

# **Permanent Citizens' Assemblies**

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Larry Patriquin

# Permanent Citizens' Assemblies

A New Model for  
Public Deliberation

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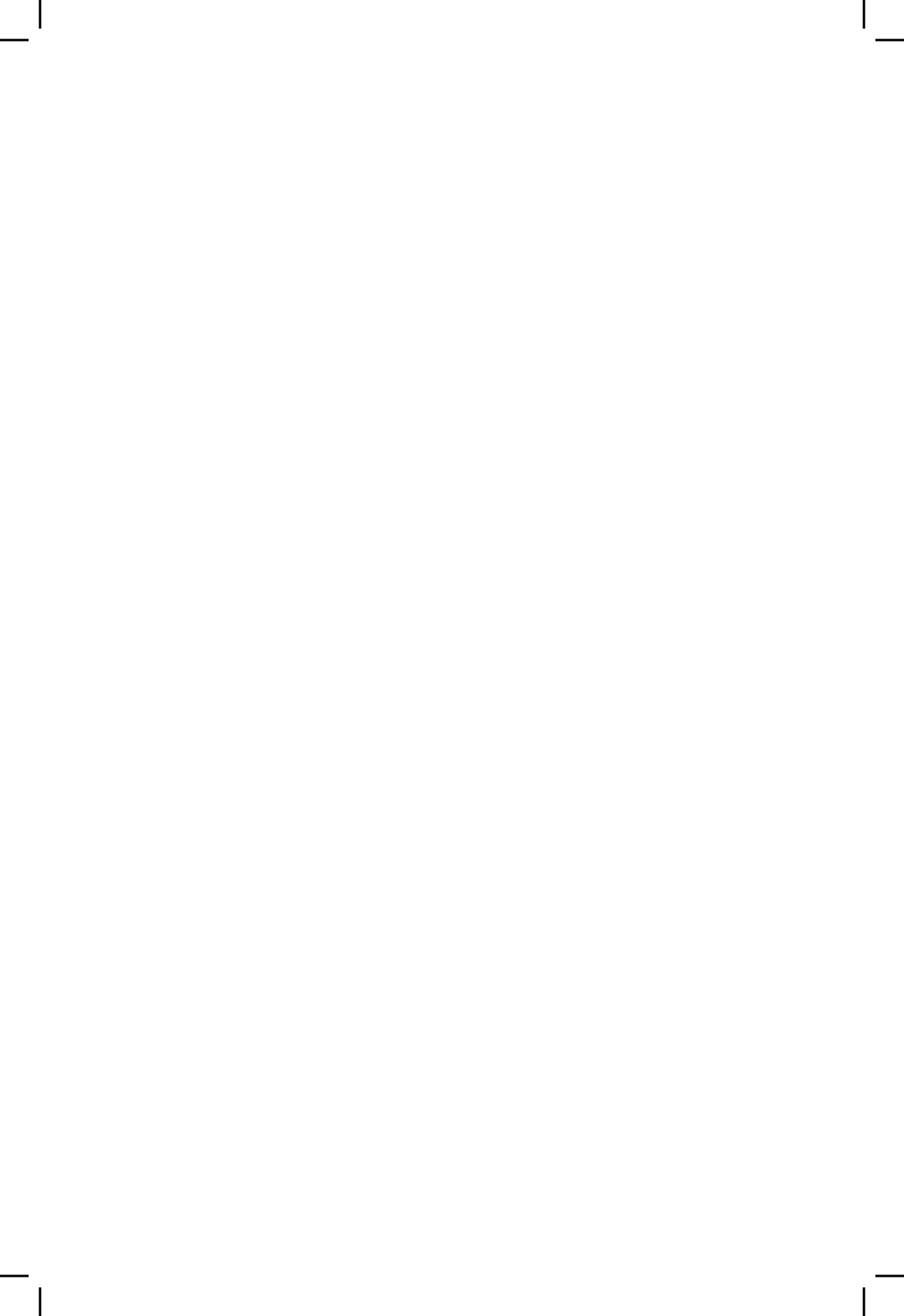
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# Introduction

Despite occasional complaints, most citizens, in “Western” nations at least, seem to be minimally satisfied with their democracies. At the same time, while things could be much worse, they could also be significantly better. In many countries, for growing segments of the population, including those who vote regularly, democracy has become synonymous with broken promises and abandoned commitments. One refrain, commonly heard, is that politicians are “all the same – liars and hypocrites.” Opposition parties trumpet “hope and change” but deliver little once in office and instead invent new “mandates” that have nothing to do with their campaign platforms. Some political marketers now unashamedly maintain that the truth no longer matters, that facts are no longer relevant. A politician, some image-makers claim, can be more successful by manipulating people’s emotions. As a result of such negative perceptions of politics, more voters are becoming apathetic, deciding to opt out. And disproportionately those voters are socially and/or economically marginalized; the government does not seem to show much empathy for their day-to-day concerns. For those who still bother to vote, the system is frustrating, and citizens frequently swing “erratically between Left and Right looking for the elusive promise of democracy” (Swift 2010, 23). The election of Donald Trump as president of the United States in 2016 turned these rumblings of dissent into a roar heard around the world.

The feeling of powerlessness experienced by “the people” in civic affairs is particularly glaring under a so-called majority government, where a single party, one that under “first past the post” electoral systems may have garnered less than 40 per cent of the vote, can rule for four or five years without fear of defeat or recall. Such governments are especially prone to act autocratically, yet citizens have few ways to make their voices heard, aside from waiting patiently until their next opportunity to vote.

Another option is to take to the streets to protest. More than ever, democracy is being “subjected to a groundswell of dissatisfaction from below” (Swift 2010, 22). A recent example of this is Idle No More, a grassroots movement founded in Canada in 2012 that encompasses “a broad conversation calling for recognition of treaty rights, revitalization of indigenous cultures, and an end to legislation imposed without meaningful consultation” (Kinew 2012). Thousands of First Nations, Métis, and Inuit peoples across the country, as well as their allies in the broader community, engaged in rallies and protests, some of which included blocking roads and bridges. The birth of the movement coincided with a hunger strike by Theresa Spence, chief of Attawapiskat First Nation, which lasted forty-three days, a strike that focused the nation’s attention on the issues facing her people, but one that had also been taken in solidarity with Idle No More. Chief Spence ended her hunger strike after Prime Minister Stephen Harper agreed to a meeting with Indigenous leaders.

Given the nature of Idle No More, some wondered aloud whether its actions were democratic, including Patrick Brazeau, a Conservative senator and member of Kitigan Zibi Anishinabeg First Nation. He proposed that Chief Spence should “think twice” about her actions. He suggested that there was no need for a hunger strike, “especially in Canada, living in a democratic society where there’s a lot of processes and procedures in place for all Canadians – of all creed, religion, race, and colour – to have their voices heard,” and that Chief Spence should instead have followed “proper parliamentary processes” (quoted in Smith 2012). Still, for many people, demonstrations like Spence’s – and many others could be highlighted – are a symptom of the fact that governments are not hearing their citizens’ concerns on matters of fundamental importance. And those same citizens have no formal entry point to get their concerns onto the public agenda.

This book focuses on one way to strengthen our political system, to increase its legitimacy, by forcing governments to, in effect, listen to “the people.” It makes a case for the creation of permanent citizens’ assemblies (CAs). These assemblies would consist of groups of ordinary adults, an equal number of men and women, chosen at random from the population, from among those who are willing and able to participate. They would be charged with examining important public issues and recommending ways to address those issues.

Any such assembly would only advise governments; it would not have any legislative powers. If we proceed on this basis, permanent CAs could be established without having to amend any country’s constitution; in most nations, this would be a difficult and perhaps impossible task that after years of extensive wrangling would probably not succeed. Experience has shown that many people will opt for the status quo over what they perceive as a

“radical” change in how politics is conducted if they sense an abrupt reconfiguration of familiar government institutions, institutions that in some cases are centuries old. This book, although rooted somewhat in the Canadian context, proposes a workable democratic reform that is achievable in a relatively short space of time, one that could be implemented, with only slight modifications, in any of the world’s roughly 200 nations.

Chapter 1 begins with a brief summary of the basic structure of direct democracy in ancient Athens as well as a concise survey of the rise of representative democracy. The chapter goes on to note the usual, and often unreliable, ways that governments seek information from the public, while highlighting a few examples of how temporary CAs have operated in practice in Canada, Australia, and Ireland. Chapter 2 draws out in detail how a citizen’s assembly might work: how its members could be selected; how it would set its agenda; the process of group deliberation; and how an elected legislature might handle its recommendations. In addition, it explains why a CA would need to maintain its independence from both politicians and political parties.

While this book focuses on the idea of a national CA, chapter 3 suggests that governments at every level, including state/provincial and municipal, could effectively use CAs, as could all types of quasi-government organizations. Chapter 4 addresses some criticisms that such assemblies are likely to encounter, including the age-old idea that everyday people lack the intelligence to provide sophisticated answers to complicated policy questions. Chapter 5 notes the potential cost of an assembly. It also examines the potential benefits via two brief case studies from Canada – the proposed Quebec “Charter of Values” and the federal government’s current and long-standing attempt to procure military aircraft. It then looks at two “costly” international case studies – the United Kingdom’s “Brexit” referendum on European Union membership in 2016, and the decision by the United States and the UK to go to war with Iraq and Afghanistan, as well as the consequences of those decisions.

Chapter 6 suggests that, even with a CA, the decision-making institutions of states would continue to operate exactly as they do now, including the legislature, the executive (cabinet), the courts, the civil service, the police, and the military. However, I also advance the possibility that, in a series of steps taken over a couple of decades, a CA could, in the Canadian case, replace the Senate as a chamber of “sober second thought.” The Conclusion encourages everyone, regardless of where they place themselves on the ideological spectrum, to demonstrate confidence in their civic neighbours by giving them a meaningful and active role in political life through the construction of permanent CAs.



## *Chapter 1*

# Democracy Ancient and Modern

Democracy was invented in ancient Athens, though it had little in common with the type of democracy most nations practice today. Much of this chapter is taken up with this history, telling the story of how we moved over time from direct democracy to representative democracy. This is followed by a section which notes the difficulties that citizens in representative democracies have in making themselves heard and, conversely, the challenges faced by governments in trying to determine the best ways to listen to “the people.” The chapter concludes by highlighting recent cases of one attempt to solve these problems, through the creation, in a few countries, of a number of temporary citizens’ assemblies (CAs).

### DIRECT DEMOCRACY IN ANCIENT ATHENS

In ancient Greece from about 750 to 500 BC, roughly 1,000 *poleis* (“city-states”) emerged as the dominant form of governance, though for most of them we know almost nothing.<sup>1</sup> We are aware that some of them were oligarchies (“rule by the few”) or were run by tyrants, men who had seized power, usually attempting to create a dynasty whereby that power would be passed on to one of their sons. At various points, many other *poleis* became democracies, though none more famous, and none more well documented, than “Athens” (often used as a shorthand way of referring to the city-state of Attica, which consisted of about 2,500 square kilometres and included Athens, its only city). By 350 BC, the population of Attica was about 300,000. Only 30,000 residents were citizens, however; this low number relative to overall population was because women, slaves, and foreigners (*metics*), with rare exceptions, could not gain citizenship. There had been about 60,000 citizens

in the mid-fifth century BC; the ensuing decline in numbers was a result of wars, plagues, and a law in 451 which restricted citizenship to children of Athenian fathers *and* mothers (so, no longer only fathers).

By the mid-fourth century, the word *polis* (the singular of “poleis”) was being used “in two senses: geographically to mean a ‘city’ and politically to mean a ‘state’,” a form of “self-governing community” (Hansen 1999, 56). Still, “polis” might be more accurately translated as “citizen-state” rather than “city-state” (Cartledge 2016, 15). This is especially the case because (1) only one-fifth of the residents of Attica lived in the urban centre; the rest were settled throughout the countryside, hence this “city-state” (and almost all others) was essentially rural; and (2) Athenian citizens *were* the state; for reasons which will be highlighted later in this chapter, they never experienced a substantial division between “we, the people” and “the government.”

After c.700 BC, Athens was ruled by a council of wealthy nobles, which at some point took the form of nine men appointed for annual terms. In the ensuing centuries, there was great conflict as a result of long-running feuds between some of the noble families and between those nobles and the impoverished masses who worked the land. As a result, in 594, Solon, an aristocrat, was appointed to try to settle these disputes. In the process, peasant-farmers, the *hektemoroi*, had their debts cancelled. They were then allowed to hold their lands rent free, which effectively made them owners of the properties they had been occupying for some time. In addition, political reforms brought many non-nobles into the work of governance. Solon created a Council; one of its main roles seems to have been to set the agenda for an assembly, which was open to all citizens. His most important development was a new court system, in which all citizens could serve as jurors. Justice was henceforth in the hands of everyday men, something unprecedented at this time, and arguably something never replicated anywhere to the present day.

Solon’s reforms seem to have garnered broad acceptance from the major players in the disputes, though conflicts recurred. In 508/507, another aristocrat, Cleisthenes, was appointed to help restore order. He had strong support from the *demos*, the farmers and craftsmen who were the backbone of the economy. A long-term settlement was only going to take hold if these men could be accommodated by granting them substantial powers, so Cleisthenes, in effect, “undercut the hold which the nobles had earlier exercised over the political machinery of the state” (Stockton 1990, 24). He did so by making significant revisions to the three institutions whose creation is generally attributed to Solon. They were:

- (1) The Assembly (*Ekklesia*): All citizens aged twenty and over could sit in the Assembly. By the mid-fourth century, it was meeting forty times a year, about once every nine days, with roughly 6,000 people in

attendance. Its agenda was posted in public four days prior to each meeting. At an assembly, which usually took up an entire morning, there was no “discussion” or “deliberation” as we would understand it. In contrast, members, typically from the wealthier classes, those who had been formally educated simply spoke for or against motions. All members, from the richest to the poorest, listened to the speeches of these *rhetores*, and then voted by show of hands. The responsibility of the men who sat in the Assembly consisted “of actively listening to and judging the merits of complex, competing arguments,” a role in which the ordinary citizen “was forced to think about and choose among the various policy options presented to him” (Ober 1989, 79). Most people assumed that these men had “enough common sense to choose wisely between the proposals on offer” (Hansen 1999, 306).

- (2) The Council of 500 (*Boule*): It generated the agenda for the Assembly and implemented its laws and decrees, so, for instance, it oversaw the construction of public works which were mandated by the Assembly. Its members were chosen, in ten groups of fifty men each, from those who agreed to put their names forward, to represent the various geographic areas which comprised Attica. Most of the men on the Council likely came from the top half of the population, in terms of personal wealth. Each man was appointed to serve a term of one year; he could serve only two such terms in his lifetime, and those could not be served in consecutive years. Given what we know of Athens’ population, the vast majority of citizens would have served on the Council at least once. The Council met daily, with a number of exceptions, such as festival days. A different chairman, who presided over meetings, was chosen by lot each morning, and, once chosen, he could not serve in that role again for the remainder of his annual term. The Council had no decision-making powers. It created motions for discussion, which the Assembly was free to accept without alterations, amend then accept, or reject.
- (3) The Law Courts (*Dikasteria*): Every year, 6,000 men were chosen by lot, from those who had agreed to let their names stand, to serve as “dikasts.” During the year, for each day courts were in session, the requisite number of jury panels was selected, again by lot, from this group of 6,000. Dikasts were generally older, poorer, and perhaps unemployed men who were not active in farming and so had the time required to devote to the tasks at hand, which could occupy 200 days per year. Most cases probably employed 501 jurors, but jury panels could be much larger, if a case were deemed to be important. Courts spent a lot of their time dealing with lawsuits between private individuals and “public” suits, where a citizen could claim that another citizen had, in effect, committed a crime against the polis (or against “the people”). In court, each side spoke for

a set amount of time, and then jurors voted in secret. The time allotted for speakers was relatively brief for private suits, but for public suits (which were basically trials of people such as politicians and generals), the accuser and accused had about three hours each to make their cases.

In addition to these institutions, the Athenian state was run by about 600 administrators (magistrates), who served annual terms, usually as part of boards consisting of ten people. Magistrates handled the minute details involved in implementing the decisions of the Assembly. Most of these men were chosen by lot from those who put their names forward (*ho boulomenos*, a volunteer, “any citizen who wishes”). They were charged with regulating markets, acting as auditors, overseeing the construction of public buildings, and running the religious and cultural festivals. Perhaps 100 or so of these magistrates were elected, in areas deemed to require specific expertise, including most financial officers as well as the ten generals who were in charge of the army and navy.

As noted, members of the Council, the dikasts (jurors), and the vast majority of magistrates were selected by lot. It was basically “luck of the draw” that determined which citizens would serve in each area of government. Athens used the lot because it prevented small groups of people, typically the wealthy, from monopolizing power (and quarrelling incessantly with each other in the process of doing so). The lot, combined with the novelty of having most magistrates, including the generals, work as part of a group with nine other colleagues, suggests that the motto of Athens could have been: “Never grant too much power to an individual.” The lot assumed that the vast majority of men were fair, honest, and just, and that they had roughly equal abilities. It also took for granted that they were capable of carrying out most state functions – such as chairing meetings, putting forth motions, organizing activities, keeping records, and collecting money – though there was an acknowledgement that a few specialized tasks should be carried out by individuals elected by the people.

The democracy at Athens was constantly evolving, creating and revising rules as well as institutions. Indeed, with the reforms of Cleisthenes, there “was a growing political consciousness and sense of power,” which “showed itself most clearly in the Athenian willingness to innovate in the conduct of their public affairs” (Sinclair 1988, 14). In one important instance, Athenians grew to dislike their practice of ostracism, in place for about two-thirds of a century. It entailed exiling men considered to be political troublemakers, men who were engaged in activities which many believed were endangering democracy. So around 415, they effectively replaced ostracism with the *graphe paranomon* (“prosecution for introducing illegal measures”). With this procedure, a charge could be laid by a citizen against any other citizen



who had introduced into the Assembly, or was about to propose, a law (or more accurately, a “decree”) which the accuser maintained was “unconstitutional.” The matter was resolved in court by jurors after listening to the cases put forward by both prosecutor and defendant. As a result, a measure passed in the Assembly could be voided by men sitting as a court (many of whom may have approved the offending measure while sitting in their role as members of the Assembly). The *graphe paranomon* served as a peaceful way of settling disagreements.

Another significant reform occurred after 399. It mandated that if a proposal for a new law was passed by the Assembly, it then had to be sent to a board of *nomothetai* (“law-setters”), a subset of the 6,000 dikasts appointed for the year, for further discussion and approval (or rejection). Speeches were made for and against the proposed law. The creation of new laws, then, was still the job of hundreds of Athenian citizens. What this procedure did was to remove “a lot of tedious and often technical business from the Assembly, whose agendas were crowded enough” (Thorley 2004, 60). In effect, the Assembly entrusted the “final decision to what they saw as simply a large, random, and representative cross-section of themselves” (Stockton 1990, 82). The Assembly still maintained other important functions, including declaring war, making peace treaties, imposing taxes, and constructing public works.

After 451/450, Athenians helped to solidify their democracy by paying citizens a daily rate for their time on the Council and the courts as well as their work as magistrates. After c. 400, a daily payment was also put in place for attendance at the Assembly. These payments, along with regular assignments in the navy (Athens was almost continually at war), served as extensive forms of government employment, especially for the very poor. This public-sector work, in particular its overtly democratic component, did not go down well with some members of society. Indeed, “nothing else in classical Athenian institutions so enraged anti-democratic publicists” (Finley 1983, 34). In the ancient world, whenever oligarchs took power back from democrats, they quickly moved to abolish payments for public service. In doing so, they were able to limit access to state offices to rich men, those who could afford to spend their days autocratically governing the lives of the vast majority.

At Athens, the major reforms implemented from Solon’s time to the mid-fifth century were generally attempts to restrict the power of the well-heeled and spread that power more evenly throughout the citizenry. The upshot was that free men did not have to look up at a state which administered them in a “top-down” fashion. Rather, citizens were in the driver’s seat in a way, and for a length of time (measured in centuries), that has never been matched by any polity in human history, before or since. Through their presence in the Assembly, Council, and courts, Athenians had effective control of the

entire state. This included the creation of new laws, which were grounded in the morals and intellectual capabilities of a sample of everyday citizens. It included as well the interpretation of those laws, whereby in courts, a mass of run-of-the-mill men (typically 501 of them) sat in judgement of all those facing prosecution, including the most affluent members of society.

The elite lacked the institutional ability to reclaim the powers their ancestors had once seized but lost, and so they were unable to prevent or veto decisions made by the majority. These decisions were almost certainly accurate reflections of public opinion, rooted in the Athenian belief that “the collective wisdom of a large group was inherently greater than the wisdom of any of its parts” (Ober 1989, 163). What made Athens unique was that its governance principle was based on *rotation*, not *representation*, the latter enabling one person to speak and vote on behalf of many others. By directly “representing” themselves, Athenians were immersed, on a frequent basis, in the culture and practices of their democracy. The consequence of their political arrangements was that the number of citizens “who were actively involved in public duties and responsibilities was simply staggering” (Stockton 1990, 112). In sum, Athenians looked at their democracy and concluded that

whatever was lost in speed, expertise, and continuity was counterbalanced by the constraints which were erected against the emergence of over-powerful ministries and unrepresentative and irresponsible bureaucracies, by the wide pool of practical experience, local knowledge, and common sense that was drawn on, by the provision of a platform for the free expression of every interest, in short by the absence of that “them-and-us” dichotomy between government and governed which has been so marked a feature of so many other societies. (113)

But not all Athenians would have agreed with this sentiment. The views of the critics of democracy began with an attack on the word “demos” itself, which could refer to the entire citizenry, and is how the poor understood the term. Conversely, “demos” was used in a more pejorative sense, by people like the philosophers, to mean one part of the citizenry, the “lesser” part, the ordinary folk. Many aristocrats looked at these individuals and concluded that they were “common,” yet they had, regrettably, come to control the main institutions of government. *Demokratia* (democracy), a word coined around the 450s, referred to the power that these men of modest means had over their wealthier counterparts. Aristocrats recognized that democracy was an overt attack on economic, social, and political hierarchies, so it is not surprising that anti-democratic theories quickly followed on the heels of the development, in practice, of massive popular participation in governance.

