Amending Formula

- A way to change this so-called "supreme law"
  - it has to be at least somewhat flexible to respond to changing circumstances and changing preferences
  - trade-off is flexibility versus unanimity/consensus
- Ours is federal - it involves the consent of provinces
- Consensus seems natural, but this gives veto power to sometimes very small players (PEI, pop. 130,000)
- So... Canada's General Formula:
  7 provinces with at least 50% of Cdn population
- TREMENDOUSLY IMPORTANT IN CANADA
  - one reason it took so long to get the Constitution patriated
  - so much subtlety: more than 5 different formulas!

Amending Formula: Example

- Meech Lake agreement to recognize Quebec failed because it wanted to change the amending formula
  - Quebec wanted 'distinct society'
  - But it also wanted veto power over (section 42):
    - (a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;
    - (b) the powers of the Senate and the method of selecting Senators;
    - (c) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;
    - (d) subject to paragraph 41(d), the Supreme Court of Canada;
    - (e) the extension of existing provinces into the territories; and
    - (f) notwithstanding any other law or practice, the establishment of new provinces;

- So that meant the Meech Lake agreement needed UNANIMOUS CONSENT FROM ALL PROVINCES
- That's where it met it's downfall

UBC POLI 101
Canadian Politics

Responsible Government

"In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

James Madison, 1788
Constitutional Principle: Responsible Gov't / Supremacy of Legislature

- The legislatures can make any law they choose
- But that means they are responsible for everything government does or does not do
- But how can we hold 308 separate people responsible?
- We don't. Instead, we select a government from these 308
  - the US does not have a government in the same sense! More later.
- Government in practice means the members of the governing political party
  - but even that's too many separate people
- So the government is the Queen's Privy Council: the Cabinet and especially the Prime Minister
- It's these characters who are collectively responsible to the legislature
- Cabinet Ministers are individually responsible for the actions of everyone in their department – in a more legal sense

Canada’s ‘Fusion of Powers’

- Theoretically, executive and legislative branches are distinct
- Executive: power to propose and then implement and enforce law
- Legislative: power to accept (pass), change (amend), or reject laws proposed by the executive
  - and to oversee what the executive does as it implements laws e.g. US system and the Auditor General of Canada
- In Canada:
  - the executive is the Cabinet (Queen's Privy Council),
  - the legislative is the House of Commons AND Senate
- THESE ARE THE SAME PEOPLE!!!
  - or, at least, the members of the executive are drawn from the legislature

Canada’s ‘Fusion of Powers’ – Cabinet in Parliament

- In Canada's Westminster System, the executive (Cabinet) is always part of the legislative - it is selected from the legislature by the Crown
- The identity of the Cabinet is determined by the legislative: Cabinet is responsible to the Members of Parliament
  - technically, if MPs don't like the Cabinet, they can throw them out
  - but really the other way around: PM gets to pick Cabinet Ministers because...
- In practice, the Prime Minister is the leader of the party getting the most seats. The Governor General “asks him/her to form a government”
Announcements
• Reading for this week is on the website
  - It focuses on accountability of Ministers and Public Servants
• 4 paper topics up
• 1st paper due week of Feb 7th
  Can be on either the Constitution questions or the Responsible Government questions

Paper Guidelines
• Answer the question, but in a balanced way:
  - Take a position, but consider the other side
  - Or, just take a compromise position!
• The real content, the way you should answer, should be exploring and analyzing the:
  - Concepts involved
  - Behaviour of the actors involved (parties, individuals, governments, civil servants, citizens, non-governmental organizations, interest groups, etc.)
  - Changes to the system and its institutions that would alter behaviour and thus alter the results or consequences of that behaviour
  - The desirability of certain goals and values
• Define your terms clearly, but don’t waste a whole lot of space on this
• Don’t waste a page on intro and a page on conclusion
  - Write the paper as an answer to the question and then write a one-paragraph intro and one-paragraph conclusion when you’re done!
• Look at the style in section 3.7 of the textbook. . .
  Try to write like that, except with a bit more of an argument/answer

Example:
• Question: Is the Prime Minister too powerful? What can be done about it?
  Answer:
  ... Within the federal government, the PM defines the agenda and ultimately makes the important policy decisions. The fact that he/she controls appointments in his/her party means that other members of the governing party will try to please the PM, keeping their mouths shut if they disagree...
  The federal system in Canada, however, provides a check against the power of the Prime Minister. ...
Contrast with the USA: Separation of Powers

- The Americans wanted to keep the executive and legislature from getting together and using their combined power to oppress the people
- So they set them up in competition with one another
- President directly elected; bureaucracy under his thumb
- Congress is elected independently
- They have to agree for laws to be passed
- The legislature (Congress) then has to monitor the bureaucracy to make sure that it enforces those laws
  - EPA example
- Responsibility is harder to pin on either
  - parties make this a lot easier, but not if there's divided government

The Logic of Responsible Government: Delegation and Accountability

1. We need to delegate decision-making and enforcement to a small group (law-makers, law-enforcers)
2. We want that group to always do what we would do if we were all making the decision
3. So we must make it in their self-interest to do what we would do (what we want done) – we create incentives for them
4. First, we make it worth their while to do it (income)
5. Then we hold them accountable:
   - We threaten to take their power away if they
     1. do stuff in their interest rather than in our interest
     2. or let the people the get to do the work (civil servants) get out of hand
     2. or just "shirking" - not doing their jobs, performing services we pay for
6. We delegate this power to our representatives
   a. Our representatives can stop them before they do that stuff
   b. Our representatives can remove them afterwards
7. If our representatives don’t do this for us, we can remove the representatives themselves!

Diagram of Delegation and Accountability

- We could bend this into a circle
- The key here is information
  - how much effort should each one spend in monitoring the people it is supposed to monitor
  - might each one try to keep real information about its activities away from the authorities that are supposed to monitor it
  - might they all decide to blur the responsibility so they can all get away with things
Example: APEC Demonstrations HERE at UBC!

- Police used too much force against protestors
- Who is responsible? Who do we punish?
  - RCMP individuals
  - Minister responsible: Solicitor General
  - Prime Minister
  - Political appointees in the Prime Minister’s Office
  - Later? Our representatives for not watching the PM or the minister closely enough?
- Problems at each step with information and identities

In 1991 Jean Chretien told the Commons: “I would like to tell the people of Canada that there will be one thing: when we form a government, that every one Minister in the Cabinet that I will be presiding will have to take the full responsibility of what’s going on in his office. And if there’s some bungling in the department, nobody will be singled out, but the Minister will have to take the responsibility.

“And if there are errors, some might be moved. But the people who cannot defend themselves [civil servants] will not be singled out, hanging out there in front of the public, it is shameful. It is an indignity that we have not seen in Canada since a long time and it’s why I stood today. Because if the system of Ministerial responsibility and integrity is not respected; if Ministers cannot anymore go home and look at themselves in the mirror and say do I have the trust of the people of Canada; if they cannot do that because they want to keep their little jobs, people will never -- have never anymore confidence in public service in Canada.”

“I think one of the major changes over the last decade or more has been the extent to which basically Prime Minister Chretien has got contempt for parliament itself and for the parliamentary committees,” Robinson says. “At least Mulroney -- and I never thought I’d say this -- but at least Mulroney understood and respected the role of parliamentarians, as opposition members of parliament and government members of parliament, to try and get at the truth.” – Svend Robinson, NDP MP for Burnaby Douglas