

# Is the extent of prime ministerial power a threat to Canadian democracy?

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Figure 1: *Brigette DePape's silent protest during the 2011 Speech from the Throne*

## Introduction

The exceptional power of the prime minister is a central and distinctive feature of Canadian democracy. Not directly elected by the population, the prime minister leads the largest party in parliament: effectively fusing the executive and legislative branches. Compounding this, the Canadian parliamentary system exhibits a high degree of party loyalty. Some factors explaining this include the need for candidates to have their nomination papers approved by their parties, the power of the prime minister to determine the composition of cabinet, and the limited influence of private members in the house.<sup>1</sup> Prime ministerial power also extends into control of appointments and the civil service.

While the power of the prime minister does a great deal to establish the character of *Canadian* democracy, it sometimes clashes with the democratic ideas upon which the country operates. This tension has been especially evident in recent years, in which the power of the civil service to provide non-partisan expert advice has been curtailed and where the sovereignty of parliament itself has been challenged by a government unwilling to accede to its wishes. These episodes have highlighted some of the dangers associated with power being centralized to the degree it has been in Canada. In particular, there is a danger that government will effectively prioritize loyalty over effectiveness, dealing with problems and failures by covering them up. Such behaviour risks producing a cabinet with no strong voices aside from the prime minister, a chastened civil service unable and unwilling to speak truth to power, uninformed and voiceless members of parliament, and a corresponding reduction in policy-making effectiveness.

## The power of the prime minister

Canada's prime minister has considerable institutional means through which to effect his will, including the Prime Minister's Office (PMO), political staffers in his party, and through the non-partisan civil servants working directly for the prime minister in the Privy Council Office (PCO) and indirectly at the other two central agencies and in line departments.<sup>2</sup> White discusses how these institutional structures have changed

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<sup>1</sup>Munroe, "Style within the centre: Pierre Trudeau, the War Measures Act, and the nature of prime ministerial power", p. 534.

<sup>2</sup>See: White, *Cabinets and First Ministers*, p. 66-7.

since the 1960s, largely in ways that favour the prime minister over cabinet. For instance, the Clerk of the Privy Council has transitioned from being cabinet secretary “first and foremost” to being more of a deputy minister for the prime minister; similarly, the role of PCO has changed to provide more direct information to the prime minister. Prime ministerial power is also strengthened by Canada’s first-past-the-post electoral system, which often translates a plurality of votes into a disproportionate share of seats for a party and which marginalizes small parties and independent candidates. The prime minister has extensive powers of appointment: ministers, deputy ministers in the departments of the federal civil service, supreme court justices, the Clerk of the Privy Council, etc. The prime minister has other powers worth noting, such as executive power over the armed forces and security services, dramatically illustrated in Pierre Trudeau’s handling of the Front de libération du Québec (FLQ) crisis.<sup>3</sup>

Because ministers serve at the pleasure of the prime minister, kept in a state of tension by aspirations of promotion and fears of demotion or expulsion, the prime minister is well-placed to dominate the thinking and operation of cabinet, particularly the Priorities and Planning Committee which he chairs and which gives final approval for significant government decisions. The role of ministers as sources of information for the prime minister may be diminishing as a result of changes in technology and the media. Donald Savoie makes the point that with the advent of public opinion polling, the prime minister “no longer need[s] to rely on ministers to know where citizens stand on a given issue”.<sup>4</sup> As Matthew Kerby points out, Canada’s cabinet is also unusually likely to include first-time ministers appointed without previous parliamentary or political experience.<sup>5</sup> Graham White describes how “[m]inisters typically come to office with little or no legislative experience, have relatively short-lived ministerial careers, and change portfolio assignments within cabinet frequently.”<sup>6</sup> White claims that this is more of an issue in Canada than in other Westminster-style democracies like New Zealand and the United Kingdom.<sup>7</sup> Such individuals lack experience and a personal base of support and are therefore almost entirely dependent upon the prime minister for their influence. In this situation, they

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<sup>3</sup>See: Munroe, “Style within the centre: Pierre Trudeau, the War Measures Act, and the nature of prime ministerial power”.

