BEYOND GOVERNMENT BY SURPRISE: GOVERNANCE IN THE IMMIGRATION SECTOR

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In recent years, immigration policy has been transformed through a governance process best described as government by surprise. A bewildering flurry of decisions made in a closed, tightly controlled process remade immigration and settlement programs with little opportunity for public consultation, parliamentary scrutiny or informed public debate. Government by surprise is highly effective at keeping critics off balance. But it also brings serious costs. It raises the level of uncertainty and lowers predictability for all involved; it can only erode trust in government; and it weakens the accountability mechanisms on which our conception of democracy rests. It's time to retire government by surprise.

The election of a new federal government presents an ideal time to reflect on governance in the immigration and settlement sector. The policy process during the last ten years has raised troubling issues, and hopefully the lessons of the recent past can become signposts for a different future. Such an evaluation needs to set the immigration sector in the context of the larger system of democratic governance in Canada, and pay careful attention to mechanisms of accountability, the vibrancy of checks and balances, and the strength of linkages with stakeholders in the sector.

It is useful to start by briefly highlighting two different conceptions of democratic governance, noting the strengths and weaknesses of each, and then using the two conceptions to analyze the policy process in immigration and settlement sector in recent years. I will call these two conceptions "consensus democracy" and "majoritarian democracy".

The defining assumption of consensus democracy is that the exercise of untrammeled government power is a danger. In this model, democracy requires political institutions that limit the potential for abuse by creating checks and balances and by bringing major economic and social interests into the process of policy development. In practice, surmounting the checks and balances inherent in this model usually requires compromise between political parties before new policies can be implemented. The classic case is obviously the US, with its complex system of divided authority. But the German system, for example, achieves similar constraints through a proportional electoral system which leads to coalition governments which must compromise internally, plus two powerful chambers of the national parliament and the multi-level governance inherent in the EU.

The defining characteristic of majoritarian democracy is the concentration of political power in the hands of a government which – in the prototypical case – is formed by one political party holding a majority of seats in the legislature. In this model, governments face fewer constraints on the exercise of power. The critical line of accountability is to the legislature and to the electorate. The key to the democratic legitimacy of the model lies, not necessarily in the search for broad consensus, but in open, transparent government, consultation, and vigorous public debate, to ensure voters are informed the next time they cast their ballot.

The strengths and weaknesses of these two systems are the obverse of each other. Consensus democracy ensures a broader societal agreement on new initiatives. The downside is that the need for consensus can slow the process. In contrast, the majoritarian system facilitates action, allowing a government to act on the basis a narrower range of public support. Critics of consensus democracy worry about the potential for paralysis. Critics of majoritarian systems worry about the abuse of power and complain about elected dictatorship.

By its very nature, Canada has always been closer to the majoritarian model. Most often, the electoral system delivers a majority in Parliament without a majority of votes from the electorate. The former Conservative government and the recently elected Liberal government both achieved majorities in the House of Commons with the support of less than 40% of voters. Moreover, compared to many other democratic countries, there are relatively few potent checks and balances. The courts and the Charter of Rights and Freedoms clearly matter. At times, the federal-provincial interface has also represented a check on the exercise of power at both levels of government, a consensus mechanism in an otherwise majoritarian polity. But intergovernmental compromises are important only when governments want to advance policies that require the cooperation of the two levels. Absent such political drive, intergovernmentalism does not kick into gear, as witnessed by its decline under the former Conservative government.

Given the limited institutional checks on political power, what qualifies our system of governance as passably democratic is an open and transparent process, with a strong flow of information to the public, opportunities for public input before decisions are made, and informed vigorous debate in the media, civil society, and Parliament. Without that, it becomes harder to pretend this is really something we want to call democratic.

In some earlier periods, the immigration and settlement sector did a reasonable job of meeting these expectations. Proposals for significant change were preceded by discussion papers setting out a new direction, public consultations gave interested parties an opportunity to present their views, and final decisions were enacted through legislation, with serious parliamentary debate and committee hearings, and the media scrutiny which such debates trigger. In addition, regulations made pursuant to the legislation were often the subject of consultations before being formally approved by cabinet. The Immigration and Refugee Protection Act in 2002 largely followed this pattern.

This approach faded during the recent Conservative government. Interestingly, the shift began in the context of minority government. Traditionally, minority governments lean more towards consensus politics, with governments having to find support for each piece of legislation from another party in the House. But that was not the route chosen. In 2008, the omnibus Budget Bill, packed with many different things and passed through political brinkmanship, granted the Minister the authority to fundamentally alter important immigration programs by issuing "Ministerial Instructions" to immigration officers. Ministerial authority was broadened again 2012. In addition, avenues for public consultation narrowed. Consultations were by invitation only, held in private, narrowly defined and highly targeted. And parliamentary committees played a smaller role in shaping policy change, limiting opportunities to public groups excluded from the private channels to advance their views.

