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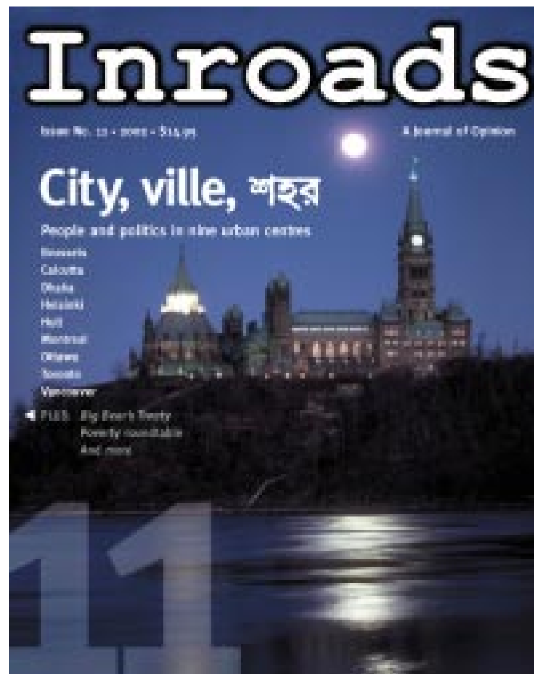

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JOURNAL Inroads 11

Reg Whitaker

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The flight from politics

Why neither Left nor Right play the game any more

WHITAKER ARGUES THAT CONTEMPORARY Canadian public life is characterized, on both Left and Right, by a "flight from politics" into rights talk. The origins of this flight lie in Canada's legitimacy crisis since the 1960s, a crisis marked by the strength of the Quebec sovereignist movement and by the expectations by groups lobbying for more public spending.

Unable to command electoral victories, the Left has substituted rights talk. The Right, not content to have won many electoral victories over the last two decades, has sought to constrain government discretion by ambitious international trade agreements.

The result is a serious democratic deficit. Whitaker finds modest signs for optimism, however. Canadians are dissatisfied by the one-party nature of federal politics and are actively discussing means to breathe life into Parliament.

SINCE THE CHARTER OF RIGHTS AND FREEDOMS CAME INTO EFFECT IN 1982, there has been both praise and criticism of its effects on Canadian democracy. Enthusiasts claim the Charter has been inclusionary, helping make room for previously excluded or marginalized citizens, thus widening and deepening democratic participation. Critics have blasted the Charter and the "rights talk" that has come in its wake as inherently undemocratic. Puzzlingly, this criticism has come from critics on opposite sides of the ideological divide. Marxist legal scholar Michael Mandel has excoriated the "legalization of politics." Yet from the Right, Ted Morton and Rainer Knopff are equally hostile. They see the Charter facilitating the evasion of democratic political negotiation. It is worth quoting their words at length:

> *Our primary objection to the Charter is that it is deeply and fundamentally undemocratic … in the more serious sense of eroding the habits and temperament of representative democracy. The growth of court room rights talk undermines perhaps the most fundamental prerequisite of decent liberal democratic politics: the willingness to engage those with whom one disagrees in the ongoing attempt to combine diverse interests into temporarily viable governing majorities. Liberal democracy works only when majorities rather than minorities rule, and when it is obvious to all that ruling majorities are themselves coalitions of minorities in a pluralistic society. Partisan opponents, in short, must nevertheless be seen as fellow citizens who might be future allies. Representative institutions facilitate this fundamental democratic disposition; judicial power undermines it.*

Peter Russell, writing from a more centrist position, issued an early warning of the effects of transferring policy-making from the legislative to the judicial branch. This would, he argued, represent "a further flight from politics, a deepening disillusionment

with the procedures of representative government and government by discussion as means of resolving fundamental questions of political justice." I take Russell's words as my text, noting that he referred to a "*further* flight from politics" and a "*deepening* disillusionment with the procedures." The flight from politics is a deeper, wider, and more worrying phenomenon than scholars squabbling over the Charter of Rights have usually allowed.

Morton and Knopff see the emergence of a Court Party, a leftist amalgam of centralizers, "equality seekers," "social engineers," civil libertarians, and "post-materialists," all intent on winning enforceable victories in court that they have failed to win through the electoral and legislative processes. This party is, they assert, fundamentally authoritarian, since it has failed to win consent in the democratic marketplace. This is a partial view. There is a flight from politics, but it is more widespread than Charter litigation alone. Nor is it simply a left-wing phenomenon. The Right, too, has attempted to flee the political arena rather than fight democratically, and to impose its preferred policy solutions upon the country by fiat. This has largely taken the form of locking Canada into global economic regulatory regimes, international commercial agreements, and binding dispute resolution mechanisms which impose neo-liberal agendas and constrain governments, both federal and provincial, from using a variety of collective policy instruments. This too is a "legalization of politics" and generates many of the same anti-democratic effects, although for different purposes.