<sup>4</sup>Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, p.233-4.

<sup>5</sup>Kerby, “Combining the Hazards of Ministerial Appointment AND Ministerial Exit in the Canadian Federal Cabinet”, p.599.

<sup>6</sup>White, *Cabinets and First Ministers*, p.32.

<sup>7</sup>Ibid., p40.

can be expected to be easily dominated and unable to provide an independent and forceful voice in cabinet that can serve as a check on prime ministerial power. The desire for representativeness in terms of region, sex, ethnicity, and other demographic factors is one motivation for appointing relatively junior parliamentarians to cabinet positions.<sup>8</sup> Arguably, this convention bolsters Canadian democracy by providing for a diversity of voices in cabinet; at the same time, because such ‘neophyte’ ministers are especially beholden to the prime minister, their presence may bolster prime ministerial power overall.<sup>9</sup> The lack of experience of many ministers may also impoverish the quality of discussion in cabinet committees and contribute to ‘groupthink’ outcomes in which decisions are not appropriately considered from all relevant angles, but only from within the limited perceptions and range of experience of a small subset of cabinet.

Canadian political parties do not have the independence of their American equivalents. There is no party leadership in the House of Commons that can challenge the executive in the way congressional leaders can, including at times when the U.S. president and congressional leadership are both of the same party. This gives the prime minister considerable sway to set the legislative agenda, including through the Speech from the Throne and through his ability to direct the government leaders in the House of Commons and Senate, and through his control over cabinet. Canada’s parliament involves few ‘free votes’ in which members of parliament (MPs) are permitted to vote according to their own judgment or the wishes of their constituents. Spending bills can only be introduced into the house along with a Royal Recommendation, and can thus only be introduced by the government.<sup>10</sup> The power of the opposition and individual MPs is constrained in other ways also, including through the setting of the parliamentary calendar, the procedures that control the introduction of private members’ business, and the degree of control exercised by the government of the day over parliamentary committees. All this further curtails the capabilities of individual MPs and the opposition.

One example of the prime minister’s degree of control over MPs can be found in the response to Toronto

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<sup>8</sup>See: White, *Cabinets and First Ministers*, p. 30, 40-42.

<sup>9</sup>In the British television series *Yes, Minister* — widely regarded as an excellent source of insight into the functioning of Westminster-style democracies — Humphrey Appleby describes the constraints on ministerial selection: “There are only 630 MPs. If one party has just over 300 it forms a government. Of that 300, 100 are too old and too silly, 100 are too young and too callow, which leaves just about 100 MPs to fill 100 governmental posts. There’s no choice at all.” (Series 1, episode 3: “The Economy Drive”)

<sup>10</sup>White, “The ‘Centre’ of the Democratic Deficit? Power and Influence in Canadian Political Executives”, p. 231.

MP Garth Turner’s decision to comment on the David Emerson controversy.<sup>11</sup> After expressing his dismay to the press, Turner was confronted in turn by the senate majority leader, government house leader, the prime minister himself, and the prime minister’s chief of staff.<sup>12</sup> Describing the latter conversation, Turner later commented that “an unelected political staffer... had tried to gag an MP, threatening to throw him out of the party and ordering him to make a false statement”.<sup>13</sup> While this is obviously a single example, it coheres with broader accounts of a prime minister and PMO determined to retain strict control over the party, parliament, and the organs of government generally. Most dramatically, the Conservative government was found to be in contempt of parliament in 2011 for failure to produce documents that had been demanded: the first such occurrence in a Westminster-style government.<sup>14</sup>

Another important dimension of prime ministerial power is the power to recommend a candidate for appointment as governor general (a recommendation which the sovereign is bound by constitutional convention to accept) and to dismiss a governor general if deemed appropriate. These powers are especially important given the role of the governor general in government formation — especially at times of contention, such as when minority governments and possible coalitions are involved. In some ways, the absurdities of Canada’s prime ministerial system are captured in the Speech from the Throne that is issued in each new parliament. Essentially written by the prime minister and PMO, the speech is actually delivered by the prime ministerially appointed governor general. The prime minister then gets the opportunity to ‘respond’ — arguably, a neat demonstration of the way in which Canadian democracy can have the staging of a drama with multiple independent actors, but which is largely directed by a single person.