At Athens, a number of writers saw democracy as a tyranny led by the “base,” “vile,” and “irrational,” a despotism concocted by the poor to oppress

the rich. The “vulgar” were a group of people with inbred character flaws who were trying, and failing, to rise above their station. The main drawback of the poor was the fact that they acted on gut instincts rather than reasoned, logical thought. Being ignorant, they were easily swayed, especially by cunning orators.

Socrates, for one, maintained that “statecraft was a highly skilled specialty only capable of being mastered by a small, refined, and educated elite” (Wood and Wood 1978, 84), by men of leisure, all of whom just happened to be members of the aristocracy. In a critique of Athenian democracy, he claimed that “a good decision is based on knowledge and not on numbers” (quoted in Wood and Wood 1978, 98). He said that in the Assembly, if there is a building project, they consult architects; if there is a ship to be constructed, they consult naval designers. But on more important matters having to do with the governance of the polis, the Assembly accepted the judgement of men like blacksmiths and shoemakers – and even men “lower” than these – with each and every one of them “unable to point to anybody as his teacher” (quoted in Wood and Wood 1978, 100).

Plato’s political philosophy was grounded in a similar conviction, that “to earn a livelihood, and especially by means of manual labour, corrupts the soul and disqualifies a man for politics, making it not only justifiable but necessary for him to subject himself to the command of others” (Wood and Wood, 1978, 53–54). In turn, he argued that government should be run by cultured men, the “philosopher-kings,” those who had the money necessary to purchase tutors and the time required to think about public policy. For Plato, virtue cannot be taught; it is inaccessible to most human beings, because they are not of noble birth. This is particularly the case for ordinary labourers and craftsmen, “whose souls a life of drudgery has warped and maimed” (quoted in Wood and Wood 1978, 144).

Finally, Aristotle argued more strongly for the idea of collective wisdom, a type of which, he maintained, was evident in the Assembly, but he also believed that political offices should be reserved for the well born, those who are naturally superior to others, who would make the best rulers. The men who govern should not include those who practice “sordid crafts,” “vulgar arts,” or “servile occupations” (quoted in Wood and Wood 1978, 221). In his view, labourers should play only marginal roles in public life, perhaps something similar to the ones they play in present-day representative democracies, where their activities as citizens generally involve little more than casting an occasional ballot every few years.

The amazing political experiment that was Athenian democracy ended with its defeat by the Macedonians in the Lamian War in 322 BC. An oligarchic system was imposed from the outside, new property qualifications for citizenship were put in place (disenfranchising about two-thirds of the citizenry), and

a tyrant was installed in 318. In the ensuing decades, a number of attempts were made to restore democracy, but by the late 260s, after further military defeats, “Athens permanently entered the ranks of the subject city-states with paltry politics, the victim of superior external force” (Finley 1983, 117).

Athens had “a dynamic political system,” which apart from two brief oligarchic coups in 411–410 and 404–403, “went on for the best part of 200 years” (Hansen 1999, 22). This unparalleled city-state “came as near as any community ever has to achieving the democratic ideal of government by the people themselves, through citizen participation” (Arblaster 1994, 19). It was, at the same time, a polis that, from our modern perspective, suffered at least two serious flaws. First, the population consisted of a number of slaves, typically individuals captured in war (as well as their descendants). Slaves had no political rights, and they could be bought or sold. They worked in their masters’ homes or their fields. Slaves were also wage-labourers, completing tasks side by side with free men, both earning the same incomes. A few slaves were well-off, including bankers, though far more were worked to death, such as many of those who toiled in the wretched silver mines. Second, women also lacked political rights. Similar to almost all societies down to the twentieth century, the men of Athens viewed their female relatives as unfit for public life and so relegated them to the private sphere, where their main role was to beget children.

Slaves and women certainly undertook much of the labour in Athens, though it should not be overlooked that the vast majority of Athens’ citizens had to work for a living as well; the only exception was a rather tiny group of privileged persons. As it turns out, “political activity only occupied a fraction of the time of the individual citizen” (Hansen 1999, 318) and, for the most part, did not interfere with his work life. While slaves and women were prevented from participating in politics, what makes Athens stand out was that the status of *labourer* – even a penniless man who owned no land – was not used as a means of exclusion from citizenship. This was almost certainly unique in the world until the late eighteenth century. Poorer, free men somehow forced their way into politics over the course of a couple of centuries, eventually managing to dominate public policy in a way that has gone unmatched in any society to this day.

The groundbreaking democracy at Athens, which had shattered all paradigms of how people could – and should – be governed, required sustained violence, perpetrated against it by outsiders, before it was abolished. Compared to other regimes, both before and after its time, Athens was an eminently agreeable place to live. It experienced no peasant revolts or urban mobs, both of which were features of non-democratic, highly inegalitarian societies. As long as democrats were in control, it also witnessed no violent acts of repression perpetrated against the masses, engineered by narrow

cliques, led by unaccountable monarchs, nobles, and their willing henchmen. Despite the constant complaints of its philosopher-critics, the exceptional citizen-state of Athens somehow “managed for nearly two hundred years to be the most prosperous, most powerful, most stable, most peaceful internally, and culturally by far the richest state in all the Greek world” (Finley 1985, 23). After its death at Athens, the idea of democracy would not re-emerge as a topic of serious, sustained public debate anywhere in the world for nearly two millennia.

### REPRESENTATIVE DEMOCRACY

In the early modern era, many political theorists were advocating in favour of “mixed” governments, which supposedly contained a proper “balance” in the elements of monarchy, aristocracy, and democracy. In Britain, these were incorporated, respectively, in a king or queen, the House of Lords, and the House of Commons. In these proposals, however, the democratic element was such that the people, in effect, had little power. For instance, in the British case, all members of the House of Commons were well-off and were elected by a small percentage of men. The “democratic” aspect of this type of state had nothing in common with the powers held by ordinary citizens at Athens. Mixed governments were espoused by theorists because they were, at heart, aristocratic. The wealthy understood this too, seeing them as “stable” and “prudent,” even when, as in the case of the Roman republic, slave and plebeian uprisings occurred from time to time and were typically met by ruthless state violence.

It was in England in particular that ideas of mixed government were merged with what came to be known as “liberalism.” Liberal ideas are rooted in the need to monitor and, when necessary, reign in oppressive states. Liberals tended to see government as necessary but also as potentially authoritarian. This is why restrictions had to be placed on state actions. Over time, the importance of having a constitution, written or unwritten, was also stressed. It would entrench a “separation of powers” between the legislature, the executive (“cabinet”), and the courts, in order to help protect against tyranny. Constitutions would place limits on what elected governments could do, while courts would serve as guardians of the rights of the people.

Liberals also advocated for a minimalist state, notably where economic activities and private lives were concerned. They considered it especially essential that the state’s ability to expropriate or regulate private property must not be undertaken haphazardly. Another important aspect of the liberal state was the idea of “rule of law,” that law had to be administered fairly by an impartial judiciary, who treated everyone equally and were at arm’s length

from other state institutions, such as the monarchy. In addition, liberals have defended the practices of free speech and freedom of choice in one's personal life, as long as one did not harm others. Finally, liberals have supported tolerance of religious diversity and rejected as illegitimate the idea of a state-mandated religion (summed up in the phrase "separation of church and state").

While ideas like these were important advances for humanity, hard-fought victories one and all, liberals did not, however, make arguments in favour of democracy until relatively recently, and when they did, they did not understand it in terms of extensive, society-wide, *popular powers*, which was the essence of democracy at Athens. This aspect of liberal theory should be kept in mind. It means, for instance, that the practice of "rule of law" and the presence of courts to place constraints on the use of power are *liberal* ideas. In contrast, having ordinary people exercise power is a *democratic* idea.

New interpretations of "democracy" burst on to the scene in the modern era in the course of the American Revolution, when colonists were determined to break away from the "oppressive" British and build a new nation from scratch. The main question they had to answer was: How shall we govern ourselves? In this process, America's Founding Fathers made it clear that they had no intention of creating a democracy. In fact, they argued strenuously against Athenian democracy as a model to be emulated by themselves or anyone else. James Madison claimed that in assemblies which could be attended by any citizen, "passion never fails to wrest the scepter from reason" (quoted in Roberts 1994, 181). A large group would automatically descend into chaos, he believed, regardless of which individuals composed it, adding: "Had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob" (quoted in Roberts 1994, 181). Not to be outdone, John Adams claimed that at Athens, "from the first to the last moment of her democratical constitution, *levity, gayety, inconstancy, dissipation, intemperance, debauchery*, and a *dissolution of manners*, were the prevailing character of the whole nation" (quoted in Roberts 1994, 183).

In turn, writers like James Madison proposed establishing a *republic*, which he defined as "a Government in which the scheme of representation takes place" (quoted in Dunn 2005, 77). Republics were states without monarchies, but also ones where individuals were supposed to have important roles in governing themselves. Republicanism not only involved getting rid of the monarchy and extending the vote but also marked a change of political culture. It supposedly blossomed best in societies with large numbers of independent, farmer-owner-citizens who no longer wished, as in the American case, to remain child-like subjects of the English king. In this polity, personal success would not depend on birth, on who your parents were (from aristocrats to paupers), but rather on ability, hard work, and obtaining an education.

As a part of the growing conversation on how to move forward, many non-elite individuals throughout what would become the United States made it clear that they too wished to join this new movement for freedom, wanting to play a role in government, particularly through a greatly expanded vote, with some even making the case for a form of economic egalitarianism. Numerous women, Native Americans, African slaves, freed Blacks, and poor Whites demanded that their rights be recognized as well. Most “gentlemen” did not like this idea, saying they found it unpalatable to participate in government with the likes of people, for example, whose only skill was knowing how “to cobble an old shoe” (quoted in G. Wood 2003, 51), never mind individuals who were of a different gender or skin colour.

The Founding Fathers advocated for the creation of “representative democracy,” a term that had one of its first uses in a 1777 letter by Alexander Hamilton. He defined it as a type of government rooted in *elections*, in which “the exercise of the legislative, executive, and judiciary authorities is vested in select persons” (quoted in Dunn 2005, 226n7). This method of governance would constitute *indirect* rule, mediated by men who owned substantial property (including, for many of them, large numbers of African slaves). Representative democracy was seen as superior to direct democracy because it apparently enabled the brightest citizens to govern (in the most exemplary cases, perhaps akin to Plato’s philosopher-kings), and these “select persons” would supposedly do so in the public interest, in the interest of a majority.

Those who owned much wealth wanted to create a government based on “representative principles,” one, as James Madison put it, which would be run by “a small number of citizens elected by the rest” (quoted in Held 2006, 73). But how could they meet this goal? Their practical task, as it turns out, “was to sustain a propertied oligarchy with the electoral support of a popular multitude” (Wood 1994, 77). They accomplished this by maximizing the distance between mass and elite, between people and power. They put federal governance in the hands of a few hundred individuals who were not demographically representative of the population; all of them were white males, and almost all of them were extremely well-off. These men would sit in Congress, and so stand in for millions of what advocates of this system expected would be generally passive citizens (or at least not “active” in the Athenian sense).

A large republic rather than, say, a confederation of states, combined with local, New England–styled town meetings, would make a prototype of Athenian democracy (or even a milder version of it) an impossibility. Elections were the key to subverting rule by the demos and could be used to create a constitution that, while not monarchical, was a far cry from “democracy” as Athenians understood the term. What is noticeable about this momentous event is that it was during the American Revolution that “democracy” was

substantially redefined as “not the exercise of political power but its relinquishment, its transfer to others, its alienation” (Wood 1994, 62). Modern representative democracy, then, was *purposefully* designed to keep ordinary people as far away as possible from power.

The question of what “democracy” meant – and whether it was a good thing or bad – continued into the nineteenth century. For instance, in Britain, as pressure mounted to achieve universal manhood suffrage, arguments were made opposing even this limited right of citizenship. At this time, democracy was defended almost exclusively by socialists and anarchists. By 1867, in the British debate on the Reform Act, even an MP like John Bright, known as a fairly radical liberal, could bluntly declare: “I do not pretend myself to be a democrat” (quoted in Arblaster 1994, 46). Many people, both advocates and critics of mass voting, felt it would consistently produce governments with socialist leanings, since ordinary workers were the overwhelming majority of the population. This did not happen, to the great relief of elites, as large sections of the lower classes supported – and still support – liberal and conservative parties. By the early twentieth century, the fears of the rich had subsided, and so the novel form of limited representative democracy, which had emerged in the previous century or so, could win acceptance from upper classes. They came to realize that changes to voting rules – opening up the franchise to more men and eventually women – did not endanger their ownership of vast amounts of property. By the 1920s, the tide had turned so much that the leading opponents of democracy were vile, terrifying men such as Benito Mussolini, Adolph Hitler, and Joseph Stalin. Things went so far that, in the post-World War II era, virtually any nation that was not Communist could claim the mantle of democracy, at least in the eyes of the American government, even if it harboured an authoritarian bent (e.g. South Vietnam in the 1960s or Pinochet’s Chile).

For the longest time, people who self-identified as “liberals” and “republicans” saw little need for democracy. They fought, tooth and claw, every extension of democratic processes, including the granting of the vote. In the course of these battles, part of the struggle was over what constituted democracy, and when the dust had settled, the reengineered definition that emerged no longer meant “popular participation in government”; instead, “democracy” had become synonymous with *liberalism* (Wood 1994). In sum, what happened during the nineteenth and twentieth centuries is that our understanding of democracy was “revised, adapted, narrowed, and diluted to render it compatible with the persisting belief in the necessity or the virtue of rule by elites, with an equally persistent mistrust of ‘the masses’” (Arblaster 1994, 51–52).

In the first half of the twentieth century, economist Joseph Schumpeter (1883–1950) was perhaps the leading proponent of this type of “democracy.” He said the role of citizens was simply to choose between competing elites,



coalesced in a few political parties, who would serve as their governors. Schumpeter was adamant that the “voters outside of parliament must respect the division of labor between themselves and the politicians they elect” (quoted in Held 2006, 150). Despite his negative view of ordinary people, Schumpeter, like almost all liberal-democratic theorists, believed that these people should have the right to vote, though he never explained why such individuals were smart enough to cast a ballot but too dumb to do much of anything else. Perhaps this was so because if the final “voting domino” had ever fallen, then the problematic nature of his theory would have been well and truly exposed. Schumpeter’s is a self-described *pro*-democratic philosophy, though one that “seems to cede almost everything to opponents of democracy” (Held 2006, 144), including the notion that the electorate is basically emotional, impulsive, uneducated, infantile, and easily manipulated. In this “elitist” theory, the “ideals and methods of democracy become, by default, the ideals and methods of the existing democratic systems” (Held 2006, 166). Proposed changes to these systems are usually portrayed as unrealistic or undesirable (always, of course, in the guise of *defending* democracy).

Today, to “have a democracy means to have no monarch, no dictator, no aristocracy, no junta” (Roberts 1994, 46–47). The definition of a successfully functioning democracy seems to be one that is not subject to virulent, open conflicts involving extensive police presence in the streets and endangerment of lives and properties. Democracy today is basically about avoiding violent, autocratic rule, while protecting the most elementary civil and political rights. The main thing that citizens can accomplish with their votes, then, is to protect themselves from tyranny, by dismissing their rulers. This is an important and valuable power, for sure, though one that should be seen as the beginning – and not the end – of the creation of vibrant and effective democracies.

Having a mostly passive electorate was met with approval by elites and, in the immediate post–World War II era, by most political scientists, especially those who espoused “pluralist” theory. They surmised that a collection of people with not much to say – and few ways to say it – was preferable to an ever-demanding citizenry. Even having more than two political parties (the minimum necessary to claim status as a democracy) was seen as a bad idea, because social cohesion would be threatened. This was so even if it meant suppressing smaller parties through the genius of “first past the post” electoral systems (e.g. those used in Canada, the United States, and much of the UK), making it extremely difficult for them to gain a toehold in legislatures.

Pluralism is perhaps still the most commonly accepted theory of how public policy works. It suggests that “interest groups” or “pressure groups” are at the heart of modern democracy. Government is a referee, settling disputes

between groups, all of whom can have their voices heard. At the same time, no single interest is able to dominate agenda-creation, the processes of speaking for or against proposals, or decision-making. This competition between groups involves much debate and mediation, in which no one interest has excessive influence. The political system is rational, and it is always the best possible solution to any problem or issue, the one with the most evidence in its favour, which gets implemented, even if it has required bargaining between groups and some necessary trade-offs, producing a variety of compromises.

Critics contended that the “pluralists’ analysis of the conditions of political involvement was extraordinarily naïve” (Held 2006, 169). One problem with the theory was its insistence that a lack of political involvement on the part of the mass of people was not to be interpreted as apathy or some form of structural exclusion. Rather, it meant that most people were pleased with the way their government operated and were supportive of the policies it put in place. In the 1960s, the theory was questioned, particularly in its American heartland, which was rocked by uprisings including, among others, the civil rights movement led by African Americans as well as growing opposition to the Vietnam War. In this light, critics cast doubt on the idea that all groups had a roughly equal ability to be heard by the state. As a result, many pluralists revised their theories to acknowledge that some groups were in fact much more powerful than others, recognizing the disproportional public policy victories achieved by organizations that were backed by substantial wealth. Pluralists became more sensitive to inequalities rooted in class, race, and gender. Even in its updated guise, however, pluralism is not particularly insightful at explaining what governments choose *not* to do. For example, not a single state in the world has established long-term full employment, and none provides its citizens with unconditional basic incomes. Interest groups and activists try to influence where governments are going, though many of them with perfectly reasonable and affordable demands have failed decade after decade (see, for example, the struggle, since the 1930s, to establish “Medicare for all” in the United States). Pluralism still does not provide effective answers to the questions: What gets on government agendas? And who is best positioned to get items on those agendas?

In ancient Athens, an advanced, sophisticated direct democracy existed, one where political power was almost exclusively in the hands of the “common man,” one where access to decision-making was constantly available and was never blocked by a barricade of “representatives.” In our current “democratic” system, universal suffrage gives us representatives, men and women who have to be somewhat sensitive to their constituents’ concerns; otherwise, they risk defeat at the polls. Despite this, there is not much accountability in the long periods between elections. In a critique of this state of affairs, typical of England’s representative democracy, French philosopher Jean-Jacques

Rousseau (1712–1778) famously said: “The English people believes itself to be free; it is gravely mistaken; it is free only during the election of Members of Parliament; as soon as the Members are elected, the people is enslaved; it is nothing” (quoted in Held 2006, 46). While perhaps a somewhat harsh assessment, it is the case that with strict party discipline in parliamentary systems, it is possible for legislators to vote, on a regular basis, against the wishes of a majority of their constituents, especially if those legislators won their seats by, say, less than 40 per cent of the vote. Today, the people, as it turns out, “have strikingly little control over what their representatives actually do in their name” (Arblaster 1994, 81). These same people also have, as Rousseau long ago intimated, limited ability to have their voices heard on a routine basis.

### VOICES OF THE PEOPLE

In representative democracies, the processes through which individuals talk to their governments are well known. Aside from voting and public protest, citizens frequently make their voices heard, typically as members of interest groups and through presentations before legislative committees. They can also, if they like, meet with their local representative, as can any of his or her constituents. Both forms of participation, however, tend to be employed disproportionately by a distinct subset of people, those who are well-off and well-educated, who have the financial and intellectual capital required to “work the system.” The ways that governments engage the public usually involve politically active citizens pushing their own agendas. They rarely require that these “pushy” citizens listen to and deliberate with those with whom they are prone to disagree.

In addition to the aforementioned points, governments throughout the democratic world rely on three primary methods to solicit input from their populations; however, all of these information-gathering techniques have serious drawbacks. First, politicians invariably pay close attention to opinion polls. This is not surprising as it is their job to represent the people, so they need to know what the people are thinking, and especially how they might be divided on any given issue. The problem with opinion polls is that most of them produce dubious results, so much so that they should be taken with a grain of salt. This is true even for “scientific” polls that sample a group which represents the population on a number of variables, such as gender, geographic area of residence, and age.

For example, a February 2016 survey by the Angus Reid Institute claimed that 70 per cent of Canadians believed the government was on track with its promise to take in 25,000 Syrian refugees, though those interviewed also

maintained that that should represent an upper limit to the number accepted. Canadians appeared to be saying loudly and clearly: “25,000 is fine, but we definitely don’t want any more!” The poll, therefore, suggested that the government should back away from its larger commitment to allow in 50,000 asylum seekers. The government, the media reported confidently, was in the process of implementing a policy “at odds with what the majority of Canadians want” (Hobson 2016). But was this in fact the case? Would the government have been wise to abandon its policy? And would it have been showing great respect to democracy – and the apparent will of the majority – by doing so? To answer these questions, and to highlight why using a poll to inform government action is inappropriate, let’s consider the original question Angus Reid pollsters asked (note that 15,000 was the number of refugees already in Canada when the poll was conducted):<sup>2</sup>

Some people say the government shouldn’t stop at resettling 25,000 refugees, and should take in more than that. What do you think is the ideal number of Syrian refugees Canada should accept in addition to the ones who have already come/are coming?

- No more – stop now at 15,000
- Stop at 25,000 – that’s enough
- An additional 1,000 to 5,000
- An additional 5,000 to 10,000
- An additional 10,000 to 15,000
- An additional 15,000 to 20,000
- An additional 20,000 to 25,000
- More than 25,000
- No limit

Now let’s picture a typical respondent to this poll. Perhaps she is sitting in a hot tub drinking tequila when out of the blue someone phones to ask how many refugees Canada should accept. Does this respondent decide on the spot that a higher number of refugees would adversely affect the demand for, say, housing, health care, English-language teachers, food banks, and so on? What makes her think Canada could successfully integrate 25,000 newcomers but not, say, 35,000? How, in other words, do interviewees make their determinations in an *instant*? It would be interesting to know how this individual – and how the majority of interviewees – settled on 25,000, as opposed to recommending stopping at 15,000. Conversely, why were so few willing to say “more than 25,000” (i.e. more than 50,000 overall)?