The specific origins of this general flight from politics can be situated in the late 1960s and early 1970s. It was in this period that emergent trends in Canada coincided and reinforced one another. The challenge to federalism of Quebec nationalism moved into a new phase with the sovereignty movement. At the same time, a long-term decline in deference to hierarchy and authority had begun in the rest of Canada, undermining the existing mechanisms of elite accommodation that had served to hold the country together in the past, and exacerbating the task of meeting the sovereignist challenge. This was the specific Canadian variant of a legitimacy crisis, but there was another crisis, more widely based, in this period. Conservative thinkers and business-oriented think tanks (such as the Trilateral Commission) began developing an "ungovernability" argument, that democratic governments were being swamped by "demand overload," as previously quiescent sections of the democratic citizenry began raising their voices and the stakes of redistribution. Retroactively, conservatives waging the cultural wars of the 1980s and 1990s looked back at the 1960s and 1970s as the era when consensus broke down, anarchy broke out, and the delicate fabric of social and cultural order was seriously rent. Left-wing observers have been more sanguine, even romantic, about the last era when social justice seemed a leading priority, and new possibilities were opening up after the stifling conformity of the 1950s had begun to dissipate. Dispassionately, we can say, whatever spin one puts on it, that this period was one in which the political ante was being dramatically upped, at the same time as the rules of the game were being challenged. This was an explosive combination. We are still feeling the fallout.

The Left's challenge: Embedding social rights

Morton and Knopff's picture of the Court Party is a bit of a caricature, but they do have one good point. The Left in Canada never made the transition from the margin to the mainstream through building a mass socialist or social democratic party capable of seriously contesting national political office. The New Right did do this, with the rapid emergence of the Reform/Canadian Alliance, a party that not only showed remarkable growth capacity, starting from scratch, but also appropriated "democracy" from the Left in the process. While the Alliance now seems stalled outside the corridors of power, its past performance in helping transform the dominant political discourse in Canada should not be discounted. The Left did change the discourse as well, but failed to follow up with the kind of political work that has made Reform/Alliance so influential in policy terms. Having placed culture, identity, gender, ethnicity, race, and sexuality on the agenda, the Left was largely diverted from political action in the traditional, parliamentary, sense, and instead focused on consciousness raising, protest, rights recognition, and the pursuit of litigation rather than legislation. The ironic result has been that the new identity politics has generated a reaction in the form of right-wing populism that has been relatively more successful in the electoral arena, and has impeded, although not defeated, the Left's attempt at winning cultural hegemony for its ideas. However, the New Right has been more or less a sideshow in relation to the larger response of the neo-liberal Right, described later.

Left-wing observers have been sanguine, even romantic, about the last era when social justice seemed a leading priority, and new possibilities were opening up.

There is a huge literature on Charter litigation. I am more interested in the wider political implications and effects of the rise of rights talk as a dominant left-wing discourse. At any rate, rights talk preceded the Charter. One could even argue that the Charter was the result of the rise of rights talks, rather than the reverse.

Situating the Charter in its political and historical context, it is evident that its appearance on the agenda was as a political tool enabling the Trudeau government to partially divert attention away from a different kind of rights talk that had begun to dominate constitutional discourse in Canada: the right to national self-determination of Quebec and its potential for either breaking up federalism or forcing its radical decentralization. When eight premiers opposed Trudeau's patriation plan in 1981, the proposed addition of the Charter to the package focused popular support. A wide variety of groups testified about what ought to be in a Charter, subtly shifting attention away from what had been the primary question – certainly for Quebec – of the legitimacy of unilateral patriation itself. But the widening of the constitutional field

beyond the traditional question of the collective rights and jurisdictions of governments to encompass the rights of individual citizens and groups in civil society could not have been as successful a political tactic, had not the ground already been prepared by a prior and fundamental shift in the society.

It is not difficult to understand the motives that led the Left of the post-1960s toward emphasis on rights over parliamentary politics. The old social democratic Left had opted primarily for the parliamentary route, embodied in the organic relationship between the trade unions and the NDP. Its successors were generally marked by a pervasive sense of exclusion or at least marginalization from political institutions. In reality, trade union affiliation with a political party stalled indefinitely in third party status in national politics was a sign not of the influence of the union movement but of its ineffectuality.

The new groups seeking to place their concerns on the political agenda could not fail to note that business, by playing both of the two mainstream brokerage parties, and by bringing influence to bear directly on the policy process via pressure groups and business associations, had incomparably more success than labour. Feminists, Aboriginals, environmentalists, racial minorities, gays and lesbians did not abandon the party political field altogether. There was, however, a tendency to concentrate on mobilizing pressure to bear on the institutions of policy-making, often directly on the bureaucracy, or indirectly on the parliamentary parties through organizing demonstrations of their supporters. This had the advantage that purity of ideals and fidelity to group interest could be maintained more easily. Activists who opted for party politics were condemned as sellouts by their former comrades.

