

Constitutional rule bending: When angry citizens push back and fight for democracy

PROROGATION AND CONTESTATION

In British-style parliamentary regimes, prorogation is a mechanism that allows the government to suspend the work of deputies. This measure is deemed acceptable if the legislative program of the government is mostly finished, which is obviously a very rare occurrence.

It is a special measure, to be used with circumspection and in keeping with the reasons for which it was originally instituted. It seems obvious that the Harper government acted contrary to these provisions. In 2009, for example, the Harper government used prorogation while 37 laws out of the 64 that were slated for study had yet to be examined. In addition to this dubious motivation, the Harper government called for a very long prorogation as Parliament would not resume for at least six weeks.

Some journalists, and maybe a large part of the government, seemed to think that Canadians did not care about prorogation and that the issue was too complicated. However, the weeks following prorogation in December 2009 showed them to be wrong. In fact, prorogation initiated a very important debate and mobilized a very angry public against Harper and his friends.

GETTING ORGANIZED

Early in January 2010, a group of political scientists circulated a letter written by the non-partisan group Fair Vote Canada, in which they condemned prorogation and demanded electoral reform. A few days later, my colleague at the Université de Montréal, Daniel Weinstock, instigated a second letter. The letter, signed by over 200 university faculty from a number of disciplines—political science, law, and philosophy—aimed similarly to condemn this political manoeuvre that, while being perfectly legal, is contrary to the very nature of Canadian democratic institutions. Weinstock

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received considerable media attention, and because of these initiatives prorogation became a real issue for Canadians. Weinstock and the signatories insisted on the fact that the formal legitimacy of prorogation was precisely the reason why it should be used with circumspection; this is also what the population at large understood to be at stake in the prime minister's actions.

What is at stake, according to the petitioners, is the very capacity of elected officials, as a whole, to deliver what they owe to the electorate. However, the question becomes, how, during prorogation, can our elected officials be held responsible for decisions taken in their absence by the executive? Further, it is incumbent on the nature of the British system to ally the written law with customs, a fact that Harper seems to have forgotten in modifying the value of the former while

denying the importance of the latter.

These actions may go against the spirit of conservatism, but they are completely coherent when considered with the other "revolutionary" actions of the Harper government. Harper's government has not hesitated, between 2006 and the present, to slowly yet permanently alter the manner in which Canadian institutions have been framed and legitimated. In addition to its pragmatic curtailment of institutional autonomy, the Prime Minister's Office has also gradually eroded the symbolic authority of our democracy.

In late January 2010, important meetings took place in about 60 cities across Canada. Large protest marches were organized in order to oppose Harper's prorogation and to show that his government's actions had no support among the citizenry. A number of organizations, including Canadians Against Proroguing Parliament, mobilized in order to alert fellow citizens and, most importantly, to counter political apathy, the main weapon of an authoritarian government. Numerous organizations, such as Amnesty International Canada, the Canadian Labour Congress, the Canadian Federation of Students, Équiterre, Independent Jewish Voices, the Climate Action Network, and Kairos, united under the aegis of the Voice Coalition to sign a public declaration challenging the Harper government's sabotage of democratic institutions. All of these actions show the remarkable force of civil society, but there is still a lot of work to do.

THE FRAGILE POWER OF THE PEOPLE

These actions clearly reveal people's discontent, which, when followed by resignation, suggests that a population evinces a self-protective reflex or a temporary passivity, especially when it has been unscrupulously manipulated for long periods. How to address this?

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It seems to me that the problem lies in the paucity of institutional, non-governmental mechanisms that are able to provide a sounding board for public protest. Canada lacks a culture of public spaces, in the sense that Habermas and others use the term. We have no process whereby the exercise of reason allows members of civil society to have a certain amount of control over public affairs by holding those in power to account. These big ideas, often relegated to the rather “mad dreams” of philosophers, are essential to thinking through the democracy deficit that we are currently facing.

Even though a large segment of civil society contested prorogation, a few people—notably, the historian Michael Bliss—have pointed out that it will likely have a minor effect. The bills put on hold will be restudied one day or another, and the Special Committee on Afghanistan will inevitably continue its work. In other words, it is “much ado about nothing.” The problem with this type of argument, however, is that it does not take into account two very important facts.

First, regardless of the government’s motivations, Canadians pay a price when important bills that address real social issues are delayed in passing. Ultimately, the balance rests on whether this delay was worthwhile, something we should be dubious of given the weak arguments offered by the government for suspending parliamentary activities. Second, the recourse to prorogation as a political tool shows that the government has no problem running public affairs as if they were above the reach of Parliament and, thus, above the representatives elected by the people. We could argue at length regarding the merits and disadvantages of a parliamentary democracy, but given that we live in this type of system, the government cannot simply choose to modify its logical functioning based on what benefits it from one moment to the next.