As we will see, ordinary citizens are capable of intelligent commentary on a host of public issues, but only after they have studied the available options in detail. Opinion polls, in contrast, merely record unreflective *guesswork*. Responses truly are *opinion*, a form of commentary that never needs to be

justified with good reasons. In terms of how a society proceeds in determining its commitment to refugees, this poll, like virtually all polls on complex issues, is irrelevant. While only one among countless possible examples, it highlights precisely why we need to rid ourselves, once and for all, of the bad habit of poll-driven public policy.

Second, governments occasionally appoint “blue-ribbon panels” consisting of business or political elites to give advice in areas where the government is planning to initiate reforms. For instance, in 2014, the premier of Ontario appointed a three-person panel to explore the possibility of privatizing select crown corporations. It included Ed Clark, chair of TD Bank, described as “Premier Kathleen Wynne’s privatization czar”; former Conservative cabinet minister Janet Ecker; and former New Democratic Party (NDP) cabinet minister Frances Larkin. The panel recommended that the government offload some small-scale utilities, but it was opposed to anything resembling a fire sale. Mr Clark told the media that we “should not rush to sell assets; rushed sales are not in the public interest” (quoted in Benzie 2014).

These panel members were seemingly chosen to represent the diversity of the province’s main political parties. Yet, regardless of what one might think of the members or their recommendations, the fact remains that this panel consisted of just three people who, statistically speaking, could not possibly represent – or stand in for – Ontario’s fourteen million citizens. Furthermore, why were *these* individuals chosen, and hence given so much influence over a critically important public policy? Many observers might well answer that the premier, like so many politicians before her, handpicked a panel to tell her what she wanted to hear.

Third, and finally, governments sometimes create task forces of experts to examine an issue in order to garner input. For instance, in 2016, the federal Liberal government appointed a group of nine people, including professors and physicians, to review the proposed legalization and regulation of marijuana. The task force came under immediate criticism, however, for the choice of Anne McLellan, a former Liberal MP, as its chair. What irked some observers was the fact that, while serving in the federal cabinet in 2005, McLellan told the media that the government is “not in the business of legalizing marijuana. We are in the business of putting in place a new penalty regime for small amounts of marijuana” (quoted in Emery 2016). In the “comments” section at the end of an article by pro-legalization advocate Marc Emery (2016), one citizen commentator (Dave Stevenson) had this to say about the decision to appoint McLellan and her colleagues:

A committee, composed only of life-long pot opponents, is unlikely to recommend any sort of legalization.

The committee will cherry-pick its witnesses, screening out anyone who doesn't subscribe to their antiquated fear and loathing. When it comes to writing their report, sometime in the indefinite future, they will tell [Prime Minister Justin] Trudeau what he wants to hear: "Canadians don't want legalization; indeed they want MORE people locked up."

Trudeau will then have extricated himself from a mess of his own making. He will be able to stand up and tell Canadians that their voices have been heard, that he will continue the tireless campaign to keep them safe from the scourge of marihuana.

Concerned citizens might have regarded, rightly or wrongly, any recommendations from this task force as the work of a group of "elites." As it turned out, in December 2016, the task force recommended that the sale of marijuana be made legal, and it gave the government advice on how the market for this product should be regulated, yet its recommendations did not end the cannabis controversy.

Within days of the release of the task force's report, Emery and a handful of others were arrested in Montreal for operating illegal marijuana shops. Politicians – federal, provincial, and municipal – were adamant that the current laws would be fully enforced until new legislation was in place. Dana Larsen (2016), the director of Sensible BC Campaign for Marijuana Reform, may have signalled Emery's strategy in early 2016 when he maintained that "it is civil disobedience against the unjust pot prohibition laws that has gotten us to the verge of legalization. We must keep up that momentum as we enter into the final stretch of our cannabis campaign." He added: "Our movement has never been based on patiently waiting for politicians to grant us freedom. Cannabis liberation is about peaceful defiance and standing up against unjust laws, not only with words, but with concrete action." These acts of defiance included the smoking habits of the roughly 20 per cent of Canadians who admit to using marijuana at least once a year.

The sale and consumption of small amounts of marijuana became legal across Canada in October 2018. The country finally expunged a law long seen as illegitimate by millions of people. Still, a CA might have examined this law, perhaps fifteen or twenty years ago, and dealt with the matter once and for all. Instead, nearing the end of the second decade of the twenty-first century, Canada was still wasting roughly half-a-billion dollars each year, enforcing a crackdown on a product that might have been made legal decades ago, if only citizens had had more direct input into the policymaking process.

The typical ways in which governments solicit information highlight just how much we lack institutions that devolve some elements of power to everyday, unelected citizens – institutions that can draw on broad-based knowledge to assist in the development of public policy. This lack has led some observers to search for practical supplements to our current political system with the

goal of addressing one of the major limitations of our democracy. This study suggests that public involvement in policymaking should consist of more than just ad hoc consultation with individuals and groups that leave many citizens suspicious that politicians and bureaucrats have determined an “agenda” in advance, and that key decisions have already been made. While the concerns of the electorate can be channelled upward in a variety of ways (including via opinion polls, individual “czars,” and task forces),<sup>3</sup> I propose that the best way to do so would be through a formal, entrenched source of consultation that incorporates the perspectives of average citizens, which would enable people to clearly express their preferences on a host of public controversies. On any given issue, we have a valuable collective wisdom, but we will be forever unable to accurately discern it unless we construct CAs. Indeed, a number of localities have already experimented with these new institutions.

### **CITIZENS’ ASSEMBLIES**

The first large-scale, government-sponsored CA in the world was created in 2004 by the province of British Columbia (BC) to study the question of electoral reform. It consisted of 160 members from across the province, two from each of BC’s seventy-nine provincial ridings, plus two Indigenous members. The assembly members worked, mostly over weekends, throughout much of the year conducting research, deliberating among themselves, and consulting with other citizens, holding over fifty public hearings and accepting 1,600 written submissions. When they completed this work, they asked themselves whether British Columbia should keep its first-past-the-post (FPTP) electoral system or move to a single-transferable vote (STV) system in which voters rank candidates on a ballot. Only eleven members voted to keep FPTP, while 142 voted for STV. The members of the CA followed up with a second question: Do we recommend the STV system to the people of BC? This time, just seven said “No” and 146 said “Yes.” The CA then issued a report highlighting what it saw as the drawbacks of the status quo, while also explaining why it was recommending a change to the method of voting (BCCAER 2004). In an ensuing referendum on the question held in May 2005, 58 per cent of BC voters approved the CA’s recommendation, but the provincial legislature, which had established a “super majority” threshold of 60 per cent for acceptance, rejected the measure. In a second referendum held in 2009, support for an STV system fell dramatically from 58 to 39 per cent.<sup>4</sup>

In 2007, the government of Ontario followed suit, creating its own CA on electoral reform, which consisted of one person from each of the province’s 103 electoral constituencies. This CA worked over many weekends during an eight-month period. It likewise conducted research, while engaging in

consultation and deliberation. When members had completed their work, they asked themselves if Ontario should keep its FPTP electoral system or move to a mixed-member proportional (MMP) system. Only sixteen voted to keep FPTP, while eighty-six voted for MMP. A second question followed: Do we recommend the new system to the people of Ontario? In this vote, eight said “No” and ninety-four said “Yes.” Like its BC counterpart, this CA issued a report making the case for its recommendation (OCAER 2007). In an October 2007 referendum, 63 per cent of Ontario voters rejected the CA’s proposal. A subsequent poll, however, showed a majority of voters “believed that assembly members had been hand-picked by the government” (Fournier et al. 2011, 134). The public, it seems, was ignorant about the issue of electoral reform, the existence of the assembly, *and* the point of the ensuing referendum. This experience underlines a major drawback of ad hoc assemblies. They do not have enough time – enough history – to generate broad understanding of their role and purpose, hence their recommendations lack the power and influence we might expect of permanent institutions.

There have been a handful of other CAs throughout the world in recent years, some of which originated not from government mandates but rather out of civil society organizations. One of these was the Australian Citizens’ Parliament (ACP), funded by the Australian Research Council and the new-Democracy Foundation. It consisted of 150 geographically representative members aged eighteen to ninety. They met over a period of four days in 2009, tasked with answering the question: “How can Australia’s political system be strengthened to serve us better?” Their goal was “to imagine what a more citizen-friendly, accessible government might look like in the twenty-first century” (ACP 2009, 3). The ACP then developed its own agenda in the course of answering this broad question. The members eventually prioritized thirteen ideas for the government to consider. The ACP experiment inspired numerous municipalities across Australia to make use of citizens’ juries (smaller versions of CAs), including Melbourne, where in 2014 a “People’s Panel” consisting of forty-three individuals developed a ten-year financial plan for the city. In June 2015, the City Council announced that it was accepting almost all of the panel’s recommendations.

The state of South Australia also made use of a large citizens’ jury (consisting of 350 people) to answer the question: “Under what circumstances, if any, could South Australia pursue the opportunity to store and dispose of high level nuclear waste from other countries?” A royal commission had proposed the idea of a dump, but critics felt this commission had been “stacked” with pro-nuclear advocates. In response, South Australia’s premier, Jay Weatherill, who was in favour of storing nuclear waste, set up a citizen’s jury to examine the royal commission’s recommendations. The positive spin the



commission had placed on the project, which suggested it would generate \$100 billion in income over 120 years, did not impress the jury, which voted 70 per cent against the project under any circumstances. Their reasons, provided in a report issued in November 2016, included the lack of Indigenous consent and the potential for damage to South Australia's image as a "green state." The jury also criticized the royal commission's economic argument, saying its findings were "based on unsubstantiated assumptions." They added that "this has caused the forecast estimates to provide inaccurate, optimistic, [and] unrealistic economic projections" (SACJNW 2016, 5). Finally, the jury was concerned that the state would not properly regulate the nuclear industry, and it gave past examples of government failures in this area to support its concern.

Similar endeavours to engage the public have been undertaken in Ireland, including one by We the Citizens (WTC), which emerged out of a working group of the Political Studies Association of Ireland, funded by Atlantic Philanthropies. The WTC was organized with the goal of demonstrating that citizens had useful ideas on the question of how to reform Ireland's politics. Like the Australian Citizens' Parliament, it examined ways to enhance democracy, while also considering government taxation and spending policies. The WTC's 100 members met for two days in 2011. Their report recommended, among other things, that the government adopt "a citizens' assembly mechanism to complement and enhance our representative democracy" (WTC 2011, 6), suggesting that CAs could be created on an as-needed basis.

The WTC served as a model for Ireland's 2012 Convention on the Constitution, which completed its work in 2014. The Convention had 100 members: a chair, thirty-three politicians, and sixty-six members chosen at random from the population. It examined ten issues and made recommendations to the Oireachtas (parliament), one of which favoured legalizing gay marriage. A referendum was subsequently held in May 2015 on this issue, in which 62 per cent of voters approved an amendment to the constitution making Ireland the sixteenth country in the world to legalize gay marriage and the first to do so via a national referendum.

The Irish continued their experiment with the creation of a time-limited CA in July 2016, which is considering a number of issues, including climate change and an aging population. This CA consists of ninety-nine randomly chosen citizens and is chaired by a Supreme Court justice. After it was established, political commentator David Van Reybrouck called Ireland "the most innovative democracy in Europe," because it is evolving "from a state of government in which the people have the right to vote to a form of government in which the people have the right to speak" (quoted in Humphreys 2016).

The Irish assembly held its inaugural meeting in October 2016, when it began its first task: addressing the question of abortion, which was effectively

banned under the Eighth Amendment to the Irish constitution, which came into effect in 1983. In this predominantly Catholic country, it would be difficult to imagine a more contentious issue for a CA to consider, yet members moved ahead, receiving over 7,700 submissions from the public by the December 2016 deadline. In April 2017, the assembly voted 64 per cent to recommend changing the law to enable a woman to access an abortion without having to provide a reason for her choice. In a national referendum held in May 2018, Irish citizens voted 66 per cent in favour of repealing the Eighth Amendment.

In sum, the few CAs that have existed have been given specific tasks, which they have laboured on for a limited period, closing up shop when they completed their project-oriented work. This book, in contrast, recommends the establishment of assemblies as permanent institutions, a topic to which we now turn.

## NOTES

1. For an excellent, concise history of ancient Greece, see Martin (2000). For brief surveys of Athenian democracy, see Patriquin (2015) and Thorley (2004).

2. [http://angusreid.org/wp-content/uploads/2016/02/2016.02.02\\_Refugee\\_solo.pdf](http://angusreid.org/wp-content/uploads/2016/02/2016.02.02_Refugee_solo.pdf).

3. Governments can use referenda and plebiscites as well, though in countries other than Switzerland and the United States, these methods of information gathering are rarely employed.

4. In the fall of 2017, BC's newly elected NDP minority government (with the support of the Green Party) announced that the province would hold a binding referendum on proportional representation (PR) via mail-in ballot in the fall of 2018. The result of the referendum was that 61 per cent of voters chose to remain with the first-past-the-post system, "a resounding win for the status quo" (McElroy 2018).

## Chapter 2

# How Would a Citizens' Assembly Work?

The citizens' assembly (CA) model outlined in this chapter (which makes occasional reference to Canadian institutions) would not require any significant modifications to the current state structure, including the House of Commons, the Senate, or the governor general. Rooted in direct democracy, a CA would *supplement* the system of representative democracy, not replace it. A CA would be a small, practical step in the direction of greater self-governance.

So, how might this assembly work?

### FORMATION

A properly constituted CA consists of a representative sample of the entire population. The importance of following this basic guideline cannot be emphasized enough. As egalitarian and as democratic as it may sound, a CA that amounts to an open-invitation consultation session would be a mistake, because those who sponsor the consultation would undoubtedly end up with a group of relatively high-income earners with education levels that are above average. These people would also likely turn out to come almost exclusively from urban areas; they might be mostly men; they might include few youth; and they might draw heavily from dominant ethnic/religious groups. If organizers seek input on any matter, and they search for participants, say, by putting advertisements in newspapers, they are highly unlikely to gather at their hearings anything resembling a representative group of citizens. For example, in the early 1990s, the state of Oregon in the United States examined the question of expanding free public health care to the poor. Participants in the ensuing discussions had more education and earned higher salaries than

the average. While these factors hampered data collection to some extent, far more problematic was the fact that 70 per cent of the participants worked in the health care sector (Fung 2005, 407). These individuals no doubt had valuable insights to offer, but the skewing of the occupation variable meant that the organizers of this process were not working with men and women who came anywhere close to reflecting the overall citizenry.

How then could a Citizens' Assembly of Canada be populated? To begin, I suggest that provincial and territorial membership in the CA should be set at half the number of a province or territory's members of parliament (MPs) who sit in the House of Commons (see table 2.1). Doing so would generate a sample of ordinary Canadians in what should be an uncontroversial manner, thus avoiding quarrels over the geographic breakdown of the assembly.

The next step would be to ensure that the CA's membership consists of an equal number of men and women. Given gender balance and a representative geographic sample otherwise chosen at random, the CA would be populated by a group that would almost perfectly replicate the nation in all variables typically deemed important for purposes of public policy, including age, religion, language, sexual orientation, disability, race, ethnicity, income, and employment status. For example, if 7 per cent of Canadian adults are unemployed, then about twelve members of the citizens' assembly (MCAs) would be jobless. Meanwhile, about twenty-two of the 172 MCAs, including

**Table 2.1. Provincial and Territorial Membership in a Citizens' Assembly of Canada**

<i>Province or Territory</i>	<i>Members<sup>a</sup></i>
Ontario	61
Quebec	39
British Columbia	21
Alberta	17
Manitoba	7
Saskatchewan	7
Nova Scotia	6
New Brunswick	5
Newfoundland and Labrador	4
Prince Edward Island	2
Nunavut	1
Northwest Territories	1
Yukon	1
Total	172
Plus up to an additional two Indigenous members <sup>b</sup>	Maximum of 174

a In calculating seats in the CA, a "half number" was rounded up to the next whole number. For example, Nova Scotia has eleven seats in the House of Commons. Half of eleven is 5.5, which was then rounded up to six.

b See the explanation in note no. 2.

many of the aforementioned unemployed, would live below Statistics Canada's low-income cut-off line, generally regarded as the nation's poverty line. Unlike Parliament, which has a vast over-representation of professionals, especially lawyers and business people, the CA would truly mirror the country's occupational profile. Each iteration of the CA may not perfectly represent all variables, but over time the various characteristics of those who serve on CAs would come extremely close to matching those of the citizenry at large.

There is one important instance, however, where we might not achieve expected levels of representation, and that is of Indigenous peoples, who currently constitute 4.3 per cent of Canada's population. Based on where Indigenous persons live across Canada, and the number of MCAs assigned to each province and territory, by "luck of the draw" we should expect to consistently have one Indigenous MCA from each of the provinces of Manitoba and Saskatchewan, as well as from the territory of Nunavut. These three individuals, however, would make up just 1.7 per cent of MCAs. Therefore, I propose that we use stratified random sampling<sup>1</sup> to ensure that at least one Indigenous person is chosen from Manitoba and Saskatchewan as well as from the four largest provinces: Ontario, Quebec, British Columbia, and Alberta. As a result, in each of these provinces, the percentage of Indigenous MCAs would roughly equal the percentage of Indigenous persons in the overall population. From these six provinces combined, the CA would draw six Indigenous MCAs out of 152 seats allocated in the assembly, or 3.9 per cent, which exactly mirrors, to the decimal point, the percentage of Indigenous peoples in these provinces. In addition, via luck of the draw, an Indigenous person from Nunavut would sit in nine out of every ten CAs; there would be an Indigenous person from the Northwest Territories in one out of every two assemblies; and there would be an Indigenous person from the Yukon in one out of every four assemblies. Combining these three "lucks of the draw," a typical assembly would include two Indigenous MCAs from the territories, bringing their overall number in each Assembly from six (guaranteed) to (typically) eight (or 4.7 per cent of MCAs).<sup>2</sup>

In addition to all of the more personal "statuses" noted earlier, the CA would precisely reflect the ideological spectrum, from the few socialists on the far left to the few libertarians on the far right. Even with a handful of outliers on board – men and women who, by the way, have every right to hear their views represented in our political institutions – the CA would undoubtedly be dominated by members who self-identify as conservatives, liberals, and social democrats. With this make-up, we would for the first time obtain an accurate portrait of how a true cross-section of the population perceives public policies. The CA would reproduce the body politic in miniature. Given its composition – and this is the critical point – its recommendations would

correspond *almost exactly* to what Canada's twenty-five million eligible voters would say if they could all gather in a room to debate and vote on issues. Such a CA would facilitate a reasonable facsimile of a nation-wide conversation. In short, a small group could get the job done for us, and on any matter the choices of these 172 citizens would bear weight because they would be *the same choices we would all make* if we were able to do so.

For the inaugural CA, 172 people would be chosen, half of whom would serve two-year terms and the other half, four-year terms. At the two-year point, a new group, constituting half of the CA's total membership, would be selected for a four-year term, a method of appointment that would then be repeated *ad infinitum*. This way, the CA would always consist of members with at least a couple of years' experience and others who are relatively new. No one would be eligible to serve more than one term. If a mid-term vacancy occurred, a replacement could be chosen from a database, but only if there were, let's say, more than six months left in the term. The individual selected would come from the same gender and province or territory as the departing MCA (e.g. a woman from New Brunswick). Just before commencing their duties, all MCAs, and any replacement MCAs, would undergo a training period of a few days in length.

MCAs would be selected by lot from those who put their names forward. Citizens could "apply" for the job by checking off some boxes on their annual income tax return, which would keep them in a database, or, if they have no income, by submitting a simple, one-page form online every second year to get themselves into the CA "lottery." The CA would not be like jury duty, where individuals are given little choice as to whether or not they serve. Because this method of composing the CA involves a process of self-selection, where a portion of the population would opt out, it may produce a slight bias in favour of, for instance, those with higher incomes. If any significant and hence unacceptable bias were discovered in the sample, income could always be added as a fourth category of selection, in addition to gender, geography, and Indigenous status.

There is no doubt that, with this type of process, we would have to deal with potentially problematic selections to the CA. For one, it is hoped that guardians of others would not put forward the names of any individuals who, for whatever reason, are not capable of sitting in the assembly. There are many who would be unable to serve: for instance, those struggling with addictions that are not yet under control, those suffering from dementia, and those serving prison terms. Indeed, being selected as an MCA would not automatically entitle one to the position. "Applicants" for the job, like applicants for any job, would need to demonstrate that they have the minimum necessary physical and psychological capacities to handle the tasks they are assigned. In the process of selection, and once individuals have become

MCAs, their new employer, the government of Canada, would of course be bound by the “duty to accommodate” people with disabilities, a duty now enshrined in many human rights codes. And MCAs, like any employees, could be disciplined for, among other things, harassing co-workers or repeatedly violating employment rules, and they could be fired for just cause, with the work of carrying out these unpleasant tasks perhaps assigned to senior civil servants in human resources, who would also ensure that MCAs have proper grievance procedures at their disposal.