There was another reason to bypass political parties, although in retrospect this appears as a warning sign of problems for the Left. Parties, even self-styled "democratic" parties like the NDP are inevitably, in pluralist societies, brokerage institutions, despite their ideological tag and their trade union affiliation. Getting minority group policy concerns onto the party platform usually involves the kind of policy brokering, the trade-offs and compromises, that previously marginalized groups have identified as structural barriers to their recognition. Faced with the gritty reality of making deals and playing old-fashioned coalition politics even in pursuit of movement ideals, many shrank back in revulsion. This only pointed toward a deeper problem, one that many on the Left remain reluctant to acknowledge. There is no natural alliance of the excluded and marginalized. There are conflicts between groups and within groups. Party activity highlights and exacerbates these tensions. Operating as new social movements along identity lines avoids (or evades) some of the tensions and costs of coalition building.

As the political history of the past decade shows only too clearly, however, extra-parliamentary activity imposes a different set of costs. Groups operating from relatively narrowly defined bases can be perceived as "special interests" opposed to the public good. However infuriating this designation may be to movement people, and however much the application of the special interest category has been decried and denounced by writers in, or sympathetic to, the movements, this interpretation has in a sense defined the terms of political discourse on behalf of the new Right. Reform/Alliance formulates a concept of the general will of the people that is directly opposed to the selfish, albeit fragmented, minority wills of the special interests. Moreover, the Right has largely succeeded in popularizing its own partial view. When neo-liberal governments intent on imposing their agendas face weak, fragmented opposition in parliaments, opposition spills into the streets and labour disruptions, as in Ontario during the initial wave of the Common Sense Revolution from 1995 to 1999, or in British Columbia in 2002 under the Liberal government of Gordon Campbell. The "special interest" focus of the street opposition tends to be utilized by the government in its own defence, emphasizing successfully that it alone speaks for the general or public good.

As for the tactic of acting directly on the bureaucracy, liberal bureaucrats quickly learned how to absorb and co-opt some of the energies of the social movements with special targeted programs and largely symbolic representational gains. Feminists were put in charge of programs targeting women's groups. Multicultural programs were, and are, a relatively cheap way of paying off party supporters in the ethnic communities with taxpayer dollars and minor positions on boards and panels, etc. Pay and employment equity programs are representational ghettoes for minority spokespersons. Representation becomes something of an end in itself, partially displacing more substantive policy goals, and is more easily satisfied by government, at a lower price tag.

In this context, it is not surprising that the Left has laid heavy focus on rights. For previously marginalized groups seeking favourable policy outcomes, but suspicious of using the route of party politics, rights are a kind of currency to be deployed for strategic advantage. Capital may hold the big properties on the Monopoly board, but rights are also properties on the same board. To see how these properties can be played successfully, there is the instructive example of the pay equity settlement in the federal public service.

A long-standing dispute dating back to 1983 concerning the dollar value to be placed on pay equity in the federal public service was sent to a special tribunal on appeal by the Public Service Alliance of Canada (which had just signed a collective agreement that included a negotiated settlement for the employees affected). The tribunal, using a highly technical, if not arcane, formula, ruled that some 200,000 federal employees, mainly but not entirely female, should receive retroactive compensation that might amount to between $4 and $5 billion. The PSAC, as well as feminist and equity advocacy groups, insisted that this award was the employees' right. The government did not dispute the right, but did dispute the dollar value put upon it. The only recourse was to appeal to the courts (which, it should be noted, are as insulated from political accountability as human rights tribunals). In 1999, the government lost in the Federal Court, and then capitulated totally. The point is not who was right or wrong, rather it is that instead of settling for a compromise amount negotiated in the process of collective bargaining, the PSAC elected for rights litigation on the gamble that if they won, they would win it all. And so they did.

Could a decision to allocate over $4 billion to these particular 200,000 people be justified as rational public policy? The question does not even arise in this case, because it was fought as rights litigation in the venue of politically unaccountable tribunals and courts where public policy rationales take a back seat to rights. Yet the outcome was sufficiently expensive to the federal government to have real effects on other potential beneficiaries of government expenditures. It also proved later to be divisive for rank-and-file PSAC members, some of whom have questioned the disproportionate gain for one group among the membership.