The powers of the prime minister in general can be distinguished from the use of power by any one person who has occupied the position. H.D. Munroe argues that: “despite centralizing pressures, the exercise of prime ministerial power is significantly shaped by personal style”.<sup>15</sup> It can be said with some credibility that Stephen

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<sup>11</sup> Elected as a Liberal, Emerson crossed the floor to join the Conservative cabinet in 2006.

<sup>12</sup> Martin, *Harperland: The Politics of Control*, p.36.

<sup>13</sup> *Ibid.*, p.36.

<sup>14</sup> See: O’Brien and Bosc, *House of Commons Procedure and Practice, Second Edition*, <http://www.parl.gc.ca/procedure-book-livre/Document.aspx?Language=E&Mode=1&sbdid=ABBC077A-6DD8-4FBE-A29A-3F73554E63AA&sbpid=9686D5B2-9075-4451-8082-1446F8BE3C5E>.

<sup>15</sup> Munroe, “Style within the centre: Pierre Trudeau, the War Measures Act, and the nature of prime ministerial power”, p. 531.

Harper has consolidated power in the prime ministership and PMO to an unusual degree, and arguably shown little respect for the principles and mechanisms of Canadian democracy. Writing before the 2011 election, journalist Lawrence Martin said of Stephen Harper:

“As a strongman prime minister, [Harper] was beyond compare. He made previous alleged dictators like Jean Chretien look like welterweights. It was no small wonder that Canadians feared what he might do with a majority government. With that kind of power he could establish a hegemony the likes of which Canadians could not imagine.”<sup>16</sup>

It will be interesting to see whether the judgment of historians on Harper’s subsequent majority will justify these assertions or make them seem overblown.

## Checks on prime ministerial power

Graham White’s forthcoming paper “The ‘Centre’ of the Democratic Deficit? Power and Influence in Canadian Political Executives” describes some of the institutional limitations that do apply to the power of Canada’s prime minister. Important among these is federalism.<sup>17</sup> Canada’s constitution divides responsibility in many areas between the federal and provincial governments, restricting the degree to which prime ministerial will can be easily translated into nationwide changes in policy.<sup>18</sup> Canada’s provinces have considerable independent capability and authority; in addition to their assigned powers under the constitution and their political and judicial institutions, provinces have a large degree of political legitimacy that arises from their history and from the sense of identity maintained by their citizens. In many areas, the federal government can only implement policy changes with the cooperation, or at least the acquiescence, of provincial premiers and legislatures. This serves as a substantial check on prime ministerial power, and arguably a mechanism through which the prime minister may be held democratically accountable.

There is at least some reason to question the degree to which the prime minister can dominate cabinet.

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<sup>16</sup>Martin, *Harperland: The Politics of Control*.

<sup>17</sup>White, “The ‘Centre’ of the Democratic Deficit? Power and Influence in Canadian Political Executives”, p. 232.

<sup>18</sup>Munroe, “Style within the centre: Pierre Trudeau, the War Measures Act, and the nature of prime ministerial power”, p. 535.

In *Cabinets and First Ministers*, Graham White points out that the prime minister's power is constrained both by the limits of what any one person can do, and that "no prime minister can afford to run roughshod over ministers repeatedly."<sup>19</sup> In considering the question of how to evaluate the 'autocratic' tendencies of a prime minister, White suggests that "the real test" is "in his dealings with tough, able ministers".<sup>20</sup> Arguably, this misplaces the nexus of Canadian democracy. Surely being 'democratic' doesn't consist primarily of adopting a consensual style of decision-making when operating with a hand-picked group of one's subordinates. Ministers are appointed by the prime minister and serve at his pleasure, making them at best a problematic check on prime ministerial power. The ultimate accountability of the prime minister is to parliament and the Canadian people, and the degree to which that duty is being respected cannot be determined by looking at discussions around the cabinet table.