Finally, in order to facilitate maximum participation, employers would be required to grant unpaid leaves of absence to any employees selected to serve on the CA. If an MCA’s employer were still operating after the four-year term expired, the employer would be expected to provide their former employee with a job – preferably the same job – which would pay an amount at least equal to the position the MCA left.<sup>3</sup>

## AGENDA

In order for the CA to succeed, it must control its agenda. If it does not, and its agenda is determined by Parliament, it would lose the ability to choose which topics to address, and hence would not operate nearly as well as it could if left to its own devices. Indeed, if the critically important power of agenda setting does not remain within the auspices of the CA, it would not be an experiment worth undertaking. A CA that could choose which matters it addressed and which it ignored would have something significant to add to public discourse. It is true of perhaps all political systems worldwide, even the most democratic ones, that they are “effective in preventing issues potentially dangerous to the defenders of the status quo from reaching the decision-making agenda” (Bachrach and Botwinick 1992, 14). A CA could help to change a situation in which, as one writer noted regarding the build-up of nuclear arms, it “is nonsense to talk of rule by the people when such questions cannot even get on to the political agenda” (Burnheim 1985, 41–42). All political parties are afraid to broach difficult issues, such as the decriminalization of certain drugs, safe injection sites for addicts, and doctor-assisted dying. A CA would be more open to examining controversial topics like these, because there would be no political fallout for doing so. In the end, a CA may not support the proposals made by those advocating for change, but it would at least bring issues, many of which are now closeted, into the public arena for serious discussion.

The CA would also alter how we handle such matters. When we consider movements that have arisen in the last half-century (e.g. the anti-war movement, gay marriage, racial equality, and women’s rights), we have to conclude that most of them “have been promoted by demonstrations and direct

action, rather than conventional political activities through parties and legislatures” (Budge 1996, 192). Without a CA, citizens often feel they have only one option: to mobilize in the streets – an act that, especially on contentious issues, has potentially serious consequences for people, police, and property. A CA might help to reduce the frequency of protests, which, like low voter turnout, are a tell-tale sign that we need to make urgent amendments to our representative democracy.

But how would a CA set its agenda? In Parliament, the government of the day decides what gets on the order paper; the opposition then reacts to and critiques the government’s proposals. While certainly more challenging, with no designated leadership driving the agenda, it would not be difficult for the CA’s membership to determine how to proceed. Based on the amount of time available, it could decide which items to tackle and in what order. For example, every year or so, each MCA might propose a few agenda items. Many members would likely make the same proposals. Once duplicates were removed, and with further modifications, the complete list could be whittled down to perhaps ten or fifteen items. A vote would be held on which five or six would proceed to further debate. The winning issues would move forward. Perhaps a committee of the CA, with the help of staff, could determine a time allocation for each item, with complex matters allocated more hours. The CA could also choose, at any point, to move an “emergency” matter to the top of its agenda. In addition, the House of Commons could request that the CA respond to a specific question, though the assembly would not be obligated to agree to any such request. It might also be a requirement for the CA to consider a question from the public if enough signatures could be gathered in support. Like similar initiatives in the United States, money would inevitably play some role in determining the success rate of such petitions. However, even if wealthy backers were able to get a petition accepted, they would have succeeded only in getting their question on the agenda. They would still have to convince the Citizens’ Assembly – the polity in miniature – of the merits of the case, and they would undoubtedly be opposed by other organized interests.

No question would be off-limits to the CA. It would have *carte blanche* to consider any issue it believed merited examination. From the long list of contentious matters that have arisen in Canada over the last decade or so, just some of the questions a CA would probably have dealt with include:

- Should we abolish the long-gun registry?
- Should we exit the Kyoto Protocol on climate change?
- Should we sign a free trade agreement with the European Union?
- Should we extend the deadline for our military operations in Afghanistan?
- Should we purchase the F-35 military aircraft?



- Should the age of eligibility for the Old Age Security pension rise from sixty-five to sixty-seven?
- Should Canada Pension Plan contributions and benefits be increased and, if so, to what level should they rise?
- Should doctor-assisted dying be permitted only for individuals who are terminally ill or also for those who have a “grievous and irremediable illness, condition, or disability”?
- Should the recreational use of marijuana be made legal, and, if so, how should the drug be produced and sold to consumers?
- Should proposed reforms to the taxation of small businesses be implemented, amended, or rescinded?

The CA would typically address specific policy matters such as those just noted through a precise query formulated by a Question Committee, which would have a rotating membership of MCAs responsible for each issue as it moves up the agenda. Their work would be guided by the fact that there is not much point asking a question that would garner little support. With its questions in hand, the CA would be ready for work. If it were to deal with an average of one question in each two- or two-and-a-half-month period (assuming some time for vacations), the CA could handle about twenty questions over a four-year term.<sup>4</sup> If a significant body of MCAs felt a given question needed to be re-examined, they could bring it back to the CA after a certain period, which might depend on the level of support the measure originally received, as indicated in table 2.2.<sup>5</sup>

If a question were brought back for further consideration after the allotted time, supporters of the measure would be wise to address some of the concerns noted by the majority who rejected it the first time in hopes the question might subsequently pass. Some questions may simply require patience.

**Table 2.2. Wait Times for the Re-examination of Questions**

<i>If the percentage vote of the losing measure was . . .</i>	<i>then the question could be asked again in . . .</i>
more than 40 per cent but less than 50 per cent	3 years
more than 30 per cent but less than 40 per cent	6 years
more than 20 per cent but less than 30 per cent	9 years
more than 10 per cent but less than 20 per cent	12 years
more than 0 per cent but less than 10 per cent	15 years

Proposals not accepted immediately might succeed a generation later, just as gay marriage would almost certainly have failed in a 1980s CA but passed into law in Canada in 2005. In other instances, if a question failed, a different one, related to the same issue, could quickly appear on the order paper. For example, if MCAs recommended against the purchase of F-35 aircraft because they found them too expensive and inappropriate for Canada's needs, they might be open to suggesting the purchase of a different plane. The fact that a CA addressed an issue might serve as enough of a catalyst for it to gain increased public support – an overt recognition of changing social attitudes. A CA would provide the ideal safe haven for burgeoning alterations to our political and cultural landscapes to gain momentum, via an institution recognized as legitimate by virtually everyone.

Once the CA made a recommendation, if Parliament did not act on it within a period of ten or so years, the CA could choose to revisit the issue. This might occur if, for instance, 55 per cent of MCAs recommended a measure, but Parliament declined to move because of the close nature of the vote. Given its previous report, and readily available research, the CA could conduct a review rather expeditiously. If it produced a higher majority than before in favour of the measure – say 65 per cent – the increased pressure on Parliament might result in action.

## DELIBERATIONS

A certain type of deliberation would be essential to the success of the assembly. However, this style of deliberation would not emulate the adversarial debate featured in elected legislatures, where the objective of speakers is to use any legal means necessary to defeat opponents, those who are not members of one's own political party. In contrast, MCAs would have to attend to others, which would include people from different socio economic circles, even if not ultimately agreeing with them. The necessity to listen carefully is rooted in the work of MCAs, who serve as "a dedicated jury of people who do not have an axe to grind, a party to support, or a region that has sent them there to fight its corner" (Barnett and Carty 2008, 50). A professional facilitator would moderate discussion at the assembly level to ensure a range of views was heard. This individual would monitor time-limits, enforce rules of procedure (e.g. on parliamentary language), draw out the major arguments articulated at various points in the debate, "read" the room, and so on. Like the speaker of the House of Commons, the facilitator would have no interest in the outcome of the discussion. Any decision made by the facilitator could be overruled by the assembly.

Below the level of the general assembly, MCAs would chair smaller "break out" groups and committees on a rotating basis. The 172 members of the CA

would be divided into ten “symposia” of roughly seventeen members, with membership in each constant over a two-year period. Two of the ten symposia would use French as their working language. As much as possible, the members of any given symposium would reflect a microcosm of the assembly itself. For instance, each one would have at least eight men and eight women. Every symposium would, in turn, break down into two seminar groups of eight or nine members each, in which detailed discussions could be held, where everyone would have time to speak while thinking through the costs and benefits of a proposal. At the British Columbia Citizens' Assembly on electoral reform, participants said that small groups were crucial for “learning, asking questions of clarification, sharing ideas, testing theories, building consensus, generating solutions, and so on” (quoted in Smith 2009, 85). Each seminar would frequently link up with the other seminar in its symposium to compare notes, then all ten symposia would eventually meet in plenary sessions of the assembly. While the activities of the assembly would be held in public and recorded, work undertaken in the seminars and symposia would be private, akin to a caucus or cabinet meeting, thus allowing for a full and frank exchange of views minus the glare of the media spotlight.

One of the main tasks of MCAs in their work at all three “levels” of the CA would be to gather the knowledge that would form the basis of their eventual recommendation. MCAs would listen to, ask questions of, as well as interrogate and critique, expert witnesses on all sides of any question, glean information from the nation's public servants, leaders of civil society organizations, representatives from the private and voluntary sectors, and concerned individuals. This work would be supported by physical spaces set up with the goal of enabling dialogue. For instance, witnesses might appear before a couple of randomly assigned symposia, organized in a semi-circle and charged with the task of making queries and comments, while the other 145 or so MCAs viewed the discussion on-screen in the main auditorium. The CA would also accept written submissions, which would be posted online for anyone to peruse. In addition, members would be allocated time to read extensively on the issue at hand from research materials they had gathered on their own. All of this work would enable MCAs to produce high-level discussions while meeting the objective of deliberation, which is to transform off-the-cuff *opinions* into nuanced, evidence-based *arguments*.

MCAs would confer with each other at all three levels: seminars, symposia, and the full assembly. All arguments pro and con would be iterated and dissected in an environment of scepticism and respectful cross-examination. At the start of these conversations, MCAs might typically hold preconceived ideas on an issue; however, as observations and counter-observations were made, many would likely rethink their positions, modify them, or go so far as to adopt a view diametrically opposed to the one with which they began. MCAs would be obliged only to listen to other viewpoints and be open to

changing their minds. They should feel no pressure whatsoever to support a recommendation they disagreed with. That said, MCAs should always try to find common ground, and attempt, through various modifications of a proposal, or even modifications to the question itself, to bring as many members as possible on board.

In arriving at a recommendation, the CA would not be expected to achieve consensus among all participants. While perhaps an effective way of proceeding in small, homogeneous groups that rely on “peer pressure, social conformism, and a willing acceptance of group norms” (Barber 2003, 149), consensus is not viable in free, pluralistic, multicultural societies, where divisions of class, race, and gender – among others – are common. In consensus models, dissent can be frowned upon or even actively discouraged. At the same time, discussion in a CA would not be a free-for-all, a protracted “talkathon” with no end in sight, where the long-winded would be permitted to drown out the more soft-spoken. The CA would follow typical parliamentary procedures, with reasonable time allocations for speakers, culminating in a vote. Before any vote took place, however, all those present should feel that the matter had been covered exhaustively. Should members deem that a debate was becoming repetitious, it could be halted at any point by one member “calling the question” and the assembly deciding to end it. While this option would exist, given tight timelines overall and limits on each speaker, this procedure – an indication that an issue has been hashed and re-hashed *ad nauseam* – would rarely be invoked.

A CA operating in the manner outlined here would differ from at least one British proposal for a “people’s parliament,” which called for a body that sits and listens to experts, in the same way a jury listens at a criminal trial before casting judgement. In the British proposal, a slightly reformed House of Lords, with members appointed for life, would debate issues, while decisions would be made by the people, serving as a jury in a House of Commons, whose members have been drawn by lot (Sutherland 2008). This proposal, however, negates the major strength of direct democracy – that citizens *speak* directly to each other, and *think out loud* with each other. MCAs must not be passive listeners; they must actively deliberate. In the course of doing so, they must be able to articulate arguments both for and against the question at hand.

The conclusions of citizens gathered in a CA of the sort outlined here would be vastly superior to the uninformed public opinion gathered in polls, which, even with representative samples, cannot accurately gauge the “truth.” Truth, after all, finds the light of day only after lengthy study, civil debate, and thoughtful reflection. This is *the* key feature of a CA, the element that makes it a unique institution, and gives its recommendations so much value – value even in the most basic sense of yielding knowledge that is “worth paying for.”

## RECOMMENDATIONS AND INFLUENCE

After it had concluded its deliberations, the CA would issue a report of about twenty-five pages, clearly written and free of jargon, containing balanced summaries of the majority and minority viewpoints. Drafted by staff, each summary would receive final approval from a committee of ten or so like-minded MCAs. Combined, they would meet an important goal of democracy, namely that the information the public receives on any issue – the information that forms the bases of our decision-making – should be “in accord with the degree of diversity of opinion within society” (Arblaster 1994, 93). This objective cannot be attained via “scientific” polls, open consultation sessions, or task forces populated by “experts.” Only a CA can guarantee that “the people” have truly spoken.

The CA report could also record the vote tally, and it could note individual names for the “yes” and “no” sides. However, since MCAs are not responsible to a group of constituents in the way that Members of Parliament are, and because assembly members are a microcosm of society as a whole, in effect automatically “reflecting” everyone, a list of names would serve little purpose. Indeed, it might be best to maintain a secret ballot so that MCAs do not feel pressured to vote for one option over another. Still, a record of votes could easily be made part of the report, since the practice is already a common one, indeed a requirement in elected legislatures.

A CA’s activities would contribute greatly to the education of citizens on public policy. In Canada, CA plenary sessions and discussions with expert witnesses could be carried by the Cable Public Affairs Channel (CPAC), while its reports would be posted online and would hopefully also receive extensive media coverage. CA deliberations, final recommendations, and reports – with both supporting and dissenting arguments – would form a storehouse of knowledge for the media, academics, students, and the general public. After perhaps some initial scepticism, the CA’s advice and reasoning would demand serious consideration, especially by parliamentarians. A CA could wield more influence than may appear possible at first glance given its lack of decision-making power, because MPs would find it risky to ignore its recommendations, in particular those supported by an overwhelming majority of MCAs.

Nevertheless, it would be the government’s prerogative to run counter to the CA, though the ruling party no doubt would be pressed to defend such a choice in the course of seeking re-election. In doing so, the government may well be able to get citizens on side in rejecting a case made by the CA. While governments *could* defy the assembly, over time they might be less inclined to do so, especially if the CA becomes a respected moral authority, with the citizenry coming to see this new institution as a condensed version of the

people themselves. After all, the “more legitimate the process in the minds of the public, the more difficult it will be for public officials to ignore the recommendations” (Crosby et al. 1986, 173). Any government that frequently defied the CA would probably be regarded as arrogant and insensitive, and would accordingly face punishment at the ballot box.

Another consequence of the assembly would be to put pressure on the government of the day to address issues that it might otherwise prefer to ignore. Given this potential, political parties are more likely to support the CA when in opposition, while perhaps disapproving of it when they are in office, though there would surely be occasions when this love-hate relationship would be reversed. Likewise, ordinary citizens would also find themselves on both the winning and losing sides of assembly debates from time to time, applauding loudly the recommendations they support while expressing dismay at those they dislike. On the whole, if most individuals find themselves generally pleased and only occasionally displeased with the CA’s outcomes, the assembly could be regarded as doing its job properly.

The recommendations of a CA are unlikely to be either *über* radical – say, wanting to nationalize the banks – or *über* conservative – for instance, wanting to ban abortions. Rather, they should represent in microcosm the views generally held by the population. These views would change over time on some matters, for example, as older generations die off and are replaced by younger ones. On certain issues, a substantial majority would select one option over all alternatives. On other issues, the vote would be extremely close, which would suggest that society is divided and hence the government of the day should proceed with caution.<sup>6</sup> One thing is certain, though. CAs would have different views on some matters compared to the people who sit in elected legislatures, with their disproportionate numbers of older, white, and reasonably well-off men. But whatever options MCAs recommend, they would express the “general will” of the nation. It would then be up to elected governments to decide what happens next.

Given that governments would continue to have the final say, a CA would not be in a position to do anything that might warrant adding safeguards to make it directly responsible to the public. Its members do not represent people “in the sense of acting on behalf of others, except in the very broad sense of promoting the general interests of society as a whole” (Brown 2006, 209). The CA would not need to be accountable to us because it would not make *decisions*, though it would, in its final reports, account for – provide reasons for – its recommendations.

In contrast, the citizenry must retain control over government *representatives*, the men and women who have legislative powers, and hence power over our lives, but who, as a rule, differ significantly from most of their fellow citizens. This would not be the case with a demographically representative,

randomly selected CA. Because an assembly would be beholden to no one – political parties, newspaper editorial boards, financial donors, pressure groups – MCAs could recommend what they believe is right, what they regard as being in the best interest of their communities and their country.

## PARTIES AND LEGISLATURES

It is possible to imagine many MCAs self-identifying with a political party and linking up with its formal structures and its MPs in the House of Commons and Senate, while other MCAs would choose to remain “independents,” and hence free of the discipline that is enforced by most parties in a parliamentary system. However, this linking of assembly members with parties could potentially confuse the role of the MCA with that of the MP. This confusion could happen even if MCAs are members of a caucus but allowed to vote as they please, free of the “whip,” as this supposed freedom is likely to work better in theory than in practice. Even if formally free, MCAs would be under enormous pressure to toe the line, and failure to do so could prove embarrassing for party leaders who might be perceived as “weak.” Therefore, the CA would need to be a “non-political” space, an inappropriate venue for “scoring points” and engaging in crass cheerleading on behalf of political parties. Obviously, MCAs in the course of their work would articulate values and viewpoints that would be unmistakably “political.” Nevertheless, participants should arrive at a tacit agreement to keep their deliberations distinct from mainstream party politics.

With this in mind, MCAs should not represent parties either in their comments (“as an NDP supporter, I find that . . .”) or in how they vote; that is, they must not be subject to the same discipline faced by MPs. While MCAs would be “independent,” they would not be expected to check their ideologies at the assembly door. Our political perspectives are an integral feature of who we are. They help guide us in the choices we make and, while alterable, they form a solid core of beliefs, like a religion. We should permit MCAs to be card-carrying members of political parties. They could also continue their involvement in a party, say as a member of a riding association executive, and they could meet and socialize with MPs, but while serving in the assembly they would not be permitted to attend party caucus meetings.

In assemblies that have operated to date, non-partisanship seems to be one of the features that have contributed to their success. For instance, except for a first-day “venting” by some members of the British Columbia CA, for “the remainder of the process, the character of the participants’ public dialogue and deliberation remained remarkably free of reference to political ideologies and positions” (Lang 2007, 43). MCAs would almost certainly not function

as unthinking advocates for outside groups, even the ones of which they are members. A person's preferences cannot always be predicted based on the social categories they are a part of, or even the political party they regularly support. For example, in a study of CAs in Canada and the Netherlands, it was found that an assembly member's support for various electoral system options was not affected by whom the MCA usually voted for. Rather, "members were genuinely struggling to find the 'best' system for their community, and whether any option might benefit or hurt any specific party was not a relevant consideration" (Fournier et al. 2011, 85). Few of the BC Citizens' Assembly members who were later interviewed "felt that they were there to act as representatives of any social group to which they belonged" (Lang 2007, 54). They saw themselves, first and foremost, as *citizens*.

As a corollary to their non-partisanship, MCAs would also refrain from dealing directly with pressure groups. Individual members of the CA could not be lobbied, in the same way that we do not allow members of a jury in a criminal trial to be influenced by the family and friends of the accused or the victim. Lobbying would be limited to elected members of the House of Commons and appointed members of Senate. All attempts to influence the assembly would be undertaken in public, in the form of testimony from witnesses, discussions between witnesses and MCAs, and debates among MCAs themselves. Furthermore, MCAs could maintain whatever type of public profile they desire. They could interact with journalists as they see fit, including ignoring them entirely. Eventually, members of the media would develop sources among MCAs, just as they do now with members of Parliament, and more outspoken MCAs, those willing to have a larger public persona, would be sought out by the media as part of its coverage of the assembly's activities.

Given the strongly independent role of MCAs, how would the assembly interact with Parliament? For one, the House of Commons might be required to spend a couple of hours considering each advisory report it receives from the CA, perhaps half-a-dozen every year. For another, House and Senate committees might want to take some time to examine the CA's recommendations. If, however, the CA supports an initiative, say to lower the voting age, and the government were to agree to move forward with it, it would be up to Parliament to design the bill, debate it, and pass it into law.

This chapter has outlined how a Citizens' Assembly *could* be organized and how it *could* operate. It needs emphasizing that readers should not be upset by any of my detailed recommendations, as little of what is proposed herein should be regarded as cast in stone. If an assembly were created, this book could perhaps serve as a basic guide to its organization. Once up and running, MCAs themselves would carry out self-audits, altering their procedures via a sub-committee that might issue a series of proposed revisions every year or two.



While I have attempted to sketch out certain facets of a CA, the main focus here is on whether *having* an assembly is a good idea, and not, at the beginning at least, entangling ourselves in the minutiae of how one might work. Most aspects of a new CA should be seen as flexible and open to change.<sup>7</sup> It is hoped that critics will not find one or two elements they dislike in this proposal, declare them to be fatal flaws, and then, with great relief, triumphantly announce their support for the status quo.

## NOTES

1. Stratified random sampling “is a randomized selection procedure that ensures that statistical proportionality (also called descriptive representation) is achieved across demographic dimensions such as locality, age, education, and ethnicity” (Lubensky and Carson 2013, 36). So, for example, if a province had twenty MCAs, and of the first eighteen chosen, ten were women and eight were men, the last two seats would be designated for men to, in this case, ensure gender parity. For an example of how a stratified random sample would be undertaken, see Lubensky and Carson (2013, 38–41).

2. For the four Atlantic provinces, given the small percentage of Indigenous peoples in their populations, and the small number of “seats” each province would be allocated, we should not require that any seats be reserved for persons of Indigenous status. For example, PEI would have only two MCAs, alongside a population that is just 0.2 per cent Indigenous. This would mean that we could not count on having any Indigenous MCAs from Atlantic Canada. In order to rectify this situation, we could appoint up to an additional two Indigenous members from the region, if none (or only one) is chosen in the random sample, thus giving the region as a whole eighteen or nineteen MCAs instead of seventeen.

3. Any regulations on this matter could be modelled on those used for parental leaves.

4. At some point, the CA might run out of issues to discuss, but this is likely only if the House of Commons does so as well.

5. I emphasize *could*; the CA might decide not to revisit an issue, even if the minimum “wait time” had elapsed.

6. It would be especially important in close votes to have a mechanism like an assembly that could accurately discern *why* citizens voted as they did.