Following the government's capitulation, an op-ed piece appeared in the *Globe & Mail*, contributed by a feminist, singularly graceless in victory. The writer was apparently incensed that views critical of pay equity in this case had been widely expressed by parliamentarians, newspaper columnists, and others. This apparent hostility to democratic debate could perhaps only be understood in the optic of rights. If pay equity is a right, even the particular dollar value placed on it by the administrative and adjudicative machinery set up to interpret this right partakes of the same sacrosanct and unquestionable aura as fundamental human rights. The deliberative process, in this optic, is reconfigured as a field on which these fundamental rights are thrown into question and threatened. Rights become a refuge or protective haven for those fleeing the insecurities of politics.

Nowhere has rights talk been more pronounced than in Aboriginal demands. To be sure, Aboriginal peoples were clearly the most marginalized and excluded among all the groups vying to influence the policy agenda. Moreover, Aboriginal claims are national in nature and scope, which distinguishes them from those of other rights claimants, save the Québécois. Sovereignists have for extended periods held political office in Quebec, with all the jurisdictional power that implies, which distinguishes their position sharply from the relatively powerless First Nations. First Nations do have a past history of nation-to-nation treaty relations, and an armoury of land claims as a tool for expanding political influence. Because their claims are national, while their bases are so weak and marginalized, it was perhaps inevitable that Aboriginal groups would focus on rights rather than a political process that was stacked severely against them in numbers, and was culturally alien and forbidding terrain for would-be Aboriginal politicians.

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This tendency was reinforced when Aboriginal bands turned mainly to lawyers for advice from outside their own communities. Alan Cairns has eloquently elucidated the impact that legal discourse has had on the political position of Aboriginal communities in relation to non-Aboriginal society. Rights talk fits the Aboriginal situation in so many ways, but at the same time, it generates political barriers. Rights as trumps can be very effective weapons in winning courtroom battles. Yet the adversarial mentality fostered in the courtroom may also polarize political opposition. It certainly does little to build the kind of mutual trust between Aboriginal and non-Aboriginal society that would favour the compromises and trade-offs necessary for livable and durable accommodations. The fact remains that whatever the outcome of rights adjudication, the Aboriginal and non-Aboriginal communities will remain living side by side and sharing the costs and the benefits of the condominium they both inhabit. Unfortunately, the arts of compromise have withered, on both sides, to the point where in 2002, the British Columbia government is carrying out a referendum in which the non-Aboriginal majority will be asked to voice their views on Aboriginal rights. To Aboriginals, such a process is inherently insulting and degrading. Yet it is simply a further step in the progressive shrinkage of the space for compromise and negotiation between the communities, a process to which Aboriginal reliance on rights adjudication has itself contributed. The potential for conflict is particularly heightened where Aboriginals and non-Aboriginals compete for resources, for example fishing on both west and east coasts. Here Aboriginal rights sometimes trump non-Aboriginal rights, within the common framework of a market that does not readily accommodate traditional rights that effectively exclude non-Aboriginal fishermen, and a common framework of government regulatory policy that Aboriginals may claim the right to disregard. The Burnt Church fiasco in New Brunswick illustrates the worst implications of this inherent contradiction.

Rights-driven political discourse on the Left has a number of victories to its credit, enough that activists continue to lean heavily on rights talk. The paradox is that it is precisely these victories that generate ever more concerted opposition from the Right. Morton and Knopff are right that the "Court party," taking this characterization at face value for the moment, is a result of political failure, and rights talk a substitute for confronting the Right in the electoral arena. But in any event, the Right had a more powerful riposte in store than politics alone.

The Right's answer: "Economic constitutionalization"

By the mid-1970s, the "ungovernability" of liberal democracies had fostered the monetarist revolution that swept through Western treasury departments more rapidly and completely than Keynesianism had in the 1940s. The coincidence of high inflation and high unemployment ("stagflation") discredited Keynesian fiscal management, but more importantly, monetarism, or supply-side economics, concealed a thinly veiled *political* response to the political forces that had grown to threaten business ascendancy in the earlier decade. Thatcherism and Reaganism represented the political counterattack to trade unions and social movements, first seizing the Conservative party from the "wets" and the Republican party from the "liberals," then taking command of the national policy agenda to strike at their opponents. They were not, however, content simply to win the immediate battles, and then settle in for the inevitable swing of the pendulum back in the other direction.

Instead, faced with a new sense of "entitlement," a rights consciousness on the part of those groups previously marginalized, and stiff resistance to rollbacks and downsizing of the welfare state and the power of unions, they sought ways of placing their neo-liberal agenda beyond the reach of politics and politicians. The Right had come to believe that democracy itself could be a threat to capitalism if social rights and entitlements were permitted to become a permanent part of the structure of democratic decision-making. It was, however, now considered equally futile to combat this threat by the ordinary politics of compromise and negotiation (the post-Keynesian consensus politics of the 1950s as practised by the Churchill-Macmillan Tories and the Eisenhower Republicans), or to contest it on the Left's own terrain, that of the embedding of social rights.