Arguably, the media constitutes another significant check on prime ministerial power. Indeed, the persistently high level of attention and energy devoted by the Harper government to managing the media lends credibility to this claim. While Canadians have few institutional mechanisms for making their objections to current policy choices felt, governments are nonetheless sensitive to the perceptions and opinions of the populace, which are themselves largely shaped by the media. Governments are certainly acutely interested in how the media portrays their performance, with extensive media monitoring teams in many departments charged with effectively summarizing the news for their political masters.

White identifies an important alternative hypothesis, in relation to the claim that the prime minister and PMO now exercise unprecedented power over the media. First, it may be that the cause of changes in relations between media and government is driven more by the emergence of a 24-hour news cycle, pressure on traditional news media, and new access to information laws than by independently motivated plans of the prime minister. White highlights how "[t]he demands of the media are relentless; not only are the media

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<sup>19</sup>White, *Cabinets and First Ministers*, p. 67-8.

<sup>20</sup>White argues that "Autocratic first ministers are those who routinely impose important decisions against the will of cabinet; who repeatedly take significant actions without consulting cabinet, cabinet committees, or the responsible ministers; who intervene (either personally or through staff) in day-to-day departmental operations or decisions; who sanction staff (political or bureaucratic) to issue decrees on important policy matters to ministers or departments; and who respond to criticism or opposition from cabinet colleagues with threats or retribution" *ibid.*, p. 83.

more intrusive and aggressive but they expect immediate responses from political leaders.”<sup>21</sup> This arguably constrains the power of the prime minister, while also making him dependent on a “phalanx” of “spin doctors and media professionals”.<sup>22</sup> The “stringent oversight on departments’ and ministers’ dealings with the media” may largely be reflective of the greater challenge that accompanies a more assertive media.<sup>23</sup> In other words, the unprecedented efforts on the part of recent governments to manage the media may not have kept pace with the changing character of the media itself, and the diminished ability of governments to get their messages out through conventional channels.

The most substantial check on prime ministerial power may be the machinery and authority of Canada’s ostensibly non-partisan civil service. In *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, Donald Savoie describes how senior civil servants “enjoy tenure” and can “batten down the hatches and wait out any passing political storms”.<sup>24</sup> Of course, the check on prime ministerial power provided by the civil service is not especially democratic. If anything, the civil service is meant to be an expert elite that provides analysis and advice in a non-partisan matter. This role, however, is an important and prescribed component in Canadian democracy. Governments are expected to listen to the expert advice of their officials and take it into consideration in their decision-making. They are also bound by the rules and procedures of the civil service in areas ranging from access to information requests to procedures for promotion and dismissal of public servants. These constraints are meant to check some of the more damaging short-term impulses of elected governments, with the objective of producing better policies and outcomes over the long-term and perpetuating institutions with the internal memory and the capacity to direct policy in effective directions.

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<sup>21</sup> White, *Cabinets and First Ministers*, p.72.

<sup>22</sup> *Ibid.*, p.72.

<sup>23</sup> White, “The ‘Centre’ of the Democratic Deficit? Power and Influence in Canadian Political Executives”, p. 239.

<sup>24</sup> Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, p.225.



## Conflicts with parliament and the rule of law

Under Canada's constitution, parliament is the sovereign body.<sup>25</sup> It is largely empowered to make its own rules, capable of compelling testimony, and capable of finding people to be in contempt. For parliament to operate effectively, it must be reasonably well apprised of the activities of government. This is arguably the area in which recent prime ministers have expanded their power most at the expense of Canadian democracy. In interviews given surrounding the end of his mandate, former Parliamentary Budget Officer Kevin Page highlighted the ways in which he was stymied in his role as an independent officer of the Library of Parliament, and how he was subsequently unable to keep parliament properly apprised about the decisions of the government of the day and their fiscal consequences.<sup>26</sup> White also claims that the Harper government issued a "manual for its MPs on how to stonewall troublesome parliamentary committees" — a behaviour that contradicts the supremacy and privileges of parliament.<sup>27</sup>