7. Hennig et al. (2017) make a brief case for a permanent citizens’ assembly as a second chamber in the Scottish Parliament. Their recommendations have much in common with mine but also much that is different. We are in agreement, though, that detailed proposals for the implementation of any CA must be “subject to debate and modification” (2).



## *Chapter 3*

# **Multiple Citizens' Assemblies**

In 2011–2012, university students in Quebec engaged in a long series of protests, some involving hundreds of thousands of people, against a provincial government proposal to roughly double tuition over the course of a few years. In a number of instances, students and police engaged in confrontations; thousands of students were arrested. The government even passed legislation that tried to ban the protests, to little avail. All it ended up doing was provoking civil disobedience while giving the impression that it was trampling on freedom of expression. The government and students remained, for the most part, at loggerheads until the Liberal Party was defeated in the election of September 2012. This incident contributed to the impression, no doubt among youth especially, that governments do not listen to the concerns of everyday people.

The previous chapter outlined how a national Citizens' Assembly of Canada might work. There is no reason, however, to restrict CAs to the federal level. Events like the Quebec student protests demonstrate that assemblies could serve useful purposes in all provinces and territories. The size of each of these CAs would depend somewhat on each geographic area's total population. In larger provinces, CAs of about 120 people might be sufficient. For the smaller provinces, eighty would likely be a suitable number; anything less would make it difficult to meet the need for representativeness. The time commitments of these MCAs would perhaps amount to one-quarter to three-quarters of those of their federal counterparts.

CAs would also prove useful at the municipal level, especially given that local issues can often raise NIMBY ("Not in My Back Yard!") emotions to a fever pitch. There recently was a burning, NIMBY-type controversy where I live, in North Bay, Ontario. It involved the question of whether to allow a casino into the community and, even more contentiously, whether to build it on a vacant lot next to the waterfront. Once the proposal started to gain

traction, a group rapidly organized a Facebook page to oppose, most notably, the waterfront as a potential location. This tactic was quickly followed with the appearance of a pro-casino group, who launched their own Facebook page. Some news agencies conducted online polls to gauge support for each side in the debate. A few days later, opponents of the casino “packed” council chambers and spent more than two hours addressing the city’s Planning Advisory Committee. City staff prepared a report for council, which ultimately decided to give permission for the construction of a casino, but recommended that it be built on the outskirts of the city. Council gave final approval for the project in December 2018. This issue, and many more like it, would be perfectly suitable for a CA to consider, and doing so would enable elected councils to take accurate readings of the “temperature” of their populations. Compared to duelling Facebook pages, and unreliable and unrepresentative polls, municipal CAs could give councils solid grounding for their decisions.

There was one recent case where a municipal government did just this; the first such CA in Canada. In the 1990s, in Prince Edward County, Ontario, a number of different municipalities were amalgamated into one governing body. In the early 2000s, the county council began to grapple with the question of its size, which was a “hot potato” issue for politicians and citizens alike. In 2013, the council convened a CA of twenty-three residents, selected at random, to tackle the matter. They met on three Saturdays over a period of about a month. First, the members agreed unanimously to not increase the number of councillors above the then total of fifteen. After settling that question, nineteen of twenty-three MCAs recommended reducing the number of councillors to ten, while four supported a council of fourteen (PECCA 2013).

The CA, while it did not deal with the issue of ward divisions at length, suggested that, given a recommendation of ten councillors, the county have either two wards of five councillors or five wards of two councillors. Their rationale was that one ward (all ten councillors elected by all voters) was unfair because it made campaigning difficult and would favour higher-income candidates. They also rejected ten wards with one councillor each, which they felt would contribute to NIMBYism. In the end, the council rejected the recommendation of the assembly. In January 2016, the county passed a bylaw that created nine wards based on the boundaries of the former independent municipalities, producing jurisdictions of vastly differing numbers of citizens, ranging from 5 per cent of the total population up to 24 per cent. The larger wards were given two or three council seats while the smaller wards received one, for a total of thirteen, plus a mayor elected at large. Because of perceived drawbacks to this system, in March 2016, some citizens in the county appealed the bylaw to the Ontario Municipal Board. In December 2017, the Board dismissed the appeal, finding “no reason to interfere with the decision made by County Council.”

What happened in Prince Edward County is just one example of how urban areas could proceed, free to pick from a variety of CA options. Large cities like Montreal, Toronto, and Vancouver could model their CAs, in terms of workload and salary, on provinces like Alberta, while mid-sized cities like Ottawa, Calgary, and Edmonton might trim their CAs down even further. There would come a point in smaller centres such as Quebec and Hamilton where membership in a CA would constitute more of a part-time job, with meetings held only occasionally. If this were the case, a rotating membership might work best; a group of people who could gather for four or five week-ends over a period of two or three months to study particular issues.

In these cases, the local government might establish the “shell” of an assembly to enable a “rapid response,” quickly bringing together the necessary participants, both members and staff, with the latter perhaps seconded from other positions within the civil service. The government and its citizens would eventually get used to the fact that the assembly might be called into action a handful of times each year, as politicians take seriously their responsibility to gather representative feedback from the people on critical issues. Citizens could follow any assembly they were interested in, including receiving email notifications a few times a year, whenever an assembly was about to embark on the examination of a question.

Examples of CAs worldwide demonstrate that we can “mix and match” the ways we construct them in order to get the required job done while keeping costs at a reasonable level. Assemblies can be large or small, with members serving on a full-time or a part-time basis. MCAs can be paid an annual salary, a pro-rated salary, a per diem stipend, or nothing at all if the time served is brief. Governments and policymakers can experiment with CAs, up-scaling or downsizing them as they see fit. There is no shortage of permutations and combinations. For example, the CAs discussed so far have subsisted under geographic umbrellas (federal, provincial, and municipal). However, we might want to organize some of our “part-time” CAs by policy issues. Health care is one area that could benefit greatly from the advice of an assembly. It is no secret that health care costs – or at least some aspects of these costs, like prescription drugs – have been increasing much more rapidly than inflation over the past couple of decades. Given this, a CA might be tasked with specific questions within the field, such as: Should we have a national drug benefit programme? If we had such a programme, which classes of drugs would be covered? How much revenue would the federal government and the provinces/territories each contribute to the programme? And so forth. To reduce travel expenses, members of these assemblies could meet in person infrequently, spending more of their time “together” via new technologies such as Skype.<sup>1</sup>

But why stop there? CAs could be used by school boards and district health councils. Some variant of a CA could, and should, be a requirement for all

federal crown corporations, including Canada Post, Canada Mortgage and Housing Corporation, and the Canadian Broadcasting Corporation; provincial crown corporations where they exist, in areas such as hydro, telecoms, liquor control boards, and public insurance; major municipal services, such as transportation, water, and recreation; and government regulators at all levels. In sum, there are countless public and quasi-public institutions that could benefit from the policy innovations and thoughtful feedback that CAs can provide on a whole host of issues.

#### **NOTE**

1. In terms of facilitating deliberations, an online meeting should always be seen as a second-best option compared to face-to-face discussions.

## Chapter 4

# Critics of the People

Most of us, from time to time, have no doubt nodded in agreement with Sir Winston Churchill's musing that the "biggest argument against democracy is a five-minute discussion with the average voter" (quoted in Fournier et al. 2011, 2). This is especially so when we find ourselves, as we invariably do, on the losing end of a vote, which we feel only happened because the *other* side consisted of a collection of hard-headed, unenlightened individuals. For sure, it is not difficult to find low levels of knowledge on a variety of issues among the general public. For instance, "at the height of the Cold War, half of all Americans thought the Soviet Union was a member of NATO" (Sutherland 2008, 79). Many may well wonder whether these "political illiterates" could be effective participants in a CA. This is particularly the case if, as one critic has suggested, a CA included a number of individuals like "Old Gertie, the bag lady, who sees every issue as still another example of how the Communists are poisoning the drinking water with fluoride as part of the conspiracy to drive her crazy and cheat her of her rightful place as queen of Rumania" (Malcolm Margolin, cited in Callenbach and Phillips 2008, 81). Furthermore, ordinary citizens often appear to be incapable of treating each other with respect, judging from the comments sections of online newspapers, which can be filled with verbal attacks, offensive language, rudeness, and sarcasm. Too many people seem to be anti-intellectual, married to their own opinions, easily manipulated, close-minded, obstinate, and racist. A CA might end up looking like an extended episode of the old *Jerry Springer Show*, with fists flying in all directions.

Some critics have, therefore, concluded that most people do not have the intellectual capacity to participate in political life; the goal of public deliberation runs "afoul of the reality of widespread voter ignorance and irrationality" (Somin 2010, 253–54). Ordinary individuals would just make a mess of

things. Moreover, many issues are complex, and most people do not have the backgrounds necessary to cast judgement on them. These individuals might have something useful to say if they were selected “to become full-time deliberators,” but regardless of the information presented to even permanent members of CAs, “deliberators are still likely to evaluate that information in ways that are biased and often illogical” (Somin 2010, 268–69).

This “intelligence critique” of CAs comes in a number of forms. One form suggests that “the masses” lack the ability to think in a sophisticated manner. For instance, some critics claim that what we might call the “theoretical bar” is simply too high for most humans to jump over. Complex policy deliberation “requires a substantial degree of understanding of moral and philosophical arguments,” and yet it “seems unlikely that most voters have more than a very limited understanding of philosophy, logic, and moral theory” (Somin 2010, 254, 259). Another form argues that ordinary people cannot sufficiently grasp technical details in areas critical to governance, such as military procurement, pipeline projects, and free trade agreements. Redekop (2005) made this argument about the average men and women who populated the British Columbia Citizens’ Assembly on electoral reform. He took issue with what he saw as this CA’s “central populist belief,” namely that political decision-making “will be more satisfactory if undertaken by mostly uninformed members of the public rather than by knowledgeable experts,” a belief that rested on the assumption that “knowledge, experience, and expertise are irrelevant if not disadvantageous.” The fact that this CA had to bring in experts on electoral systems to educate members, he says, “indicates that the populist faith in the decision-making capacity of untrained and uninitiated common folk may not be warranted” (91, 94). In contrast, Redekop made the case for governance by professionals:

Who would argue, for example, that when a bus driver discovers that her vehicle is not functioning properly, she should ignore trained and experienced mechanics and let untrained common folk, who do not possess any expertise in the area, try to undertake corrective action? To pose the question is to indicate how illogical such a stance would be. Similarly, let us consider the matter of illness. While acknowledging that certain home remedies and practices, rooted in generations of experience, can be of some value, who of us, if suffering from a serious malady, would argue that it is better to consult with untrained ordinary folk and follow their recommendations than to see a trained and licensed physician?

. . . Again, the answer is obvious. Useful comments may come from many sources; reliable expertise and tested insights come from experts. (92)

Our critic further posited that there is no evidence that “common folk” are “more moral or more astute than are other people or that they make wiser



political decisions”; these citizens, he added, do not possess “unique morality or insight” (91).

Here Redekop has advanced a “straw man” argument, a simplistic view of the very kind critics attribute to their opponents (advocates for an assembly) to try to make their ideas sound foolish. Yet no one is arguing that ordinary people are smarter, more ethical, or would make inherently better judgements than others, and no one is suggesting that expertise is irrelevant. Furthermore, the notion that having knowledge is “disadvantageous” is a claim that no rational person would make. Beating a straw man is a fundamentally unfair way of debating, as it does not give any credence to the ideas of those making a different case – and a very reasonable one at that.

Critics like Somin and Redekop are not hard to find. They provide evidence that our culture still contains elements of a tenacious, “Churchillian” fear of ordinary people – a fear that if the “lowbrows” are in charge ghastly things are bound to happen. But, I ask, ghastly compared to what? The consequences of democracy as it currently operates? Would “the people” make decisions worse than those that determined the treatment meted out to Indigenous Canadians over the 140 years or so since the passage of the Indian Act? Or, using a more global lens, worse than, say, the decision to deny basic civil rights to African Americans for at least a century after the formal abolition of slavery? Worse than World Wars I and II or the Holocaust? And if we believe those evils could not be replicated today, we might ask, would the people make decisions worse than the recent one to go to war with Iraq, a war now almost universally regarded as a catastrophe? Or perhaps we should consider more mundane decisions than this catalogue of failures. What about the countless times governments throughout the world, including in Canada, are found by their courts to have abrogated the rights of their citizens? Can we truly expect the decisions of “the people” to generate effects *worse* than these, especially if the role of CAs is limited to granting advice to legislators?

Our representatives, both elected and appointed, cannot make any claim to being wiser than a substantial majority of people. They do not have a clearer road map than we do, one with a more expeditious route towards the public good. Still, critics will have a number of questions: Would discussions in a CA always be thoughtful? My response is “perhaps not,” but are they always thoughtful in Parliament? Would some people in a CA dominate debate? Given the rules of procedure in each institution, a “domination” scenario is much more likely to unfold in Parliament, especially one with a majority government, than in the kind of CA outlined above. Should we be afraid of “group think” in a CA? I don’t believe so, given the wide variety of perspectives that would exist in any assembly. In contrast, is there not a tendency for MPs in all political parties to march in lock-step, because they have to be cognizant of the sting of their parties’ “whips” should they dissent? In short,

a CA should not be dismissed simply because critics can expound a collection of “bogyman” scenarios.

What these critics prefer is a government in which experts – society’s elites – think and decide on behalf of the rest. They assume that having immense technical knowledge, perhaps alongside an advanced degree in political theory, is a prerequisite for decision-making on public issues. This perspective intimates that the problem with ordinary people is their ordinarieness. There are certainly times in life when we need the assistance of individuals with “scientific” skills, and many of these skills take some effort to master. For instance, barbers must be deft with scissors, and doctors must be able to operate the tools of their trade.

In contrast to what we might call “elite knowledge,” what citizens require to make recommendations (or decisions) is something else, a form of general moral knowledge, notably understanding the difference between right and wrong, and general intellectual capabilities such as reading, distinguishing strong arguments from weak ones, asking pertinent questions, and so forth. Politicians (and assembly members) therefore require a skillset that is possessed by an overwhelming majority of adult citizens. One does not have to be capable of writing a treatise on political thought to, for example, understand the tragic consequences of drunk drivers and to recommend appropriate punishments for their actions; or to discern the pros and cons of legalizing marijuana; or to decide, as the Irish Constitutional Convention did, that gay people should be allowed to legally marry. We are fully capable of understanding that every decision has trade-offs, and that every decision incurs opportunity costs. Surely we, with universal education, should have no trouble accepting the idea that a preponderance of the citizenry – millions of people – are able to participate in these types of discussions, and hence become more actively involved in their democracies. If people aged eighteen and over are deemed fully qualified to cast ballots, in effect determining the overall fate of the nation, then they should be qualified to decide – or at least make recommendations – on complex matters. With their varied backgrounds, experiences, and levels of knowledge, MCAs would, as a group, be able to make judgements that maximize the intellectual capabilities dispersed throughout society. In any assembly, with dozens of speakers on both sides of every issue, the “truth,” as best we can discover it, would eventually emerge.

Unless proof can be ascertained otherwise, we should assume that MCAs could debate and discuss issues, and learn to some degree specialized and technical vocabularies, *at least as well* as members of the House of Commons. MPs, as a collective, are not necessarily more intelligent than a randomly chosen group of citizens. Few MPs at the point of first election have substantially more knowledge than average citizens on the vast cornucopia

of public policies, including agriculture, energy, natural resources, health, labour, fisheries, industry, First Nations, international affairs, sport, and so on. Nevertheless, as soon as they take their seats in Parliament, MPs vote frequently on all these issues, and typically the way they have been told to by their party's brass.

What has happened, in practice, when ordinary people have been asked for their advice on complicated matters, when ordinary people first take *their* seats? In one instance, observers of an Australian citizens' jury on recycling found that "discussions and recommendations were thoughtful, reasoned, and caring, with participants demonstrating a willingness to consider public needs over their own self interest" (Carson and Martin 2002, 109). Over a two-day period, this eleven-person jury

wrestled with options and problems and strengths and weaknesses of various issues. They called for more information and demanded clarification when confusion arose. They prioritised their ideas and then worked on their recommendations via a projected computer screen. They discussed every recommendation in minute detail until they were satisfied their opinions were accurately captured. They resisted unnecessary haste and produced a report of which they were proud. (109)

In another case, an American citizens' jury on health care reform showed that "once educated and provided with the opportunity at deliberation, public opinion is capable of moving through the implications of difficult and often highly technical issues" (Button and Mattson 1999, 622). Commenting on the Australian Citizens' Parliament, Dryzek et al. (2009, 3) note that while its recommendations were significant, "what is equally important is the demonstration of the sophistication with which ordinary citizens can, if given the opportunity, handle complex political questions." Based on their observations of three assemblies on electoral reform, Fournier et al. (2011, 39) concluded that "it was hard not to be impressed with the capacity of citizens to learn, absorb, and understand the intricacies of a subject to which most had given little, if any, prior thought." They added: "Not only are ordinary people able to learn about a difficult policy issue, as they do so their opinions of the current situation and potential alternatives change in consequence" (78). Finally, the Melbourne People's Panel, mentioned in chapter 1, also demonstrated that "the public is very smart, if given the time and information necessary to work through an issue. The panel members showed themselves to be unencumbered by the entrenched positions of political parties and the powerful lobbying efforts of vested interests on issues such as developer contributions"<sup>1</sup> (Reece 2015). When it comes to deliberation, then, practical experience seems to show that everyday citizens are more than capable of rising to the challenge.

A further criticism of “the people” is that most issues are too intellectually demanding, so much so that ordinary folk would not be able to work their way through the maze of complications and come to terms with the variety of options available. Encountering a barrage of “forks in the road,” MCAs would experience a form of paralysis, and would be unable to act. Critics usually frame this criticism as a series of apparently disturbing and, ultimately, unanswerable questions, which have the effect of suggesting that we should scrap any notion of involving in politics those who would wilt under the pressure of mental taxation. The following is one example of the genre:

Consider, for example, the possibility of structured public deliberation over health-care policy. Which experts, political parties, and interest groups should be allowed to make presentations to the deliberators? Should interest groups representing doctors, nurses, insurance companies, hospital administrators, medical researchers, or many other conceivable parties be among them? What about policy experts such as health-care economists, sociologists, and public-health specialists? Which policy options should the deliberators consider, other than the status quo? Should they include a single-payer system, “managed” care, market-based medical provision, and hybrid systems such as Singapore’s? Other potential models such as Canada, Britain, and France – all of which differ substantially from each other – could also potentially be considered. (Somin 2010, 269)

Such a list of questions should not concern us in the least, because a CA would answer each one in exactly the same way as a parliamentary inquiry into the issue would. And then a CA charged with addressing health care policy would do what all CAs have done – members would begin by determining and agreeing on the criteria for evaluating the options; they would whittle down the options to perhaps two or three; they would assess the options based on their criteria; and then a single option would emerge as the favoured one. The majority supporting the option would try to convince as many MCAs as possible to get on board with the recommendation, while at the same time respecting the minority, dissenting viewpoints that would undoubtedly remain. The recommendation would then be placed in the hands of government, which would be free to act on it or not.

Even if we acknowledge that quite a number of individuals are able to deliberate, some critics still maintain that “the people” as a whole cannot do so while they are embedded in a society that does not have anything resembling social and economic equality. These inequalities are seen as fatal to any attempt to enhance direct forms of democracy. Commenting on the American case, Sanders (1997, 348) posited that some “citizens are better than others at articulating their arguments in rational, reasonable terms.” She assumes

that those least able to engage in deliberations are likely to be those “who are systematically materially disadvantaged, namely women; racial minorities, especially Blacks; and poorer people” (349). The implication of this view is that now is not the time to proceed with deliberative experiments, because those who are shy and alienated may not speak up. They will remain almost mute, dragged down by the class, race, and gender “baggage” society imposes upon them.

But is this an accurate assessment of what might happen, or is it a stereotype? In the case of a group of Americans brought together to deliberate on questions of health and education, “by far the most talking (measured in number of words used) was done by non-white, less educated females, with non-white higher educated females close behind. The least number of words were actually expressed by white, higher-educated males.” This research demonstrated that “there is no substantial pattern of inequalities distorting the deliberative process in the way that deliberation critics suppose” (Fishkin 2009, 130, 131). Meanwhile, the conversational record of the Australian Citizens’ Parliament “revealed women to be at least as dominant and forceful as the men” (Lubensky and Carson 2013, 45). In another study of CAs on electoral reform, the authors concluded that with “no trace of an educational cleavage at any point in time, we have no reason to believe that the better educated led their group in any particular direction” (Fournier et al. 2011, 100–101).

It is possible that those with higher levels of “social capital” will speak more in settings such as town halls, where everyone is invited to participate, and the “smart” ones might indeed dominate (though we should not overstate by how much). However, a CA differs significantly from this type of forum in its membership; the CA is representative while a town hall is potentially full of “axe-grinders.” Moreover, there is a critical contrast between the two in the processes through which deliberation takes place. An assembly is highly structured, while in a town hall seats may be filled by aggressive people with big mouths who can shout others down.

It is true that we live in an era of high inequality. At the same time, education levels are setting new records. For instance, four out of every five students now graduate from high school in the province of Ontario, with many of these individuals pursuing and completing post-secondary studies. Most of the people who quit school before, say, Grade 10 are currently over age fifty, yet many of them have substantial life experiences they can draw on. These experiences more than make up for some deficiencies in their formal education, the return on which surely diminishes once we go beyond high school, the point at which the learning curve that rises exponentially from kindergarten onwards starts to flatten out. There would be instances

as well when holding academic credentials would not be especially useful. For example, an individual with a PhD in accounting would almost certainly contribute less to a discussion of First Nations' water supplies than an Indigenous elder with little formal schooling. It would also be a mistake to assume that those with advanced degrees would be more articulate and self-confident than other MCAs. In short, we should not exaggerate the negative effects of social inequalities on the ability of people from all walks of life to participate.