Globalization is an important part of the Right's riposte, which is why in the early 21st century, "anti-corporate" and "anti-globalization" movements are more or less synonymous. As is well understood on all sides, economic globalization takes policy tools out of the hands of democratically accountable governments and places them beyond the reach of political parties, activists, and the associations of civil society to lobby or influence. Even if the "wrong" people get in charge of national states, they can do less damage than they could in the past because they have fewer tools with which to do damage. The pressures of international competitiveness are insistent and, from the point of view of the Left, insidious in sapping the capacity of political actors to even imagine credible collective solutions to social inequalities, let alone set in motion redistributionist forces that might undermine competitiveness.

Globalization need not be an abstract concept. It is embodied in specific international agreements binding on the signatory states. In Canada's case, we might start with the Canada-U.S. Free Trade Agreement, expanded into NAFTA and perhaps next into the proposed Free Trade Agreement of the Americas. When the original bilateral deal was being negotiated in the late 1980s, Ronald Reagan provided a prescient metaphor when he declared that the proposed agreement would form the "economic constitution of North America." Constitutions

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are the fundamental laws, the ground rules, structuring the roles of the governors and the governed, majorities and minorities, and the relations between individuals and groups. Neither party to the first agreement wanted anything to do with political superstructures, *à la* Europe. But they were quick to see the advantages of an "economic constitution" in structuring the roles of the public and private sectors and setting enforceable limits on public policy that would constrain future governments from acting irresponsibly and threatening free markets.

A further irony of the FTA lies in how this "constitution" was imposed upon Canada. The Mulroney Tories had breathed not a word about free trade in their victorious election of 1984, and had no intention of submitting the agreement to the citizenry for approval. It was the unelected Senate, which happened to be still dominated by Liberal appointees, that forced a national election prior to approval of the pact. The ensuing contest was dominated, as no other election campaign in Canada's history, by this single issue. The contest took on all the aspects of a national referendum on the FTA and on the direction of Canada's future. If it had been a formal referendum, the FTA would have lost, as parties opposed to the agreement took majorities in all provinces save Quebec and Alberta. But it was not a referendum, it was an election run on the usual first-past-the-post rules with two parties dividing the anti-free trade sentiment and one party, the governing party, supporting it. The electoral result was another Tory "majority," and a free trade future was undertaken on behalf of a minority of the voting citizenry.

Once in place, crucial clauses in these trade agreements closed certain doors forever to policy-makers in Canada. Most notable are the continental energy resource rules that clearly make another National Energy Program, like that of the Trudeau Liberals in the early 1980s, not merely politically impractical, but illegal ("unconstitutional", in effect). Of course, the Trudeau-era NEP was a policy disaster unlikely to be repeated. But the general point is significant: *any* future energy resource policy that is designed to serve primarily the Canadian national interest, as opposed to continental and global markets, is not permissible. In the early 1980s, Alberta fought Ottawa bitterly over the NEP, and the Mulroney Tories pledged to scrap the entire program. Once in office, they were better than their word – with the FTA in their pocket, they insured that no subsequent government could ever mount anything like the NEP again. Thus the ordinary politics of give and take have been trumped by the extraordinary politics of fundamental rule setting, by the constitutionalization of politics.

In the immediate aftermath of the implementation of the FTA, there was another telling example of constraints imposed on Canadian policy-makers. Privatization of state enterprise and the ascendancy of the market over "politics" are high on the neo-liberal agenda. Although existing Crown corporations are protected, any future attempt to use this policy instrument runs afoul of clauses permitting American corporations operating in Canada to sue for compensation for future business lost when government enters the market to provide goods or services. The Ontario NDP had a long-standing promise to nationalize private automobile insurance if elected. The NDP had done just that in Manitoba, Saskatchewan, and British Columbia. (Parenthetically, it might be noted that even free market economists acknowledge that public automobile insurance can reduce costs by rationalizing administrative infrastructure, and consolidating insurance with licensing, government safety checks, etc.) Yet when the NDP won the Ontario election of 1990, they did not press ahead with their promise. Instead, they hired Canada's former free trade negotiator, Simon Reisman, to assess the potential liability to American private insurers under the FTA if Ontario proceeded with nationalization. On Reisman's advice, the NDP dropped the plan altogether. This

has obvious implications in other potential areas for public enterprise. Thus an important element in the social democratic policy agenda has been permanently blocked, and the neo-liberal market-driven alternative has been enshrined in the "constitutional" fabric. Little attention has been paid to this development, since social democrats have pretty much dropped any commitment to public enterprise from their programs. Nor is this policy instrument apparently much on anyone's mind these days. Its absence from the policy agenda is itself a tribute to the success of the neo-liberal strategy of constitutionalizing their program, and rendering alternatives "unconstitutional." Alternatives are thus placed out of sight, out of mind. The triumph of neo-liberal discourse in the media, the compelling logic of competitiveness in the absence of alternative views, are thus powerfully reinforced by the quasi-constitutional effect of binding international agreements well beyond the reach of domestic politics to rectify or even modify.

