidence.

3. *Head of government and head of state.* Another noteworthy difference between the two regimes is that the Canadian regime draws a distinction between the "head of government" (the prime minister) and the "formal head of state" (the governor-general). No such distinction exists in the United States, where the president fulfills both roles. Why this difference? Once again, the crucial point is the difference between the logic of responsible government and the logic of separation of powers. In a regime based on the principle of responsible government, democratic legitimacy depends on our capacity to maintain agreement between the House and the government, to ensure that we always have a government that commands the confidence of the House of Commons. Yet such agreement does not arise on its own; someone must actively intervene to ensure that a ministry that has lost the confidence of the House steps down and that a new ministry more likely to have the confidence of the House will take its place. In the Canadian version of responsible government, that official is the governor-general. As the official whose job it is to keep the system of responsible government running, the governor-general is, in effect, responsible for the regime; that is why, logically, the governor-general, rather than the prime minister, serves as Canada's formal head of state. In the United States, on the other hand, there is no office corresponding to our governor-general because, in a regime based on separation of powers, democratic legitimacy is maintained automatically by the system itself. Each branch of government is elected by the people for a fixed period of time and thus has its own democratic mandate. No one is required to oversee the system or to intervene to ensure that one branch has confidence in the other.

4. *Party discipline.* One final illustration of our general point is the matter of party discipline. Party discipline in Canada is quite strong—so strong that it is common for Canadians to complain that their MPs, who almost always vote the party line in the House of Commons, are little better than trained seals. In the United States, by contrast, members of both

the Senate and the House of Representatives are freer to vote as they wish, and it is not unusual for them to vote against the position favoured by their own party. This is a practice many Canadians would like to see adopted in this country.

The difficulty, however, is that here, too, the different approach of the two countries is to a large extent determined by the basic difference in their fundamental principles. The United States can afford to have weaker party discipline because under separation of powers, the president's mandate does not depend on the support of Congress. The president has a direct mandate from the people and can legitimately remain in office even if Congress consistently votes against his program. There is thus no pressing reason for members of Congress to follow their party line. In Canada, on the other hand, the internal logic of responsible government makes necessary a relatively strict form of party discipline. Because the prime minister and cabinet are not directly elected by the people, their democratic legitimacy depends entirely on the continued confidence of the House of Commons. If members of the party in power do not stick together in support of the ministry, the ministry will not have the confidence of the House, thereby losing its only title to rule. Unless Canadians are willing to see their governments change on a semi-annual basis, they have to accept that responsible government will of necessity require a high level of party discipline.

As these examples illustrate, when contemplating reforms to our political institutions and practices, it is essential to consider very carefully whether specific proposals for change are consistent with the internal logic of responsible government. The fact that certain practices work well in the United States does not mean that they will work here. A political regime is somewhat like an ecosystem. Species from one ecosystem may not be able to adapt to another. Or they may be able to adapt, provided certain adjustments are made. Of course, the introduction of a new plant or animal species to a particular ecosystem may have unintended (and undesirable) side effects, as well. Our point, then, is not that change is impossible; rather, it is that advocates of reform need to reflect very carefully on whether—and to what extent—practices imported from other regimes are consistent with the internal logic of responsible government.

### 3.7 Responsible Government and Separation of Powers Compared

The principle of responsible government is of British origin, but it now forms the cornerstone of many, if not most, liberal democratic regimes.

In one way or another, all the nations of Western Europe, as well as most members of the British Commonwealth, subscribe to the principle that the executive must be responsible for its actions to a legislative body consisting of the elected representatives of the people. In almost all of the world's other liberal democratic regimes, the most influential constitutional model has been the United States rather than Britain. (This is especially true in Latin America.) One may thus think of responsible government and separation of powers as the two great alternative principles for the formation of a liberal democratic regime.

As we have noted, the political objective which inspires the principle of separation of powers is liberty. Montesquieu and Locke argued for a separation of powers on the grounds that placing legislative and executive power in different hands would minimize the chances of the government becoming tyrannical. What they argued for in theory seems to be validated by the experience of the United States. In that country, even when the legislative and executive branches of government are held by members of the same political party, the relationship between them is one of rivalry rather than collusion. It is thus very difficult to imagine the two branches cooperating for anti-democratic purposes. Indeed, the rivalry between the two is so strong that it often becomes a problem. In 1993, for example, the government of the United States came to a standstill when the president and the Congress (both in the hands of the Democratic Party) could not agree on a budget. One may thus say that the price of liberty in regimes based on the separation of powers is a substantial inefficiency in government.