While the CA outlined earlier would produce a significant enhancement of our democracy, given the potential for criticism we should be under no illusion that this proposal would receive anything close to unanimous support. For what might happen, we can look to Australia where, during the 2010 election campaign, Prime Minister Julia Gillard promised that if re-elected, her party would create a 150-person CA to study the issue of climate change, which would run for about a year and address what is perhaps the greatest crisis facing humanity. The proposal was quietly dropped after intense criticism. Media commentators described the idea as "pathetic," "absurd," "ridiculous," and "wacky," nothing more than a potential "gabfest" (quoted in Boswell et al. 2013, 165–70). The government was seen as engineering a "cop-out," incapable of taking an effective position on a critically important issue, and instead devolving its responsibility to lead and make decisions to an unelected CA. Critics also saw the issue as too complex for ordinary citizens to handle. Even some environmentalists (who usually hug democracy, as well as trees) opposed the CA on these grounds, denigrating it as a "populist strategy," a public relations gimmick. Some politicians criticized what they saw as duplication, arguing that "we already have a Citizens' Assembly – it's called Parliament."

We can get a further inkling of how legislators might react to the formation of a CA by examining a recent experiment in Scotland. In 1995, the Scottish Civic Assembly was founded with the goal of enhancing public deliberation. It consisted of representatives from various stakeholders, such as businesses, unions, and charities. In 1999, the UK government devolved some of its powers to a new Scottish Parliament. As part of this process, the assembly's name changed to the Scottish Civic Forum. At this point, the forum's role evolved into undertaking public consultations for the new Parliament. Hence, the forum no longer set its own agenda, and it ceased to be an independent body.

It did not take long for Members of the Scottish Parliament (MSPs) to view the forum as a competitor, another site of influence that reduced in some ways the power of elected MSPs. They accused the forum of duplicating their work rather than supplementing it. They maintained that concerned citizens were supposed to talk to *them*, their individual MSPs, and not to some "forum"

outside the walls of Parliament. MSPs, then, saw the forum as a threat, so they stood in its way. These MSPs help us to answer a question posed by Davidson et al. (2011, 379): “Why is it that the rhetoric of deliberative democracy is widespread, yet the facilitating institutional landscape remains relatively barren?” This landscape became even more desolate in 2005 when the forum’s funding was withdrawn by a hostile government, thus putting an end to Scotland’s deliberative experiment. Parliament did undertake substantially improved consultation on a host of issues after the demise of the forum, but within half-a-decade political decision-makers had returned to their old, familiar ways of limiting public input to the usual suspects, and having that input directed by MSPs.

Despite the various fears of some politicians, academics, and media pundits, however, CAs have invariably produced thoughtful and competently derived outcomes both in Canada and abroad. Two Australian observers said that their nation’s 2009 Citizens’ Parliament “put to the test all the commonly held assumptions about the ability and willingness of ‘ordinary citizens’ to demonstrate their fitness for democratic self-rule” (Hartz-Karp and Carson 2009, 19). And it appears that in this instance, and everywhere else CAs have been used, “ordinary citizens” have passed this test with flying colours. The conceit that “the masses” should not participate because they are ignorant, and hence have no business in public life, is simply the same elitist prejudice that has been applied in virulent forms for centuries – and in some places, is still being applied – to groups such as women, Indigenous peoples, and racial minorities. It is long past time to put this prejudice to rest.

The contention that an assembly would contribute little more than ill-informed commentaries from hapless know-nothings seems to be put forward, in the main, by political theorists who work in the rarefied air of abstract speculation. Meanwhile, those who have dared to venture into CAs, carefully watching participants in action, have come to a different conclusion. Their observations confirm that we should not fear the ideas that percolate up from the public; rather, we should embrace them. Creating an assembly would not require a daunting leap of faith on our part. We can take comfort in the significant amounts of research on CAs, which Fiach Mac Conghail, the chair of Ireland’s “We the Citizens” CA, summed up as follows: “We now have unequivocal proof that citizens’ assemblies will work in this country, as they have in many others” (WTC 2011, 4). We can, without doubt, say the same thing for Canada.

Critiques of the intellectual capabilities of citizens are used as a shield by elites, who often are loath to relinquish their “leadership” of society. Legislators, in particular, believe that they should be the only ones who tackle our problems; after all, they say, that’s why they were elected. A CA, then,

would create grumbling among some members of the political class, because it would mean that they would lose *partial* control of the agenda, yet even this limited loss, especially for some MPs, would be too much to bear. At the same time, a CA could help MPs do their jobs more effectively. Politicians might have more to gain from an assembly than they would have to lose, a topic to which we now turn.

#### NOTE

1. Developer contributions are payments made by a private company to a city council if the company's development creates the need for more public infrastructure, such as water and sewer lines.



## *Chapter 5*

# **Costs and Benefits**

Even if the main objections to CAs have little merit, CAs are still open to the allegation that they would be too expensive and not worth the financial outlay. It might be suggested that in an era of near-constant government deficits, with so many unmet needs in our society, we cannot possibly justify choosing to fund an assembly over social, health, and education programmes. In this chapter, in the course of four brief case studies, I submit that the price tag of any CA would be more than offset by the substantial benefits received in return.

Let's begin by calculating the cost of a Citizens' Assembly of Canada. Let's assume that MCAs would receive the same pay as members of the Senate, about \$145,000 per year, and receive benefits such as life and disability insurance, extended health care, child care, pension contributions, and so on, though they would not be paid for unexplained absences. These benefits might add 30 per cent to the cost of an MCA, bringing the total for each one to \$189,000. For 172 MCAs, this would result in an overall expenditure of \$32.5 million per year. Because MCAs have no constituency obligations, they would not require office workers in Ottawa or back home in their (non-existent) ridings.

The CA itself would need to hire personnel such as librarians, researchers, writers, translators, group facilitators, and administrators. There would also be overhead costs, such as rent, hydro, office furniture, supplies, and relocation expenses. To account for these, let's take our \$32.5 million figure and multiply it by two-and-a-half. This would produce a grand total of \$81 million annually. That amount was equivalent to 0.03 per cent of federal government expenditures in 2016–2017, which were \$250 billion. It works out to \$2.30 per Canadian, per year – a bargain-basement price – roughly the cost of an extra-large cup of coffee at Tim Hortons.

While a CA would have to be paid for, its work would bring significant financial, economic, social, and political returns. This would especially be the case if it could help us avoid policy errors or, in worst-case scenarios, policy disasters. Such mistakes happen for many reasons, but especially because “decision-makers systematically choose to ignore an abundance of critical or warning voices in order to persevere with their chosen policy.” What sometimes happens is that “an elite group of highly motivated decision-makers – insulated from challenge, disposing of great political and administrative power, and intellectually convinced of their own abilities, determination, and direction – progressively cut themselves off from information tending to undermine group morale, pushing through decisions” (Dunleavy 1995, 52).<sup>1</sup> The rest of this chapter focuses on four such disasters (or near-disasters) of one type or another, which have all produced negative (or potentially negative) consequences.

### QUEBEC’S CHARTER OF VALUES

First, let’s look at an example of a “near-social disaster,” one that was certainly a political disaster, which occurred over the last few years in Quebec. In the province’s 2012 election, the Parti Québécois (PQ) won a minority government. In October 2013, in an attempt to deal with a long-standing issue regarding the “reasonable accommodation” of the cultural views and practices of, for the most part, religious minorities, the government introduced a bill popularly known as the “Charter of Values.” Perhaps the most controversial aspect of the Charter was a proposal to ban public-sector workers from wearing “conspicuous” religious symbols, like hijabs and turbans.

Despite not having a majority in the National Assembly, the government pushed ahead with its proposal, likely because polls showed that the Charter was initially popular, specifically among the francophone, Christian majority. However, over time, numerous groups and individuals came out against it, including the Quebec Human Rights Commission, the Canadian Civil Liberties Association, all three major federal political parties, and even three former PQ premiers. Some schools and hospitals said they would defy the Charter if it became law. Many universities, both English and French, condemned the bill. The Charter provoked protest marches, with many claiming it was out-and-out racist.

The government pressed ahead despite the growing opposition, and despite the assertion by numerous observers that the law had no chance of surviving a court challenge. In March 2014, Premier Pauline Marois gambled and called a snap election with the Charter featuring as one of the main issues of

the campaign. When the results were in, the Liberal Party, which had been defeated in September 2012 after nine years in power, was returned with a majority. The PQ suffered a humiliating defeat, receiving its lowest share of the popular vote (25 per cent) since 1970, almost half-a-century earlier. The premier's gamble had failed spectacularly.

The issue of "religious accommodation" did not end with the election of the Liberals, however. In 2015, they tabled Bill 62, the "religious neutrality bill," which did not go as far as the Charter of Values, but proposed to ban face-coverings such as the niqab (though not other types of religious headgear) for civil servants delivering services as well as for citizens receiving services. Given that Muslim women would be one of the few groups in society, and perhaps the only group, targeted by this legislation, it was criticized as violating human rights. Nevertheless, the province, with the general support of all four parties in the National Assembly, moved the bill forward. Even the murder of six Muslim men at the Islamic Cultural Centre of Quebec City in January 2017 did not give legislators pause. The reason for this was highlighted in an Angus Reid public opinion poll released in October 2017, just as Bill 62 was moving through committee stage at the National Assembly. The poll showed that the bill had overwhelming support throughout the province, with 62 per cent saying they "strongly supported" the proposed legislation and another 25 per cent giving "moderate" support. The bill became law shortly thereafter, and some groups, including the National Council of Canadian Muslims and the Canadian Civil Liberties Association, almost immediately launched a court challenge.

How might things have unfolded if Quebec had had a CA? As noted, an assembly would be a thorn in the side of governments from time to time. Conversely, it could also keep alive a government that might otherwise be taken down by a combination of its own hubris and ill-conceived risk-taking. In this case, the government might have asked a CA whether a Charter of Values was needed, and if the answer to that question was "yes," the government could have further asked the assembly: "What should that Charter look like?" This would have created the opportunity for an open, respectful conversation, with the CA presenting its recommendations to the legislature and, at the same time, to the citizenry. As it was, the Charter appears to have begun as an exercise driven by a handful of hard line politicians, announced to the general public via a media "leak" to a major daily newspaper. In the end, the governing party not only failed to achieve its objective, it was brought into a state of tumult in the process. The PQ might still be in power if there had been a CA to help save it from itself.<sup>2</sup> Furthermore, Quebecers could benefit from a CA that would help ascertain the level of opposition to the law, while addressing the criticisms that are still gnawing

at it, criticisms which will continue in the form of extended, and expensive, court challenges.<sup>3</sup>

## CANADA'S PROCUREMENT OF MILITARY AIRCRAFT

As a second case study, let's look at an example of what might be called a "near-financial disaster." In July 2010, then Defence Minister Peter Mackay announced that Canada's military was purchasing a number of F-35 Lightning II Joint Strike Fighter aircraft. The government was prepared to do so without an open bidding process, which, had one been employed, may have allowed it not only to get a better price for any planes purchased, but also to maximize the economic benefits to Canada in the course of their production. The original cost of the F-35s was estimated to be \$9 billion for purchase and \$7 billion for maintenance over the life of the aircraft (\$16 billion in total). In May 2011, however, the Parliamentary Budget Office came out with a total estimate of \$30 billion. By the end of 2011, based on revised figures from the Pentagon, the estimate had risen again, this time to \$35 billion. The main reason for these increases was that early projected costs had been based on different assumptions about the lifespan of the planes, and hence the number of years they would require repairs. The average annual cost of the planes remained unchanged under all the reported scenarios, at about \$1 billion. However, the impression given to the public by each new estimate was that expenditures were spiralling out of control, and might not yet have hit a ceiling.

The government, however, stuck to its plan to purchase the F-35, and the majority the Conservative Party won in the federal election of 2011 should have guaranteed that it would go ahead. Then, in April 2012, the Auditor-General's report castigated the Department of National Defence (DND), saying it had not been forthcoming with pertinent information to the federal cabinet, the ultimate decision-makers. The government responded by removing the procurement process from DND, transferring it to Public Works and Government Services Canada. As time went on, this long-running soap opera became an embarrassment for the Conservatives. As a result, in December 2012, they called for a "reset," basically starting the whole procurement process again from scratch. They appointed a four-member "panel of independent monitors," and in June 2014 this panel confirmed the assessment DND had previously made of four different models of planes considered potentially suitable. The recommendations of this panel, however, like previous recommendations, came under criticism. One media report noted that "Al Williams, the former head of procurement at the Department of National Defence, who oversaw Canada's initial involvement in the F-35 programme,

has dismissed the current process as a government public relations ploy. He argues that a competition, where all candidate jets are properly evaluated, is the only way to proceed” (Pugliese 2014).

The F-35 acquisition process highlights a failure of democratic accountability, particularly the lack of political oversight of DND. The consequences are not surprising: “Left unconstrained, a bureaucracy seeking a particular outcome will always do what DND did in the case of the F-35: minimize downside risks, take shortcuts when necessary, and in particular, articulate cost projections in such a way that those authorizing outcomes will find more palatable” (Nossal 2012–2013, 180). During the 2015 federal election campaign, the Liberal Party promised to clean up this mess by holding an open competition to determine which new fighter jet to purchase. However, in the course of the election, Liberal leader Justin Trudeau, who was eventually victorious, stated: “We will not buy the F-35 stealth fighter-bomber.” In July 2016, the new minister of National Defence, Harjit Sajjan, announced that the government “will consult with industry to determine the best new aircraft for Canada.” But according to media reports, Sajjan “refused to say whether the Liberal government still intends to hold a fighter jet competition, as it promised during last year’s election campaign” (Berthiaume 2016). The government’s intentions were made clearer in November 2016 when it declared that the competition to replace Canada’s aging fleet of CF-18 jets might take up to five years. It is evident, then, that Canada could still end up with some unnecessarily expensive military hardware.

Given this extended delay, the government argued that a “capability gap” was about to emerge, which meant that Canada would be unable to maintain its NATO commitments. As a “stop gap” measure, the government announced it was making a sole-source purchase of eighteen Super Hornet fighter jets from the Boeing Company. Critics, like the aforementioned Alan Williams, suggested that in this instance a sole-source arrangement, which does not involve a competitive bidding process, is illegal, because these types of arrangements can only be used in urgent and unforeseen circumstances. As Williams put it: “A capability gap that was allowed to grow over many years is hardly unforeseeable. Bad planning is not an excuse for sole-sourcing” (quoted in Pugliese 2016).

By late 2017, even this stop-gap proposal was collapsing as Boeing was busy complaining to the American government that, in its opinion, the Canadian company Bombardier was flooding the US market with heavily subsidized passenger jets, causing Boeing to lose contracts in this part of the aerospace market. The US Commerce Department agreed, subsequently slapping import tariffs of 300 per cent on Bombardier. The response of Canada’s prime minister was firm, saying in direct reference to Boeing’s complaint: “We won’t do business with a company” that is “trying to put our aerospace

workers out of business” (quoted in Brewster 2017). The result is that the government of Canada did not call upon Boeing to fill its “gap.” Instead, by late 2018, Canada was arranging with Australia to purchase twenty-five of its aging F-18 jets.

What if a CA had addressed this issue? A CA likely would begin by assessing Canada’s military commitments and determining the contributions new planes would make to fulfilling those commitments. Then it might address the criticisms of the F-35 that were raised from the outset: Does Canada require expensive stealth aircraft to meet its objectives? Furthermore, is it a “deal breaker” that the F-35 is a single-engine aircraft, which greatly increases the risk that we could, in some cases, lose both the plane and the pilot? Do those risks alone mean we should recommend one of the twin-engine models on the market? In addition, a CA would have gauged the performance, in many areas, of other aircraft that could meet DNDs specifications. The Assembly might have given much weight to the fact that the government could purchase three Super Hornets for every F-35 (Bezglasnyy and Ross 2011, 245).

We will never know what might have happened if Canada had had a CA. But let’s assume that after a recommendation from the assembly, pressure had fallen on the government to buy a cheaper model such as the Super Hornets, and the government acquiesced to that pressure. If the purchase of F-35s cost \$35 billion, and another option came in at \$12 billion, given our previous estimate of \$81 million per year for a CA, this fictional, yet possible, recommendation and ultimate decision would produce a saving of \$23 billion. This amount would enable the government to, among other things, pay for the CA for *the next 284 years*. As it turns out, Canadians might end up saving money, but only because of long-running ministerial and administrative incompetence; the defeat in a regularly scheduled election of the Conservative government in 2015; and a trade dispute with the US government.

A CA would have two enormous benefits when it comes to defence procurement. For one, military hardware is expensive, among the dearest capital assets any government will purchase. If a “deluxe” product is chosen when a “solid” one would do, the cost to taxpayers may amount to a small fortune. A CA could clip the wings of those who are enamoured with “next generation” weaponry that is both pricey and unnecessary to meet needs. For another, without an open competition – or even *with* an open competition – these types of acquisitions tend to come under suspicion. There will inevitably be a feeling that some politician or bureaucrat is greasing the palms of a supplier in return for a reward, perhaps a future, lucrative appointment to a board of directors. A CA would greatly reduce those suspicions, as well as general public cynicism, by ensuring that any purchase has the broad support

of not just the generals, mandarins, and cabinet ministers, but also a representative group of citizens.

## **BREXIT**

As a third case study, let's look at what can be referred to as a "social and political disaster." In June 2016, the UK held a referendum on the question of its membership in the European Union (EU). When the ballots were counted, 52 per cent had chosen "Leave," while 48 per cent had selected "Remain." Within this national 52/48 division, however, were serious regional splits. Scotland voted 62 per cent Remain, a result considered almost certain to provoke a second independence referendum. In England, London also chose "Remain" (60 per cent), but the other eight regions of the country, as well as Wales, voted "Leave," though in every case by less than 60 per cent. There was also a clear split within regions, with larger cities voting differently than smaller towns and rural areas. Some of the cities that voted Remain included Edinburgh (74 per cent), Glasgow (67 per cent), Manchester (60 per cent), Cardiff (60 per cent), and Liverpool (58 per cent).

There were other divides as well. Among those voters with higher education degrees (above the bachelor's level), 64 per cent chose "Remain," as did 57 per cent of professionals and managers. Meanwhile, manual workers, the unemployed, and pensioners voted 64 per cent to "Leave." Visible minorities (including Asians, Blacks, and Muslims) voted heavily to "Remain," while a slight majority of whites opted for "Leave." For those who normally vote Conservative, 58 per cent picked "Leave"; for Labour Party supporters, 63 per cent chose "Remain."

Prime Minister David Cameron promised the referendum in the lead-up to the 2015 election, which his Conservative Party won. The offer was made mainly as a way of dealing with deep divisions within his own party, courtesy of a large group of "Euroseptics." The gamble backfired, ending with the prime minister's resignation. Not long after, across the aisle, Labour MPs staged a revolt against their leader, Jeremy Corbyn, provoking a leadership contest in the party for the second time in a year, a contest that Corbyn won handily.

And then there were the broken campaign promises. The "Vote Leave" bus was inscribed with the slogan: "We send the EU £50 million a day. Let's fund our NHS [National Health Service] instead." There were also commitments to cut immigration, increase the number of school teachers, and deal with problems like low wages and skyrocketing rents. Not surprisingly, politicians stretched the truth beyond recognition during the campaign and quickly

“walked back” their pledges in the days after the referendum. Outrage at politicians and the political process is bound to increase.

Beyond the political fallout, the economic effects of “Brexit” are also likely to be severe, including reduced government revenues; lost jobs, especially in the financial services industry; a further downgrading of the country’s credit rating, which makes borrowing money more expensive; and an increased likelihood of lower economic growth. Social conflicts soon also emerged. After the vote, a petition circulated calling for a second referendum based on the rationale that “Leave” had obtained less than 60 per cent support, and the result was too close to engineer such a dramatic change in the status quo. Many voters had “Bregrets,” admitting they didn’t quite know what they were voting for. Taunts against “foreigners” spiked dramatically, as the referendum seemed to give racists free licence to engage in verbal attacks on anyone who did not look “British.”

Some argue that the referendum spun out of control, becoming much more than its creators had intended. The vote had provided members of the working class with a chance to strike back at the elite, to make it clear that, from their perspective, the EU best served those with wealth and education while harming the poorest, creating increased competition for low-end jobs, and driving down wages. The referendum was tossed into a smouldering mix of inequality, austerity, anger, and fear. It was a tinderbox waiting for a spark, which came in the form of millions of commentaries on globalization and its effects, made with little x’s.

Of all the electoral divisions noted earlier, though, none was as consequential as the division by age.<sup>4</sup> For eighteen- to twenty-four-year-olds, 73 per cent chose Remain. The figure was 62 per cent for twenty-five- to thirty-four-year-olds and 52 per cent for those aged thirty-five to forty-four. Meanwhile, just 40 per cent of those aged sixty-five and over sided with “Remain.” What this means, all else being equal, is that in perhaps another twenty years, a follow-up referendum would almost certainly find a comfortable majority of UK residents voting to “Breturn.” This whole social and political mess, as it turns out, may have been for naught. Meanwhile, the UK government has spent a few years trying to extricate itself from the EU.<sup>5</sup>

The EU referendum highlighted the multitude of ways in which the UK finds itself a deeply divided nation. What might have happened instead if a CA had been in place? A CA could have been a source of conflict resolution, or at least a way to ease tensions in society, by providing a forum for calm examination of an issue troubling the citizenry. Instead, the UK engaged in a referendum on a complex and multifaceted issue, where only two choices were available: “Leave” or “Remain.” An assembly, after a few months of consultation and deliberation, could have produced a more nuanced recommendation, perhaps something like: “We wish to remain in the EU, but only



if the following conditions are met.” In response, the government could have embarked on a series of domestic reforms, while lobbying for changes to the EU itself. It could have then returned to the assembly, say, five years down the road, after reforms had been implemented, asking: “Would you now recommend unconditionally that we remain part of the EU?”