The same is of course true for the nascent instruments of global governance: the WTO, the World Bank, the IMF, the G-8, and existing and proposed global regimes for countering terrorism, international crime, money laundering, illegal drug traffic, etc., or for regulating licit global finance and enterprise, such as the aborted (but by no means dead) Multilateral Agreement on Investment. All of these have in common the surrender of national sovereignty to multilateral regimes of regulation and control. In most cases, national sovereignty is limited to the formalities of compliance with the agreed-upon international rules. This does not mean that the national state has been marginalized. The coercive capacities of national states to enforce international agreements are crucial elements in the functioning of global governance. There would be no rules at all without national states to enforce them. And of course the state with the heaviest armoury of coercive power at its disposal, the United States, is the world's most influential power. Despite the current efforts of the Bush administration to impose its own unilateralist solutions on a wide range of global problems, it is obvious to all but the White House and Congress that not even the world's only superpower can run the world without the active cooperation of a host of other states. But this also means constraints and limits upon American behaviour. Far more is this the case for smaller, less influential, states like Canada. Increasingly, Canada finds itself exercising its coercive power to enforce rules that are not of its own making, in which its voice has been at best only one input, and which sometimes may even be at variance with specific Canadian interests.

Increasingly, Canada finds itself exercising its coercive power to enforce rules that are not of its own making and which sometimes may even be at variance with specific Canadian interests.

The current coalition to prosecute the war on terrorism offers an instructive lesson in the paradox of the multilateral defence of national security. When Parliament passed C-36, the Anti-Terrorism act, it was instructed that many of the controversial provisions (which drew heavy criticism from many quarters) were simply fulfillments of Canada's obligations to its allies in the coalition and to a series of international agreements on combating terrorism to which Canada was a signatory. Instead of legislating its own rules regarding the governance of cyberspace, now considered a potential battleground for cyber-terrorism, Canada simply adopted the recent (and highly controversial) European Convention on Cyber Crime.

The ironies of giving up sovereignty to save sovereignty are even more acute – one might even say, flagrant – in regard to Canada-U.S. border security issues, when multilateralism gives way to one-to-one relations with a neighbour of vastly disproportionate power. Pressure for harmonization of immigration security rules and practices comes from the U.S., but also from a very influential big business lobby in Canada. The latter obviously is concerned with the costs imposed on business by blockages at the border, which is perfectly understandable. However, if some kind of broader "perimeter security" accord is struck, or – extending the logic further as a number of lobbyists have done – if some deeper customs union arrangement is negotiated making Canada and the U.S. an inner core of NAFTA with free movement of goods, services and labour, as in the European Union, then the business lobby gains a double benefit. Not only will cross-border business flows be facilitated, but in innumerable ways, Canadian governments will be yet further constrained from undertaking policy initiatives or even administering rules of conduct that are at variance with American practices – which will mean, of course, less fear of departures from pro-business, free market approaches.

For Canada, ever closer economic integration with the U.S. is not accompanied by any development of a North American political superstructure.

As globalization proceeds, complaints about the "democratic deficit" have grown. There is no question that the objective effect of international regulation and cooperation in governance is to make authoritative decision-making more and more remote from people, less and less accountable. This is, after all, the point. Europe represents an attempt to construct a political superstructure to govern economic integration, but despite direct election to the European Parliament, cries of "democratic deficit" and frustration at a largely unaccountable "Eurocracy" have been widespread. For Canada, ever closer economic integration with the U.S. is not accompanied by any development of a North American political superstructure. The Americans will not hear of anything that diminishes *their* sovereignty, and in any event, the gross disproportion of size and weight between the two countries means that any political superstructure would bury Canadian voices.

Nor are there any structures for giving voice to "global civil society," to use this somewhat overheated and underexamined phrase. The only sites where democratic accountability mechanisms exist are nation states. Ironically, these are also the sites for the absolutely necessary and irreplaceable enforcement function. This coincidence represents a potential weak point for the security of neo-liberal globalization processes.