In contrast, regimes based on the principle of responsible government are remarkable for their efficiency. Because of the fusion of powers, the same small group exercises both legislative and executive power. In such regimes, standstills of the sort seen in the United States simply do not take place. Once a cabinet backed by a parliamentary majority decides what it wants to do, there is almost nothing to stand in its way. When the Pearson cabinet decided to introduce universal medical insurance in Canada, the adoption and implementation of the policy followed quickly and smoothly. This is in striking contrast to the United States. Though most Americans agree that action is needed to extend coverage of medical insurance, former President Clinton's initiatives on that issue were stalled and then blocked by Congress, which favoured different policies. As a result, no action was taken, and the issue has dropped off the political agenda.

Yet, some people would argue that the efficiency of responsible government is purchased at the price of a certain loss of political liberty. Because it is very difficult to stop a cabinet that has a solid majority sup-

porting it in the House of Commons, it is sometimes said that responsible government amounts to a four-year elected dictatorship. Critics of our regime will point to the introduction of the highly unpopular Goods and Services Tax (GST) as an example of the way in which Canadian governments can introduce and impose policies that have little public support. It is probably safe to speculate that the separation of powers in the Constitution of the United States would make it far more difficult for politicians to introduce a similar tax in that country.

Nevertheless, it would be an exaggeration to suggest that responsible government equals an elected dictatorship. In the first place, it should not be forgotten that all governments seek re-election. Since no government will be re-elected if it consistently or conspicuously ignores public opinion, those in power will have great incentives to behave democratically. Secondly, one must keep in mind that the activity of the government is subject to the authority of the constitution, especially the Charter of Rights and Freedoms. Finally, in responsible government, there is an important political check on the power of the cabinet: the presence of an institutionalized parliamentary opposition. As we shall see in Chapter 7, the House of Commons, to which the cabinet is responsible, affords those who oppose government policy a wide range of opportunities to question and attack the government, opportunities that do not exist in a regime like that of the United States. One can thus plausibly argue that the cabinet's accountability to the House of Commons makes responsible government as favourable to liberty as does a regime based on the separation of powers.

There is, of course, a more general issue of accountability to be considered, and that is accountability to the voters. In certain respects, democratic accountability appears to be stronger under separation of powers. The leading executive and legislative officers are directly elected by the people under separation of powers, while only the legislative officers are directly elected in responsible government. Moreover, under separation of powers, legislative officers can respond more directly to the wishes of their constituents since they are not restricted by party discipline. In responsible government, when MPs have to choose between voting in support of their party and voting in response to the wishes of their constituents, they will almost always take the side of their party.

On the other hand, responsible government offers substantially greater accountability in that it is much easier for the voters to judge the performance of their elected servants. Under separation of powers, it is often difficult to know who is responsible for the state of the nation's affairs. When the economy is doing well, for example, both the president and the Congress will take credit for it. On the other hand, when the econ-

omy is doing poorly (or when there is a crisis over the budget, medicare or some other issue), the president and the Congress will each insist that everything is the fault of the other branch. The voter has a difficult time evaluating office-holders because it is frequently difficult to know who was responsible for what. In responsible government, on the other hand, one always knows exactly who deserves praise or blame for the state's things. Because responsible government fuses legislative and executive power in the hands of the prime minister and cabinet, there is no debate over who to praise or blame for specific situations. American President Harry Truman was famous for having a sign on his desk that said "The Buck Stops Here." Such a sign would be infinitely more appropriate on the desk of a prime minister, since a president has relatively little control over the nation's legislative activity while a prime minister controls it almost completely. Accountability to the voters is, in this sense, much greater in regimes based on responsible government than in regimes based on separation of powers.

In a simple, abstract comparison, then, a strong case can be made that responsible government is a superior choice to separation of powers. This case is especially compelling in the twenty-first century, when people are generally less inclined to worry about government tyranny than were the American Founding Fathers and more inclined to expect government to intervene effectively in economic and social life. This probably explains why one regularly sees influential figures in the United States advocating reforms that would move the American regime in the direction of responsible government. Yet, politics does not take place in a vacuum and abstractions that do not take proper account of context can be very dangerous. The attractions of responsible government may not be equally compelling in all situations. One variable that has a considerable impact on the debate over the relative merits of responsible government and separation of powers is federalism. As we shall see in the next chapter, responsible government is substantially inferior 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.

### Key Terms

responsible government

separation of powers

five conventions of minority government

collective responsibility

confidence

parliamentary government

cabinet government

fusion of powers

responsible government

majority government

minority government