Another key worrisome dimension of the power of the prime minister and PMO is their dominance over the civil service and willingness to intimidate public servants who might provide the Canadian public with factual information that is inconvenient for the elected government. Obsessive media management, largely operationalized through increasing obligations to run all information releases by the PMO, has hampered the activities of government departments accustomed to providing factual information directly to Canadians.<sup>28</sup> These restrictions and interventions are definitely a cause of disquiet within the civil service. The acclaimed academic journal *Nature* published an editorial in 2012 entitled "Frozen out", describing "a gradual tightening of media protocols for federal scientists and other government workers" under the Harper government and calling for "the Canadian government to set its scientists free".<sup>29</sup> Other areas in which important information has been

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<sup>25</sup>O'Brien and Bosc, *House of Commons Procedure and Practice, Second Edition*, <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=73CC891E-0676-4773-850B-CCDCB472AD8C&sbpid=55CF9BA9-6592-457E-92AE-B90437D47609&Language=E&Mode=1>.

<sup>26</sup>For instance, see the interview at: <http://www.cbc.ca/thecurrent/episode/2013/03/20/budget-watchdog-kevin-page-wont-leave-quietly/>

<sup>27</sup>White, "The 'Centre' of the Democratic Deficit? Power and Influence in Canadian Political Executives", p. 247.

<sup>28</sup>Savoie argues that the "constant barrage of criticism" directed toward the prime minister has encouraged civil servants to be more inclined toward protecting the prime minister, ministers, and government. Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom*, p. 255.

<sup>29</sup>"Frozen out", <http://www.nature.com/nature/journal/v483/n7387/full/483006a.html>.

held back from members of parliament and the Canadian public include the Afghan detainee debacle, the F-35 procurement program, and the total costs associated with reforms to the criminal justice system. The Harper government's vengeful side can also be seen in matters like the handling of the long form census elimination (which prompted a rare resignation by a deputy minister, though not from the responsible minister), and the disestablishment of the National Round Table on Energy and the Environment for daring to repeatedly suggest that a carbon price would be an efficient way for Canada to reach its greenhouse gas pollution reduction targets.<sup>30</sup> Given all this, alongside significant and ongoing cuts in civil service jobs, considerable resentment and hostility has built up between the civil service and the Harper government. Several members of the team I was working with at the Treasury Board Secretariat at the time described to me how the protest of Brigitte DePape during the 2011 Speech from the Throne left them feeling a bit more heartened about the whole matter.

## Conclusions

The basic premise of democracy is that citizens can be counted upon to use information well. American physicist Richard Feynman — commenting on the ideal role for experts in democratic societies — argued that:

I say that's also important in giving certain types of government advice. Supposing a senator asked you for advice about whether drilling a hole should be done in his state; and you decide it would be better in some other state. If you don't publish such a result, it seems to me you're not giving scientific advice. You're being used. If your answer happens to come out in the direction the government or the politicians like, they can use it as an argument in their favor; if it comes out the other way, they don't publish it at all. That's not giving scientific advice.

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<sup>30</sup>This is even more dramatic when one recalls that the Harper government itself was promising to implement a cap-and-trade system (the "Turning the Corner" plan) while it was still a minority.

So I have just one wish for you — the good luck to be somewhere where you are free to maintain the kind of integrity I have described, and where you do not feel forced by a need to maintain your position in the organization, or financial support, or so on, to lose your integrity. May you have that freedom.<sup>31</sup>

At least during the past decade, Canada has not been such a place.

In some ways, all of this is a standard principle-agent problem. Canada's prime minister is granted authority by the population at large for the purpose of advancing the common interest. Once a person is actually at 24 Sussex, however, their personal interests may diverge substantially from those of the population as a whole. At the very least, it becomes advantageous to be able to control to the greatest possible degree the information disseminated to the population, both by the government itself and by its critics. The power of the prime minister in the Canadian system is such that an assertive leader can be a threat to democracy. The recent experience of the functioning of the prime ministership and PMO under Stephen Harper suggests that this threat is not merely hypothetical.

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<sup>31</sup>Feynman, *Surely You're Joking, Mr. Feynman!*

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