The anxiety of capital to move rule-making out of the reach of meddling at the national state level is driven by ideology, of course, but also by the more straightforward concern for predictability. Investment is future-oriented and thus risky; it also leaves investors exposed to changes in the rules that may affect their returns. Thus binding international rules are like entrenched charters of rights for capital. The adjudication of these rights has taken an interesting turn that reinforces the argument I am making. Increasingly, disputes arising from international business activities are being resolved by binding resolution mechanisms. Some of these are institutionalized in agreements like NAFTA and the WTO. Decisions, however distasteful they may be to individual parties and at whatever cost to national practices, have to be accepted. Less widely noticed than these treaty arrangements is the equivalent growth of supra- (or extra-) national dispute resolution mechanisms for conflicts arising among transnational corporations, none of whom are willing to see their disputes submitted to the legal jurisdiction of any particular state. Out there, in the global space of flows, is a burgeoning case law for what amounts to transnational corporate jurisprudence. There is thus a double democratic displacement at work – not only are the "constitutional" rules being drawn up out of the reach of democratically accountable institutions, but the adjudication of this new body of global "rights" is also taking place out of reach of democratic oversight.

There is anti-democratic blowback onto the national states themselves. National electorates grow distrustful of political parties that fail to deliver on their promises, and cynical about political systems that seem powerless to protect them from the effects of globalization. The voting electorate shrinks, as disillusioned citizens turn away from electoral politics, leaving the field to parties targeting, through "narrowcasting" marketing strategies, influential and wealthier groups in the population with a stake in electing governments able and willing to protect them from redistributive policies.

Capitalizing on this curious combination of populism and fiscal conservatism, neoliberal parties attempt to extend the quasi-constitutional entrenchment of the rights of capital into the domestic sphere through populist devices like referenda limiting taxation, and self-constraining laws forbidding governments from incurring deficits. More common in the U.S. than in Canada, there are growing examples here as well. Ontario, for instance, has provided that cabinet ministers in governments that run deficits will have their salaries slashed to help make up the shortfall. Ostensibly designed to protect citizens (i.e., taxpayers) from the depredations of politicians currying favour with "special interests" through redistributive programs, these devices attempt to embed barriers to redistribution in the political process itself, thus reinforcing in the domestic sphere the constitutionalization of corporate rights via globalization.

Another domestic spinoff of globalization is the enhancement of centralized executive power in the federal government. Observers have been pointing out for some time now that globalization has a decentralizing impact on regionally divided states. Would-be breakaway nationalisms, like Quebec in Canada, or Scotland in the UK, have been emboldened and made more credible by the new economic frameworks of NAFTA or Europe that have diminished the salience of the national states in administering regional development. Tom Courchene has argued that Ontario is moving inexorably out of the federalist orbit and into a new status as a North American "region-state." Without quarrelling with the general thrust of these arguments, which are compelling enough and supported by a wealth of empirical evidence, a counter-tendency sparked by globalization has been less often noted. In the absence of effective supranational authority with teeth, national states are the sites for enforcement of global regulation and governance. This places increasing responsibility on national governments as the effective *interlocateurs valables* in dealing with other governments and with the emergent agencies of global governance. Precisely because they deal on a government-to-government basis outside direct day-to-day accountability to national legislatures, press and public, this has the effect of centralizing power in the executive branch, and, more precisely, in heads of government.

Recently, much criticism has been directed at the centralization of power in the office of Prime Minister Jean Chrétien, and the associated one-party dominance of his Liberals. This has been identified as a source of the malaise of democracy in Canada, as in journalist Jeffrey Simpson's categorization of Ottawa as a "friendly dictatorship." The roots of this quasi-monolithic power are many. It is demonstrably the case that Mr. Chrétien's role as Canada's negotiator with the world and the lack of participation in these negotiations by the political opposition in Parliament, feeble oversight by the media of what goes on behind the closed doors of international meetings, and even the exclusion of the provinces until the deals are signed, are strong contributing factors to the concentration of largely unaccountable power in the PMO.

There were clues to this development in Canada's own political history. Executive federalism, with its emphasis on intergovernmental relations and even intergovernmental diplomacy, contributed to executive domination of both federal and provincial branches of government. Premiers became potentates able to wheel and deal largely out of the control or oversight of their legislatures, which in any event were often skewed to overwhelming government majorities and fragmented, ineffectual oppositions. As Meech Lake and Charlottetown demonstrated, there were limits to the tolerance of Canadians for the deals struck behind closed doors by their first ministers. But the concentration of power at the top has continued, and, if anything, strengthened further, as the recent histories of Alberta, Ontario, and British Columbia indicate. In each case, premiers Ralph Klein, Mike Harris, and Gordon Campbell have run quasi-dictatorships that opponents would be reluctant to describe as "friendly."

As the focus of economic decision-making shifts away from Canada and onto the wider global stage, and the crucial importance of the national state as the coercive enforcer of the global rules is emphasized, the power of the prime minister is enhanced vis-à-vis his provincial counterparts. This trend has been thrown into sharp relief in the aftermath of the events of Sept. 11, and the dedication of the Western alliance, including Canada, to a war on terrorism and to security as the leading priority on national policy agendas. At a stroke, the legitimacy of the national government has been dra-

matically enhanced, and that of the provinces diminished. Efforts by premiers to get back on to the agenda – the Tory government in Ontario has detailed part of its provincial police force to track non-citizens and report results to Immigration Canada; the premier of B.C. has bizarrely pleaded for a "Zip-Loc bag around North America" – have been ineffectual, as have the efforts of the premier of Quebec to re-establish momentum for sovereignty post-Sept. 11.