The scope of policy change carried out through ministerial instructions has been staggering. In the years after 2008, major portions of the immigration system, such as the economic stream and the family reunification stream were transformed in major ways, changes that would have involved legislation in the past. For example, the Temporary Foreign Workers program was re-made and re-made again through ministerial instructions, going through cycles of major expansion and subsequent restriction, all without legislation. If ever there were a case study of what can go wrong with populist policy-making, this was it. Admittedly, when the program became a hot political issue in 2012, the controversy was diffused very quickly through new ministerial instructions. But perhaps a more open and deliberative process would have helped avoid the mistakes that made it such a hot issue in the first place. More recently, the introduction of Express Entry was completed by ministerial instruction. Over time, we have seen a dramatic shift of the economic stream from the human capital approach embedded in the 2002 legislation to a mixed model in which employers have a much larger role – all without the focused parliamentary and public debate that legislation generates.

In the settlement sector, major changes also came through administrative discretion. The surprise decision in 2012 to recentralize delivery of settlement services in Manitoba and British Columbia was accomplished by ministerial decision without advance consultation with the provincial governments involved. The change came as a complete shock to the settlement service organizations actually delivering the services on the ground in the two provinces. As Naomi Alboim and Karen Cohl wrote in 2012, sweeping changes "have been realized through a tightly controlled political process without

allowing for real engagement and discourse" (Alboim and Kohl 2012). Clearly, their description has remained relevant since then.

Government by surprise may keep critics off balance. But there are costs to this style of decision-making. First, it raises the level of uncertainty and lowers predictability for all involved. It does not provide a secure basis to plan if you are an applicant, a stakeholder group, or a provincial government. Second, such a closed and unpredictable process can only erode trust in government. Much has been written by Robert Putnam and others about the problems of sustaining interpersonal trust in our increasingly diverse societies. But more recent analyses have emphasized the importance of trust in government as a key to managing the strains that diversity brings. Countries with high levels of public trust in government are less prone to the decline in social cohesion and solidarity that many worry about. Government by surprise, unpredictable government, government that does not honour commitments by phasing in changes, cannot be good for trust in government. Just ask international graduate students who watched the Canadian Experience Class folded into the Express Entry pool without much notice.

Third, and most importantly, government by surprise erodes the vibrancy of democracy. The majoritarian model is a legitimate conception of democratic government. And there is nothing new in diagnoses of the centralization of power in Canadian government; such assessments have been a consistent refrain throughout my entire professional career. But what gives concentrated power its legitimacy, the minimum condition that qualifies this model as a democratic form of governance, is open and informed public debate in civil society, in the media, in the people's House, in its committees. Such vigorous informed debate is crippled by government in the shadows.

One might argue that the federal government faced unprecedented problems in the Federal Skilled Workers program, that decisive action was needed, and that the process can revert back to a more traditional pattern in the future. But power is addictive. The danger is that public servants will become accustomed to this way of doing business; and the new Liberal governments might also find government by ministerial instruction and its equivalents to be convenient. After all, parliamentary processes are so messy, so time-consuming, so unpredictable.

We seem to manage it elsewhere. Witness the legislation and intense parliamentary debates about citizenship, refugees, and security. Parliament should not be reduced to a platform for wedge politics. It's time for a higher quality of democratic governance throughout the immigration and settlement sector as a whole. It's time to retire government by surprise.

REFERENCE

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PICK A NUMBER: THE VALUE OF ANNUAL CONSULTATIONS ON IMMIGRATION LEVELS

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The annual or multi-year planning consultations on levels of immigration have been regarded as an essential conversation in determining the numbers of immigrants coming to the country. Since there has been very little change in the annual level of immigration over the past two decades the author questions whether the object of the exercise is indeed about numbers. He also points out that in the absence of any shift in the numbers the evidence occasionally offered by analysts about the impact about any such modification is generally reduced to a theoretical discussion. Finally given the relatively low level of public knowledge about numbers of immigrants the author recommends a greater investment in augmenting public literacy about immigration.

From the beginning of the twentieth century to the present day, the growth of Canada's population through immigration has contributed immensely to its emergence as a country respected for its economic, social and cultural achievements. Indeed Canada is often described as a nation of immigrants as the one in five foreign-born Canadians represents the 2nd highest such ratio in world after Australia. Canada's population growth is based on natural increase and net international migration (provincial and territorial population estimates also factor in interprovincial migration). As an example, in the second quarter of 2015 natural increase was 33,000 almost half the total of 64, 000 for international migration. Barring an unlikely baby boom immigration will soon account for the country's entire population growth.

The annual level of immigration is described as one of the most critical components of a country's immigration policy. Whether the actual level of immigration is appropriate for the Canadian economy and society is the object of ongoing debate. But it has largely been a discussion between experts as the broader public has not been especially engaged in debate about immigration numbers. Since there has been very little change in the annual level of immigration over the past two decades it's difficult to determine with any certainty whether the numbers have any meaningful impact on the economy. Hence, since the 1990's it is not possible to surmise in practice the economic impact of changes to the annual numbers of immigrants. Therefore it's only in theory that observations can be made about what a change in levels might mean. There have been several studies that have examined the economic performance of newcomers over selected periods after time of