As it turns out, there *was* a Citizens’ Assembly on Brexit, launched in April 2017 by the Constitution Unit at University College London, with funding from the Economic and Social Research Council. The assembly brought together fifty citizens for two weekends in September–October to discuss and vote on options for Brexit, particularly in the areas of trade and immigration, and to issue a report with recommendations for the government. Speaking to the assembly, Labour MP Kate Green lamented: “It’s a great pity that we didn’t have a citizens’ assembly before the referendum took place, on what is actually the biggest political, economic, and constitutional decision of my adult lifetime” (quoted in Constitution Unit 2017). Indeed, while this CA served as another important experiment in highlighting the value of assemblies, it must be regarded as a case of “too little, too late.” Holding its discussions more than a year following the Brexit referendum, the assembly was akin to passengers arriving at port long after their ship had sailed.

The CA on Brexit, then, demonstrated an important limitation of ad hoc CAs, namely their very adhocery. One of the key lessons of Brexit, and for sure a “great pity,” is that there is not much point in creating a CA in the midst of a full-blown crisis, when the political waters are boiling over the edge, because that CA will not be in a position to provide significant benefits to a society that is already at war with itself. It would serve little purpose, arriving on the scene too late – an example of a political collective rushing to a hardware store to purchase an extinguisher when its house is on fire. Instead, preventative measures should be put in place to either head off conflicts like Brexit or at least limit their adverse consequences. It is in times like those that produced the Brexit meltdown that a permanent CA – one which is trusted, long-standing, and well known – would prove its value, serving as a type of insurance policy against social turmoil and its attendant carnage.

This is why I doubt the efficacy of a call, very late in the day, by a number of people for a Brexit CA, including by Neal Lawson (2018), chair of the pressure group Compass, who maintained that an assembly is “a simple and compelling idea that could break the logjam of a parliament that isn’t built to represent the ways in which the UK now divides, allowing instead for a form of reasoned politics to get us out of this mess.” Similarly, James Bridle’s (2018) plea for a CA, which would provide “an opportunity for people to actually engage with the messy business of politics, rather than shout and wave flags from the sidelines,” is also likely to fall on deaf ears. Once knives have been drawn, most people will not have the patience to reflect on, among

other things, the meaning of ancient Greek terms such as *kleroterion*, *pinakia*, *clepsydra*, and *ostraka* (all mentioned by Bridle in his article). Still, further calls were made for an assembly, including one by a couple of Labour MPs (Elgot 2019).

Not to be outdone, just days later, former prime minister Gordon Brown (2019) also proposed a series of CAs, which would “lead to constructive reconsideration by parliament of our relations with Europe.” In the comments section following the article, a number of people supported Brown’s call, but just as many, if not more, were opposed. Among other things, these commentators: (a) wondered *how* members of the assemblies would be chosen; (b) argued that creating assemblies *after* a referendum was undemocratic; (c) suggested the issue was too *complex* for the general public to have a say; and (d) maintained that, in some ways, the exercise was pointless, because the UK had *already had* a “citizens’ assembly.” The following is a sample of the comments. They highlight the fact that, across much of the UK, there was a – perfectly understandable – lack of patience for the idea that CAs might be parachuted into the Brexit maelstrom.

Who gets to decide who sits in a Peoples’ Assembly? (RedLenin)

Who will choose the members for the Citizens’ Assembly, I wonder? The Establishment??? (RevoltinPensioner)

Stuffed no doubt with the usual suspects to get the answer you want. (Id1649)

Citizens’ assembly, composed of who? Chosen how? A random sample? Very old woman, “Do I get to meet that very nice Maggie Thatcher?,” addled brain drug addict, alcoholic, people who have never voted before (lots of them about), “the EU . . . what’s that, is it them bloody foreigners?” If you have to apply, this will just be a particular unrepresentative subset of the UK population and will be very little different to the MP subset except less well informed. (Alan1987)

I see huge problems with this repeated suggestion of a “Citizens’ Assembly.” . . . unless attendance is compulsory, the delegates will be, to a great extent, self-selecting. . . . With work and family commitments, are you going to get a truly random selection? Who can take, say, a one month “time out”? There’s a risk of ending up with those who are passionate about their positions and therefore inflexible. (DenisCooper)

So [it’s] basically a cross between *Question Time* and a pub chat. I can’t see that coming to any agreement, let alone providing a clear path forward. Leaving aside the detail about how one creates a representative sample – whoever shouts loudest gets on the panel? – who would decide the agenda? Would there be a referee to enforce rules, validate facts, count votes . . . or what? Blithely coming up with a “citizens’ assembly” is as ill-conceived as proposing to solve an undefined problem with a badly worded referendum. (graun)

Apart from anything else, we'd spend two years arguing over who was on the Assembly. (teeps2016)

Who chooses the people on the assembly? Who decides that the people who pick them are neutral? On what basis do you choose them? If it's 52% Leavers and 48% Remainers, then what's the point? . . . How many people do you have on the assembly? What is the scope of their mandate? If asking 45 million people to vote again now that they know more about Brexit is undemocratic, how can asking 100, 200, 500 people to decide in their place be any more democratic? People's Vote! (williamgeorgefraser)

I would love to see the criteria involved in choosing this golden kangaroo court. . . . [And] how is it that [the] 100 or whatever chosen have some sort of legitimacy over the millions that voted in the 2016 referendum? (Kissingerwozhere)

How can a citizens' assembly involving a small group of people be democratically superior to a referendum involving the entire UK voting population? (Justice180)

So we should put off implementing the result of a referendum, so you can run a few focus groups? Come off it. Putting "People's" or "Citizens'" in front of something does not make it a better or more democratic idea. (HeatonMoor)

A citizens' assembly is no more representative than elected MPs in a representational system of government, and will never be accepted as legitimate, if the result is to overturn the referendum. (brighterday)

A referendum would be more democratic than a citizens' assembly. It's a ridiculous idea and will hopefully be treated with the scorn it deserves. (BigBanana)

As bad as politicians are, no, I don't want any Tom, Dick, or Harry calling the shots. (RightySmitey)

This reminds me of the "gilets jaunes" in France, who think they should be running the country. Their idea is to replace the elected assemblies, mainly made up from people who have been successful in life, by people like themselves who have been far less successful. (jifferytwo)

The purpose of this so-called "Citizens' Assembly" is to overturn the referendum. For those who keep shouting "Exit Brexit" this must seem like a good idea. It would be the death of democracy. No thanks. (argotique)

"A citizens' assembly is now the only way to break the Brexit deadlock." No, it isn't. Trying to get people who don't understand complex and interlinked ideas to make decisions that impact the rest of us is a disaster. Unless you're going to IQ test everyone that gets on the panel then this is doomed to failure. (MattBucks)

No, no, no! We do not need an unelected focus group at this point. It is fraught with problems and will be undermined by the same hard, right-wing, under-handed tactics deployed before. We need intelligence applied to the problem, not random people with pub opinions. I would not accept the result of such a group. (KHLondon)

Such assemblies are very easy to manipulate by whoever controls the flow of information to them, whether or not these assemblies nominally have the power to gather information themselves. . . . What safeguards would there be to ensure a Brexit “citizens’ assembly” isn’t just captured by one side of the argument (most likely Remain given its support among the powerful who are invested in the status quo) and browbeaten into submission through a flow of biased information? (imperium3)

The people are too ill informed to make a decision. Please, please, please leave it to those who know how politics works and those experts who have served us so well in the past. Never ever ask the people again. (tibbzy)

What on earth is a citizens’ assembly? Blokes in berets and/or yellow vests shouting at one another? Yeah, that should work. (severnboar)

There is an underlying assumption that a citizens’ assembly will be nice and sensible, but if it properly represents the UK it will be bickering and biased. (chris1958)

We already have a citizens’ assembly; it’s called Parliament. What we actually need now is some decisive leadership. (RacingMichelle)

We had a citizens’ assembly in 2016. More citizens than ever before in history assembled to vote and the majority of those that voted, voted to leave the EU. Since then, people like Gordon Brown and so, so, so many others have sought to overturn the vote of the greatest citizens’ assembly EVER. (Pleaforcalm)

The referendum in 2016 was a citizens’ assembly. The government asked the citizens to assemble at polling stations and cast a vote instructing them on whether to leave the EU or remain and promised the citizens their instruction will be carried out. The majority, 17.4 million, voted to leave. (AthurFerksake)

Citizens Assembly? You mean members of the public selected by public ballot to represent the people? You mean . . . MP’s??!! (Mizzentop)

Hilarious. What dingbat dreamt up the Guardian/Labour/Momentum-friendly Citizens’, sorry People’s, Assembly? I mean is this REALLY an answer to anything? Completely and utterly bonkers idea. Policy by People’s Assembly? Raving mad. Anyway – we HAD a People’s Assembly – or two in fact – the EU Referendum and the General Election! They are TRUE People’s Assemblies, enabling ALL the People to be involved. (ninjawarrior)

No to a citizens assembly . . . although I have a nice Twitter focus group you might be interested in. How about a Facebook emoji vote down? (greenhat2017)

This is the third such article in the Guardian over the past two weeks. Please stop it! It's a ridiculous idea and no one but a small minority want it. (Blockz99)

In his piece, Brown argued that the “direct engagement of the British people is now essential, in order to address the triple challenge of a government defying the sovereignty of parliament, an even more divided country, and mounting distrust between parliament and people.” But anyone cynical of Brown’s motives might ask: Why is it only *now* that it is essential for the government to engage with its citizens? In contrast, given the comments above, I suggest that “now” would be an inappropriate moment to begin innovative consultation processes with the public. A national crisis is a time when governments should be able to *use* these processes, not *create* them. In sum, the Brexit disaster should serve as a stern warning, a crow cawing on a fence post, to all democratic nations (and not just the UK) that want to reduce, as much as possible, the potential for various kinds of civic traumas.

### IRAQ AND AFGHANISTAN WARS

Finally, in concluding this brief survey, let’s look at a case that must qualify as an unmitigated “human and financial disaster,” the Iraq and Afghanistan Wars. The cost to Iraq has been the heaviest of all, with total violent deaths, including combatants, conservatively estimated in November 2018 at 288,000.<sup>6</sup> The conflict has produced around four million refugees and internally displaced persons, while creating a “failed state.” This disaster culminated with both Iraq and neighbouring Syria descending into civil war, producing in Syria a further 400,000 deaths, five million refugees, six million displaced persons, and the initiation of numerous terrorist attacks throughout the world at the hands of the “Islamic State” (ISIS).

For the United States, over 4,500 troops were killed and tens of thousands suffered devastating injuries. Today, over 100,000 veterans are dealing with serious psychological issues caused by the war. The financial cost was also huge, though relatively little of that cost was “up front.” The invasions of Iraq and Afghanistan were the cheapest parts of the conflicts, even though these expenses included pay for soldiers, transportation of troops, food and housing, and the purchase of equipment and weapons. The major part of the cost relates to the fact that these wars were paid for with borrowed money. No new taxes were implemented by the administration of George W. Bush; indeed, his tenure as president was marked by significant tax cuts. So, the total costs of these conflicts must include annual interest payments made on borrowed money; future interest payments that will need to be paid on money already borrowed; and future interest payments that will be paid on money the

American government will have to borrow down the road to cover the ongoing costs of the wars, such as disability pensions, that could continue for up to half-a-century. By 2008, the interest costs alone for the Iraq and Afghanistan conflicts amounted to \$900 billion (Stiglitz and Bilmes 2008, 122).

Stiglitz and Bilmes (2008, 31) calculate that the total price tag of these wars to America alone will be roughly \$3 trillion, a figure that, they say, “strikes us as judicious, and in all likelihood errs on the low side.” The projected expense, however, rises substantially if we include macroeconomic costs, such as higher oil prices, and the failure to invest the money spent in projects such as schools and roads, which have a greater rate of return. These costs bring the grand total of the Iraq-Afghanistan conflicts to \$5 trillion, *excluding* interest payments (130).

Let’s assume that the United States had had a CA in 2003 consisting of 244 members (half of each state’s seats in the House of Representatives, rounded up to the nearest whole number). Let’s also assume that total expenses were in proportion to those for a Canadian CA as noted earlier. If the Iraq War cost \$3 trillion, and the cost of a US Assembly is \$115 million per year – and *if* this CA had recommended against proceeding with the war, and *if* enough pressure had then been placed on Congress and the president to accept this recommendation – the CA would have paid for itself for *the next 26,000 years*. Alternatively, to pick just one policy option, \$3 trillion could build 24 million housing units; one new home for every fourth family in America (Stiglitz and Bilmes 2008, xv).

The latest revised price tag for the wars in Iraq and Afghanistan (as well as Syria and Pakistan), though, places the total cost nearer to \$4.8 trillion, including interest paid on borrowed money up to August 2016 (Crawford 2016). Between 2017 and 2053, however, costs are going to spiral upwards, because veterans’ disability and special health care needs will require \$1 trillion, while interest payments on government debts incurred because of the wars are projected to rise to a whopping \$8 trillion (assuming no new taxes are put in place to cover these payments). This projected total is almost double the entire cost of the wars up to 2016. By mid-century, then, the overall price tag might exceed \$13 trillion, or enough to build over 100 million housing units, which would amount to a new home for almost *every family in the country*. It would also be enough to pay for a CA for *the next 113,000 years*.

The United States was not the only NATO country to go to war with Iraq. Despite an anti-war march of 1.5 million people in London in February 2003, the UK, led by Prime Minister Tony Blair, also rushed off to war. In June 2016, the long-awaited results of an inquiry into that war were released (the Chilcot report). Among other things, the inquiry lambasted the former prime minister, specifically for propounding a weak case for war. The government exaggerated the threat posed by Saddam Hussein; relied on

flawed intelligence, including material poached from the Internet; sent an ill-equipped army into battle; and could not, in advance of the conflict, draw out a cogent post-war scenario, certainly not one that included a peaceful and democratic Iraq. While harsh on the major players who beat the drums of war, the Chilcot report, at the same time, levelled a devastating critique of the UK's democratic institutions. It seems that, through propaganda and the manipulation of public opinion, many citizens were deceived into supporting the war. Not only, then, does Chilcot provide lessons for UK citizens and their government, it provides lessons for citizens in every democratic polity; namely, that no nation is immune to the folly that led the Labour government, with the support of almost all Conservative MPs, to perpetrate one of the most easily foreseeable tragedies we have witnessed since the end of World War II.<sup>7</sup>

Arrogant politicians, military "leaders," intelligence "experts," and civil servants have produced no shortage of financial, economic, political, social, and human catastrophes, and have done so frequently even in nations with strong democratic traditions. CAs could not guarantee that similar disasters would never again happen, but I suspect they would greatly reduce the odds of them occurring. As things stand in most democratic nations, though, citizens lack sufficient protection against these types of calamities, or even smaller-scale debacles for that matter. Stiglitz and Bilmes (2008, 186) make this argument when they point to what might be the most important lesson we need to learn about the Iraq War, namely that America's "checks and balances failed at home, and there was no one abroad that was willing or able to stop us from the early and mad decision to invade Iraq." They add that there are currently no national or international institutions, not even the United Nations, "that can provide an adequate check against a major country determined to go to war, even if it is plainly contrary to international law."

These four case studies highlight the problematic nature of public policy decision-making processes in three countries. Readers who live outside these countries will no doubt be able to rhyme off numerous other examples that could be added to this catalogue of failures. They make clear that political systems typically cannot pass an important litmus test, namely, that "even if unwise initial commitments are made," policy processes should be "intelligent enough to allow modification or abandonment of projects as the initial mistake becomes clear" (Moran 2001, 418). Citizens should not have to depend on happenstance or the fortuitous timing of an election to be able to intervene when they perceive that they are witnessing an unfolding policy disaster. Nor should they have to find themselves neck-deep in political quicksand, having realized too late that the profound damage that governments have caused in their names cannot be undone. A CA could examine issues before, in conjunction with, or even after a legislature does so. The

goal would be to reduce the chances of miscalculations, some of them irreversible, which have terrible costs, costs that may have to be paid for generations to come. For sure, enhancing democracy with a CA would come at a price. But the absence of democracy almost invariably ends up generating price tags that are much dearer in the long run.

## NOTES

1. These words, written over twenty years ago, could have been taken verbatim from the July 2016 Iraq War Inquiry (the Chilcot Report) in the UK (see further).

2. In the election held in October 2018, the PQ's decline continued; its support fell to 17 per cent, the lowest level in its history. It won just ten seats in the 125-seat National Assembly.

3. In March 2019, Quebec's new government, elected in October 2018, led by the Coalition avenir Québec, introduced its own legislation on secularism (Bill 21), so the story continues.

4. There was no gender division between "Leave" and "Remain" supporters; both men and women split 52 per cent to "Leave" and 48 per cent to "Remain."

5. At the time of this writing, the UK was scheduled to "crash out" of the European Union on 31 October 2019, if it fails to secure a deal with the EU.

6. See [iraqbodycount.org](http://iraqbodycount.org).

7. To their credit, eighty-four Labour MPs voted against the Iraq War in 2003; only two Conservative MPs voted "No."



## Chapter 6

# Replacing an Upper House?

This book has recommended the creation of a national CA, which would become a permanent supplement to democratic institutions. While the result would, I argue, be a significant improvement on the status quo, some countries might also want to consider having a CA, in time, replace elected or unelected legislatures which serve as “upper houses.”<sup>1</sup> This chapter is a case study for such consideration, focusing on the Senate of Canada.

As Canadians know all too well, senators are appointed by the prime minister and serve until age seventy-five with no requirement to defend their actions via elections at any point. At various times, most Canadian provinces also had similar unelected “Legislative Councils,” which included a few oddities. For instance, in Ontario after 1840, the Council was elected, but many questioned why a second house, beyond the Legislative Assembly, was required to pass the same law. At Confederation in 1867, it seemed perfectly understandable when the province got rid of this Council, and “in the years since, nobody has even noticed it’s gone” (Boyer 2014, 169). All provinces that have had such Councils have abolished them, with Quebec the last to do so in 1968. The history of Canada’s unelected and unaccountable “councils” differs at the federal level, however.

While the provinces have been busy reforming their democratic institutions, the Senate of Canada has drifted along for a century-and-a-half, despite having played almost no notable role in governance. This is the case because it has never had a useful purpose. According to one of the “Fathers of Confederation,” Georges-Étienne Cartier, the Senate was put in place in order to buttress “mixed” government, to serve as a “power of resistance to oppose the democratic element,” that is, the House of Commons (quoted in Boyer 2014, 183). Boyer (125, 231) argues that the Senate “was not meant to be independent or objective or dispassionate, but a bulwark to thwart any

challenges to the established social order.” Yet, the House of Commons has never initiated any remotely radical legislation, so the Senate has had little to do in this regard from the moment of its inception, which is just one of the reasons why Boyer sees the institution as little more than a “colonial relic.”

Defenders of the Senate suggest it has made three important contributions to our political life; however, these claims made on behalf of the Upper House do not withstand even brief scrutiny. First, the Senate supposedly represents the various regions of Canada. In fact, senators have never represented broad geographic “regions,” but rather specific provinces. Yet, for quite some time, regional interests have been protected by strong provincial governments, which can do most anything they want to, with obvious exceptions such as national defence; federal-provincial agreements, such as the 2016 expansion of the Canada Pension Plan; the convention of appointing Supreme Court justices from the various regions, including three from Quebec, three from Ontario, two from the West, and one from Atlantic Canada; and the convention of appointing members from across the country to the federal executive (in 2015, the Liberal cabinet had eleven MPs from Ontario, seven from Quebec, and at least one from each of the other provinces and one from the territories).

Second, the Senate does not protect minority rights or violations of the liberties of the people; that is the job of Human Rights Commissions and the Charter of Rights and Freedoms. Indeed, it is the Supreme Court which now serves as our main arena of sober second thought and, unlike our innocuous Senate, can declare legislation unconstitutional, forcing the government of the day to go back to the drawing board.<sup>2</sup> In fact, the Senate does not protect us from anything. Its proponents say it could help prevent “tyranny” if some authoritarian government managed to get its claws on the House of Commons. However, this wildly dystopian scenario is highly unlikely. Besides, if we ever find ourselves in such a situation, it seems implausible that senators could hold back what would be, in effect, a coup d’état. If the only thing standing between Canadians and a dictatorship is 105 unelected sinecurists then we might want to consider rewriting our constitution.

Third, even the Senate’s supposed skills in investigation and research have now been overtaken by the many institutes and centres found throughout our nation’s universities, civil society organizations, business and trade union confederations, and numerous think tanks representing views across the ideological spectrum.

This leaves us with the Senate’s supposed main role as the home of sober second thought. In the words of the country’s first prime minister, Sir John A. Macdonald, the Senate could prevent “any hasty or ill considered legislation” from becoming law (quoted in Forsey 2015, 4). But even in the midst of an apparent crisis, when such legislation might be on the table, the Senate’s role

is both dubious and potentially controversial. The last such crisis arguably occurred in 1988, when the Senate defeated Bill C-30, which would have implemented a free trade agreement between Canada and the United States. The governing Conservatives, who held a majority in the House, called an election, which they won easily. Given this outcome, the Senate appears to have misjudged the public, thinking the people were opposed to free trade, hence forcing a vote on the issue. In the course of its work, the House passes hundreds of bills that the public never gets to vote on, so why did the Senate choose to defeat this one? In the end, the Upper House reluctantly passed the bill after the 1988 election. Helen Forsey (2015, 15) says that in this case, the Senate used “its ‘reserve’ power in the interests of democracy.” But that’s not how the ultimate winners of the free trade debate would have viewed its actions, especially when our Senators’ supposed defence of democracy was subsequently given a sharp slap on the wrist by the electorate.