When national security is an anxiety not merely of government elites but of civil society faced with terrorist threats to civilians, the national government becomes a renewed focus of popular support and allegiance. Moreover, coercion becomes legitimation. The role of the federal government as enforcer, manifest in relation to counter-ing terrorism, and in policing the spreading movement to disrupt and protest globalization, doubtless raises its profile, both positive and negative, but it is a profile of the state as soldier, spy, and cop, not as economic or social policy-maker. The abrasive and violent conflicts between state and "civil society" (I use this latter term somewhat ironically, given that the state can count on majority backing in containing these protests) evident at APEC, Quebec City, and soon Kananaskis, are themselves indications of how far things have drifted from the negotiation, compromise, and trade-offs that were the stuff of ordinary politics in the past. Protestors may ask sarcastically "who elected the bankers?" but the uncommitted public can, and does, ask just as sarcastically, "who elected the protestors?"

Just as the extraordinary politics of rights (on both Left and Right) have usurped the old politics of negotiated agreement, so too the apocalyptic politics of "globalization" vs. "anti-globalization" have superseded the intricate and delicate task of reforming and rebalancing a complex system of interests and alliances. Protestors can retain their purity and remain "uncompromised," but the forces sustaining globalization proceed imperturbably, facing opposition that can be policed, rather than negotiated with. And the chief political beneficiary is a quasi-one-party government in Ottawa.

Halting the flight?

There is some reason to believe that the flight from politics may finally be drawing to a close. Incessant rights talk on all sides has resulted in an impasse, and a growing revulsion against a democratic deficit that is multifaceted and innocent of particular ideology. The very domination of national politics by one party, itself an indication of democratic malaise, bears within it the seeds of democratic regeneration. The political success of the Liberals has been defined against the background of the turn in party politics in 1993 toward new programmatic, ideological parties. The BQ and Reform were in a sense both products of the flight from the old brokerage politics of compromise and negotiation, and each arose on the ashes of the Mulroney Tories, the brokerage that failed. Reform has changed its name, twice changed its leader, splintered, and is now seeking to re-establish a sense of direction. The split between the CA and the PCs remains. The BQ's sole ideological *raison d'être*, sovereignty, is going nowhere, and the BQ is drifting with it. The Liberals have succeeded in this landscape not simply because their opponents are fragmented and hopeless, but because the Liberals have seized the potential ground from them. They have done this because they alone have kept alive the brokerage principle and the arts of political prudence and compromise. Unfashionable as these arts have appeared since the 1960s, and however fatal they proved to the Tories, they remain practical requirements for national governance in a pluralist society. In aid of one-party rule, they appear to bolster the democratic deficit. But they also offer the way forward for the return of party competition and a healthier democratic debate. For this to happen, the rhetoric of rights must be ratcheted down, and the constitutionalization of politics rolled back. The self-interest of party politicians may be the best reason to believe that such a development will take place.

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Another hopeful sign of change may be discerned in that old nemesis of ordinary politics, the Quebec question. The Supreme Court Secession Reference and the Clarity Act that followed remain highly controversial in Quebec. But what is striking in the high court's reasoning and in the logic of the federal legislation is their attempt to find a compromise between the recognition of Quebec's right to national self-determination and the recognition of the rights of the rest of Canada. Both parties are enjoined to find common ground for bargaining in good faith. Rights, even the collective rights of nations, cannot be trumps, but the compromises of politics must take these rights into account.

At this point, hopeful signs of realism in the contestation of globalization seem more remote. Yet the widespread and broadly based evidence of discontent with the direction of global governance has opened up some potential space for greater popular input into the process – if protestors will take up the challenge of becoming partial insiders, as well as outsiders. The institutions of global governance do depend crucially upon the participation of national states as enforcers. Since these same governments have to worry about their legitimacy and their standing with their own electorates, there is room for encouraging protestors to bring their concerns to the international bargaining table.

If there is any positive effect of the terrible events of September 11, it has been to refocus attention on the health of the community as a whole, and on the state as an instrument with a positive role to play in protecting and supporting the civil society – not privileged parts of it, but all of it. When everyone begins to realize that the entire enterprise of placing their own interests out of the reach of others, and thus out of the reach of political negotiation, is self-defeating, the sooner we can return to the prosaic terrain of ordinary politics: the compromises, trade-offs, and half-loafs that indicate mutual respect and the recognition of one's own limits. ■

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