BULLYING AND THE AUTOCRATIC LEADER

The history of political ideas teaches us that tyranny is defined as a government that looks after its own interests to the

detriment of its subjects. Aristotle himself showed how tyrants, with their disdain for the public good, were condemned to fear reprisals from those whom they repressed. They could not hope to remain in power for long periods. It is obvious that we cannot compare the actions of the Harper government to those of the dictators that have marked the history of the 20th century and the beginning of the 21st century. However, authoritarian leaders and those who act with disdain for the institutions of government all have in common the tendency to forget that which could one day lead to their downfall.

Steven Harper’s careless oversight with respect to prorogation is that it jeopardizes that which it was supposed to protect, at least if it continues to be used for partisan ends, as it was in 2008 and 2009, rather than for legitimate or, even technical reasons. In effect, prorogation works to dissolve the confidence and trust between the people and their government by allowing the government to function without those who were elected precisely to govern.

In this way, Harper denied his government its principal source of authority. Following this action, he can no longer count on his influence and will have to rely on bullying. That is why it has become necessary for him to thrust aside the institutional constraints on the power of the executive. This is a vicious circle—recourse to bullying weakens institutions, which then forces the government to put forward excuses as to why it is obliged to work without the government and thereby to work increasingly outside the parameters of governmental legitimacy. Harper’s Conservatives appear comfortable with this logic

of bullying, and they hardly hide the fact that they believe that they alone are able to govern well.

WHY SHOULD WE CARE WHAT THEY DO?

Well before the 2006 election, in a talk before the Civitas group (a right-wing think tank) in 2003, Harper clearly announced his true objectives. This text, which too few have read, offers a glimpse into the most coherent version of Harper and his acolytes’ ideas. We might see this as a purely circumstantial text that attempts to reorganize the political map in order to pave the way for a new Conservative party. For my part, I remain convinced that Harper believed what he said in 2003, and that he continues to believe it.

In the Civitas talk, Harper asserted that the real challenge facing the right is not, ultimately, the economy—given the fact that none of the parties really considers itself socialist (by which he seems to mean both socialism in the Soviet sense and in the larger sense of policies associated with the welfare state). The challenge is the discourse of the left, which undermines the essential moral priorities of society on the pretext of neutrality or even tolerance, and which leads to a pernicious value relativism. For example, on Harper’s account, the opposition evinced by the left to the invasion of Iraq decisively contradicts their rejection of Saddam Hussein’s tyranny. If this is not relativism, it is clearly, for the prime minister, a values impasse.

This text demonstrates what is at stake with prorogation and why it is important to fight against this type of policy. What Harper challenges are the

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of the chair that accepting an unconditional authority of the executive to censor the information provided to Parliament,” declared Speaker Milliken, “would in fact jeopardize the very separation of powers that is purported to lie at the heart of our parliamentary system and the independence of its constituent parts.” Though he did not elaborate on this point, presumably the Speaker meant to say that if he were to swallow the minister’s argument whole, it would

undermine the ability of the legislative branch to perform its checking function of the executive branch or, in terms more familiar to Westminster-style parliaments, hold the government to account.

SEPARATION OF POWERS DOCTRINE—US-STYLE POLITICS

The concern here is that, by accepting the separation of powers as foundational to Canadian constitutional law, we are drifting further in the direction of US-

style constitutional politics. This is a model of divided government where a powerful executive can legitimately resist legislative initiative, where an elected upper house checks an equally legitimate lower house, and the governing party changes place with the opposition party only after a national election. All of these are innovations that Canadians perhaps should be talking about, but that this government prefers to do mostly by stealth. 


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conditions that make social pluralism possible: conditions that are necessary for our liberal democracies (see *Rogue in Power* for a full analysis of this important text).

It is crucial that we immunize our institutions against these types of excesses. Citizens must be regarded as participants on an equal footing in all decisions concerning the public sphere. This means that neither the elected representatives nor the government should use political mechanisms such

What Harper challenges are the conditions that make social pluralism possible: conditions that are necessary for our liberal democracies.

as prorogation, which is authorized by the law, to prevent public debate. Through effective use of the media and through political education and civic culture, civil society must assert its cap-

acity to transmit and amplify its efforts to protect the ideals associated with the common good. However, no civil society can do such work if the government stands opposed to it. 

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