The Senate does not serve us well at moments of perceived crisis, nor does it seem to do much better during “normal” times. For instance, from 2003 to 2009, of the 300 bills that went before the Senate, 88 per cent were passed without a single amendment (Forsey 2015, 9). There was the odd bill where the Senate had some input, but these involved suggesting mostly minor alterations. The Senate has had opportunities to challenge bills from the House, as it did in June 2016 with legislation legalizing assisted-dying in certain circumstances, yet in this instance it gave up on its most important objection. The Upper House agreed to pass Bill C-14 just days after it had returned the bill to the House for revisions, with many Senators arguing it permitted doctor-assisted dying only for those whose deaths were “reasonably foreseeable,” hence failing to meet the requirements outlined in a recent Supreme Court decision. Senators wisely concluded that they were in no position to defeat the will of the elected House. The lead Senator on the file, Serge Joyal, basically admitted he was helpless, telling the media: “It was a very sad day. Parliament decided quite openly to exclude citizens whose rights have been already granted by the Supreme Court” (quoted in Stone 2016). Within days of the law’s passage, a British Columbia woman, Julia Lamb, who has spinal muscular atrophy, decided to challenge the law, with the support of the BC Civil Liberties Association. Each senator has a lengthy sinecure, but in this instance, they could not, as a group, accomplish much of anything useful.

Given its ineffectiveness, why then is the Senate not reformed to improve its functioning? One of the more commonly suggested solutions to this “ineffectiveness malaise” is to elect senators. However, if this ever came to pass, senators, like their American counterparts, could rightfully claim legitimacy based on having the support of “the people,” which might contribute greatly to legislative gridlock similar to what can be observed in Congress, a system so dysfunctional it is harmful to whichever party is trying to govern. If, on

the other hand, our Senate were elected but not given the moral authority to defeat a bill passed in the House of Commons, it would be a toothless duplicate of the House and hence of questionable value. What this means is that, in important ways, the Senate cannot be reformed. The fact that senators are not elected *is* the problem. The fact that the Senate must never be elected leads me to conclude that abolishing the Upper Chamber is the only solution to the problem. And yet, Canadians seem unwilling to take this step.

So what is to be done? My solution is that, over time, a CA could replace the Senate. The CA could continue with its original function of making recommendations, but might also be given added responsibilities to assess and vote on bills arising from the House. The CA still would not be able to propose a bill, and it could not defeat a bill, though it could postpone one for six to twelve months, with the exception of budgetary matters. Any CA would likely invoke this limited power only in highly unusual circumstances; it could even be restricted to issuing just one or two of these legislative “red cards” each year. At the same time, we could decide that this is not an appropriate function for the CA, and that it should continue in its advisory role only.

With a demonstrably effective CA in place, with or without additional powers, Canada could decide to abolish its Senate. If it were to take this not-so-bold step, it would have an opportunity to “promote” the CA to quasi-legislative status. By then, perhaps twenty or thirty years after its inception, once almost everyone is comfortable with and supportive of the CA, it could be made part of the country’s formal constitution. The overall result would be an improvement on the status quo, as the CA would have a unique composition of members (with its representative sample of the population) appointed for relatively brief periods of time. And it would serve the unique function of addressing pressing questions of public policy, based on the assembly’s assessment of what constitutes “pressing.”

Some argue that abolishing the Senate “would be an unprecedented transformation of our whole system of government, with huge ramifications for the principles of federalism and democracy” (Forsey 2015, 81). Current senator Serge Joyal claims that getting rid of the Senate “would have a profound and nefarious impact on the equilibrium of our constitutional polity and the effectiveness of its institutions” (quoted in Forsey 2015, 84). But these comments amount to little more than traditionalist scare-mongering. Canadian democracy would no more notice the disappearance of the Senate than a child would notice the disappearance of its appendix. The abolition of upper chambers does not seem to have hurt many countries, ones similar to Canada, that have long since rid themselves of unnecessary second legislatures, including Finland (which did so in 1906), New Zealand (1951), Denmark (1953), Sweden (1970), and Norway (2009, though it had an odd form of “qualified

unicameralism” after 1814). It doesn’t seem to have hurt any of Canada’s ten provinces or three territories either, some of which have not had “bicameral” legislatures for a century-and-a-half.

In sum, if a viable CA were in place, say, for more than two decades, it could serve as a potential replacement for the Senate, giving the provinces the incentive they need to vote to eliminate the Upper Chamber. Citizens might, in turn, decide that the Senate should continue, even after the CA has become permanent. After all, it is basically a harmless institution. Even its \$100 million annual price tag amounted to just 0.04 per cent of 2016–2017 federal government expenditures. We could easily afford both institutions if need be, though with a CA in place, the Senate would almost certainly have an even more marginal role in Canada’s political life than it does now.

The CA would be an experiment in democracy that, after roughly a decade, could be renewed or halted; at around the twenty-year mark, it would be made permanent or ended, with the citizenry in both cases making the decision, via referenda timed to coincide with general elections. As it evolves, academics and practitioners from a variety of disciplines would study the CA, and modifications could quickly be made to whichever procedures were deemed inadequate. As part of its evolution, the CA would work in a rented space for its first two decades. At that point, if a majority voted to make this temporary experiment permanent, the government, and by extension the public, could commit to building an architectural masterpiece – a tourist attraction as impressive as the current Parliament buildings – as a beautiful home for the assembly in recognition of the important place it would occupy in the nation’s political and cultural life.

## NOTES

1. Readers are likely to be able to find institutions in their own countries which can be similarly replaced (e.g. the House of Lords in the UK). In nations such as the United States, it is unlikely that my proposal would be given serious consideration. Each state has two seats in the Senate, so reconfiguring this institution to make it representative of population would require small states to give up the vastly disproportional amount of power granted to them by the Constitution, which is never going to happen.

2. Parliament can, under the Charter’s “notwithstanding clause,” suspend certain rights for up to five years, with the possibility of renewals of the suspension. Parliament can do this despite a Supreme Court ruling to the contrary. However, it is testimony to the respect granted to the Court’s decisions that the federal government has never invoked this clause.



## Conclusion

Public apathy and political ignorance are a fundamental fact today, beyond any possible dispute; decisions are made by political leaders, not by popular vote, which at best has only an occasional veto power after the fact. The issue is whether this state of affairs is, under modern conditions, a necessary and desirable one, or whether new forms of popular participation, in the Athenian spirit though not in the Athenian substance, if I may phrase it that way, need to be invented.

– M.I. Finley (1985, 36)

One of the imperative needs of democratic countries is to improve citizens' capacities to engage intelligently in political life. I don't mean to suggest that the institutions for civic education developed in the nineteenth and twentieth centuries should be abandoned. But I do believe that in the years to come these older institutions will need to be enhanced by new means for civic education, political participation, information, and deliberation that draw creatively on the array of techniques and technologies available in the twenty-first century. We have barely begun to think seriously about these possibilities, much less to test them out in small-scale experiments.

– Robert A. Dahl (1998, 187–88)

In July 2016, Justin Trudeau announced the creation of the Prime Minister's Youth Council, which was to consist of thirty Canadians aged sixteen to twenty-four who would draw up a list of their concerns and give the prime minister advise on youth policy. The official website of the Council noted that successful applicants "will meet both online and offline several times a year to discuss issues that matter to you, your community, and your country. Council members will interact with each other outside of meetings to discuss ideas and upcoming activities and will engage with their communities."

Like many of the other examples of government seeking input, mentioned throughout this book, this Council is likely to make a useful contribution to public debates. However, the ideas developed by youth would likely be more effective if brought forward within the confines of a CA. In Canada, those aged eighteen to twenty-nine form 20 per cent of the adult population. In an assembly of 172 persons, there would be about thirty-five MCAs from the men and women who make up this age group, or about the same number that the prime minister will have on his council. Youth Council members, however, will be selected from a series of applicants, which is likely to skew towards those with higher than average education levels and those from higher-income backgrounds. In contrast, MCAs would be chosen at random. More importantly, Youth Council members, while consulting broadly, will still make their recommendations in a sort of “youth vacuum,” as it were, in some ways talking only to themselves. In contrast, younger people in an assembly could engage in a fruitful dialogue across demographic ranges. It would be especially important for older MCAs, who are often regarded by youth as being part of “privileged” generations, to play a role in addressing the challenges faced by those who are just beginning to enter the world of work.

The Youth Council is just one example among many that could be given. In October 2016, a year after the Liberal Party was returned to power, the new government highlighted its commitment to “listening” via no fewer than eighty-four consultations “about everything from food additives and species at risk to a national housing strategy and security policy.” The government claimed to be engaging Canadians through “discussion papers, surveys, online portals for written submissions, public meetings, regional and national roundtables, social media, teleconferences, and webinars” (Bronskill 2016).<sup>3</sup> Duff Conacher, a founder of Democracy Watch, referred to these activities as “squeaky-wheel consultations,” which is precisely what they are. Paul Thomas, professor emeritus of political studies at the University of Manitoba, pointed out the major drawback of these consultations when he asked: “How representative are those people who go online and contribute to discussions that are taking place in cyberspace? And how do you integrate that kind of public feedback with the expert advice that’s coming from the specialists inside government?” (quoted in Bronskill 2016).

It seems, then, that while the government is open to incorporating ideas from the electorate, it will do so using methods that are, in many ways, deeply flawed. In contrast, a CA could help people deal in an intelligent and thoughtful manner with the critical issues that invariably bubble to the surface, whether student tuition, old age pensions, military procurement, international treaties, or the many-faceted issues raised by social movements such as Idle No More. It could also help citizens to come to grips with the most distressing of matters governments are likely to face, including evaluating the pros and cons of going to war.



Ireland's temporary CA (mentioned in chapter 1) provides a current example of this need to "come to grips" with difficult issues. In April 2017, this CA voted 64 per cent to recommend that a woman should be able to choose to have an abortion if she wishes to without having to provide any justification for her choice. Two months later, the CA, chaired by Supreme Court Justice Mary Laffoy, presented its recommendation to the Oireachtas, the Irish Parliament. After they completed their task, Justice Laffoy thanked MCAs for having tackled "some of the most complex pieces of legislation, immersed themselves in medical and ethical discourse, and listened with respect to the voices and opinions of others" (quoted in *BBC News* 2017). Journalist Alison O'Connor (2017) also observed the "high level of sophistication" and "overall collegiality" of MCAs. She said that while watching "the citizens in all their hours of deliberation, it was remarkable there never appeared to be anything other than full concentration and engagement." She pointed out that the group had been presented with an especially "tough task," given "what they were dealing with, involving everything from dry, dense legal argument, where no certainty at all exists, to the raw emotion of women telling their personal stories of termination [abortion]." In addition to highlighting the quality of the discussions in the assembly, Justice Laffoy also acknowledged the MCAs "whose perspectives or opinions did not emerge in the final vote," emphasizing the point that the assembly was "an exercise in deliberative democracy, and their vote remains important to me because of the very fact it captures that other perspective, that dissenting voice, the different interpretation, and I wish to assure them that their votes and voices will be recorded and have a place in the report" (quoted in *BBC News* 2017).

Despite Justice Laffoy's comments, we might expect that those who did not support the final recommendation would condemn not only the recommendation itself but also the democratic body that produced it. Indeed, a spokesperson for the Pro Life Campaign was quick to assert that the CA's conclusions reflected a "chaotic" and "one-sided approach"; the assembly, in her view, was little more than a "muddled and confused farce" (quoted in *BBC News* 2017). A columnist for *The Irish Catholic* maintained that "there is no way that these radical proposals represent the will of the Irish people. Either the CA was unrepresentative from the very beginning, or the balance of speakers and presenters was such that they were persuaded to take a radical stance on abortion provision" (O'Brien 2017).

These types of criticisms are ones we should anticipate when CAs are temporary (or even freshly-minted permanent institutions). Over time, though, individuals will come to see the value of a CA, and use its recommendations as a "taking-off point" for ensuing actions. In the Irish case, this would mean that those who favour restrictions on access to abortions could lobby their politicians, appear before parliamentary committees, generate public relations campaigns, organize street protests, and so forth. These activities can even

continue after legislation is passed that is antithetical to the beliefs of opponents of abortion, in the hope that, at some point in the future, they could reverse laws and regulations they find objectionable. This would be a more civil way to proceed than attempting to vilify a deeply democratic process that had produced a recommendation on how people could resolve an ongoing controversy.

This CA gifted Ireland's politicians a community-determined recommendation on the question of abortion, a recommendation that, according to one commentator, "took politicians by surprise." All along, opinion polls had suggested "a more limited pro-repeal [of the Eighth Amendment] position among the electorate." However, "the assembly heard a wide range of information and perspectives, took its time, engaged in deliberation, and had a serious debate about reproductive autonomy of a kind that has rarely been possible in recent decades in Ireland. Having done that, it reached a range of pro-choice conclusions" (de Londras 2017). The ball was moved to the politicians' court; the assembly's recommendations meant legislators could no longer use the constitution as a "security blanket," insulating themselves from the question of abortion. Citizens could demand that those elected to govern "be compelled to spell out which abortions are permitted, which are not, and why" (de Londras 2017). In light of the assembly's report, the government held a referendum in May 2018 in which 66 per cent voted to repeal the Eighth Amendment. So just one year after the CA made its recommendations, it could be said that "an unlikely assemblage of housewives, students, ex-teachers, truck drivers, and others" had "brought Ireland to the brink of radical change to its abortion laws" (Chalmers 2018).

Even with the obvious benefits a CA can bring, as exemplified by the Irish Assembly, naysayers are certain to abound. One of the reasons for this is that the holders of power in our current institutions "seldom willingly accept deliberative transformations that dilute their authority or weaken their bargaining positions" (Fung 2005, 415). With this in mind, the proposed CA outlined in this book has been designed specifically to minimize resistance to the idea across the ideological spectrum, in order to earn more support for it. Even with this design, though, some politicians will want nothing to do with a CA – even one restricted to advising the government – because it might prove to be a nuisance, an infringement on their apparently inalienable right to monopolize the discourse on public policy.

There is almost no direct supplement to representative democracy in Canada, or in any other nation, for that matter. The "reasons for that are political rather than practical or technical: those who occupy positions of power and authority simply do not want it, and actively resist any attempt to bring it into being. Opposition to democracy is not as moribund as public rhetoric might lead us to suppose" (Arblaster 1994, 86). No country has a permanent institution of governance like the one recommended in this study. This isn't

because a CA is difficult to organize or is unaffordable – it is neither – but rather because it threatens the status of elites, especially politicians and leading civil servants, forcing them to share governance with their fellow citizens.

Opposition to a permanent CA can come even from surprising quarters. For instance, at the end of their multi-assembly study, Fournier et al. (2011, 155) declare that a CA “is an expensive instrument that ought to be used sparingly, and under exceptional circumstances,” and “only when there is a relatively large consensus that there is a real ‘problem’.” It should be, in effect, “a ‘last resort’ instrument that has the potential to improve the way we address some of our most pressing conundrums.”

In contrast, I suggest we have much to gain from having a permanent assembly, and we can suffer great losses by not having one. A CA would inaugurate a continual dialogue between the people and their legislators. It would serve as a source of policy ideas for the nation and, perhaps more fundamentally, a vocal and effective lobbyist for the citizenry. An assembly would constitute one of a number of “inputs” into the policymaking process, though one that would yield advice of exceptional quality. It would be a mirror of society, enabling us, for the first time in history, to see what we truly look like. It would ensure that no interest group could ever again claim to be speaking for the “silent majority”; the fact that the perspective of a collection of advocates for any cause is or is not reflective of the views of most people would soon be made clear to everyone. A CA could also change our political culture for the better, allowing citizens to take some ownership of decisions – in the high number of cases when Parliament would concur with the assembly – instead of laying blame on “those damned politicians,” and thus help to attenuate the current mentality of “us vs. them,” of “the people vs. the politicians.”

A CA would also be a mechanism to ensure that elites do not get out of control, a way of reducing the *distance* between those who are representatives and those who are represented, by creating a bridge between the two. It would also be a way of reducing the *time* necessary to reach a point of accountability, from possibly years by virtue of elections, to a few months via assembly reports, which would give governments swift and comprehensive feedback. Furthermore, a CA would supplement what we do with our vote on election day, when we send out a *general* message on which broad menu of policy options we prefer. With a CA, we could also give *specific* guidance to Parliament, and do so one policy issue at a time.

CAs had their origins in ancient Athens, where all attendees had a right to speak. While it would be almost impossible to replicate that model in our politics today, a modern CA, giving all members of a representative sample the ability to express their views, would allow us to produce something wonderfully close to a carbon-copy of the Athenian ideal. It would enable us to

mine the knowledge-base of our modern demos in a manner that makes efficient use of time, effort, and money. In the process, this new institution could produce a significant cultural change as well, given that at Athens, the law-givers and the jury panels, selected by lottery, “were taken to *be* (not merely to represent) the Athenian people” (Cartledge 2016, 21). With the passage of time, citizens might look to their assemblies and conclude, for instance, that they don’t just *represent* Canadians; rather, they *are* Canadians (or “they are *Canada*”). This would mean that the people’s voice, while ultimately not having final authority (which would be reserved for Parliament), would become more prominent, more influential, and more respected than at any point in the nation’s history.

So let’s be innovative! The world will not spin off its axis if assemblies are created. The worst thing that could happen is that after ten years, when the experiment could be ended, there would exist a shelf full of careful, intelligent commentaries on dozens of matters of concern to the public at large. To the inevitable retort: “That would cost Canadians \$800 million,” my response is: “What have the people obtained from the Senate in the last eight years for roughly the same amount? And what is the potential price tag that comes with *not* having an assembly?”

Which polity will serve as the impetus for a CA? In Canada, the federal government could create a CA, but one might also have its origins in the provinces, the territories, or the municipalities. It is the country’s sub-national governments that have often made policy advancements first, for instance Saskatchewan on Medicare and Quebec on child care. Any province, or even a city, could show leadership in the development of a CA and serve as an incubator for CAs throughout the country. It could also be the case that Ireland, Scotland, Australia, or one of the progressive Scandinavian or Latin American countries will be the first to make this innovative reform to their democracies. One thing is for certain. We are moving into a new era, one where citizens across the globe, in various ways, are demanding transformations, not just to government policies but also to the methods of governance themselves. Some people, somewhere, will choose to lead democratic reforms, serving as an inspiration to the rest of the world. Only time will tell us who those people are.

## NOTE

1. With a citizens’ assembly, some of these consultations would no longer be required, hence lowering slightly the previously estimated cost of my proposed CA.

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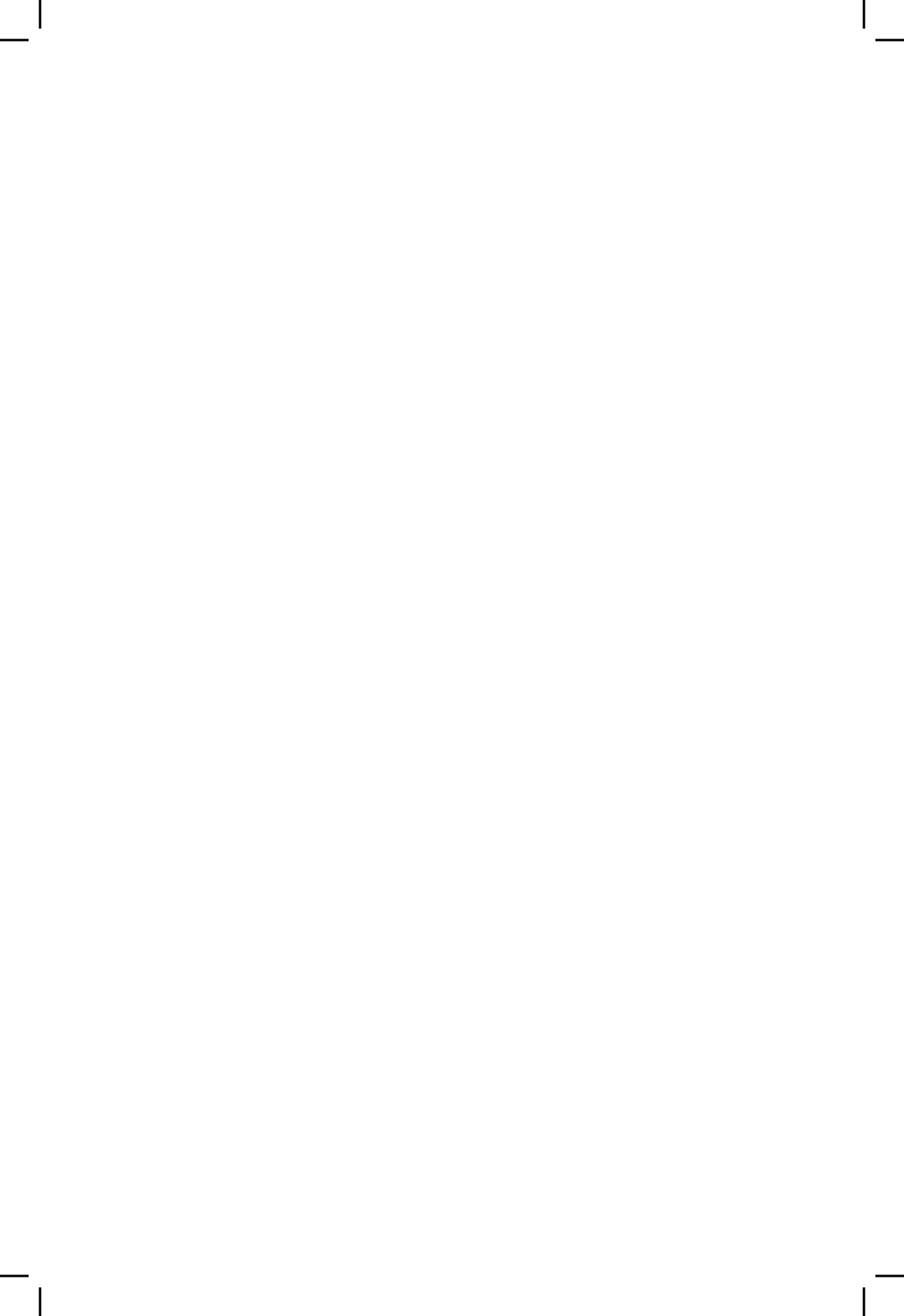
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