

consultants, the Charter of Rights, executive federalism, and an excess of both pollsters, party apparatchiks and party discipline. All of which leads to "dictatorship by a leadership cadre sanctified by a legislative majority". This analysis certainly rings true for me, and my own disappointment with the centrality or lack thereof of MPs. My own view is that much of the perks, the busy-ness, and the atomization of an MP's work, amid what Fisher calls "a cocoon of personnel and expensive services" is a form of accumulated unconscious compensation for loss of real status.

Political Parties by Hershell Ezrin, and Current Political Processes, by Michael Adams, are representative of the "geist" that Dalton Camp criticizes. Both, but especially Ezrin's could have been instructively offset with an article or two by current MPs who could have testified against the prevailing wisdom that the idea of freer voting and lessening party discipline has its origins in what people told the Spicer Commission or in the rise of "political protest movements", like the Reform Party.

Mr. Ezrin's article is particularly irritating. Most of his major recommendations read like they could have been lifted directly out of the June 1985 final report of the Special Committee on the Reform of the House of Commons, chaired by Jim McGrath, which focused on empowering the private member, relaxing the role of party discipline, restoring power to the House, reviewing appointments, etc. Yet Ezrin's article betrays no knowledge of this fact, or of the fact that the McGrath reforms have both been implemented in significant ways, and where they have not, continue to be a source of debate and ongoing reform. He believes that the "road to parliamentary and

political revival should start with a focus on the individual elected member" and on the House of Commons, as opposed to the fetish for Senate reform. I agree. But Ezrin himself is part of the problem. Like the constitutional junkies he criticizes, he too has failed to focus on the House, i.e. on what has already been done in the House, and on what MPs have already tried to do, to advance the kind of political culture that Ezrin advocates. Where MPs have not succeeded, especially when it has been a fight against the power that now resides in leader's offices, or the PMO, it has not helped that the media and the so-called experts pay no attention to what is going on, preferring instead to talk about abstract reform rather than the reform that is actually struggling to be. If as much attention was paid to what various members and/or committees have been trying to do in recent years, as is paid to other "constitutional" matters, there might be less universal cynicism about MPs. In the absence of such attention, all MPs are tarred with the failure of the very power they have been trying to erode.

The books Round Table on Government and Its Institutions is a collection of short but sharp pieces by a great variety of Canadians. Knowlton Nash sums up Camp's "geist" in a much more understandable way with the metaphor of "more ice time" for the public, and a few others hit important nails on the head. Frederic L. R. Jackman in *Changing the Political Culture* calls on the media to "take more responsibility to understand and manage its impact". John Meisel, in *Seeking the Common Good* laments the antiquarian nature of a notion like "national interest" in an age and a society in which "pluralism has run wild". David Taras calls for

regulation of polling and polling information, in an attempt to restore the place of "strong convictions". And Timothy Reid's proposal in *Building Up A Core of Prospective Leaders* deserves consideration, especially in so far as it recognizes that all sectors of Canadian leadership may well be too captive to the perceptions of their own world. Too much of the rest of *Canadian Legislatures 1992* reinforces the view that it is only politicians who have this problem.

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*The Spirit of the Laws: Republicanism and the Unfinished Project of Modernity*, by Andrew Fraser, (Toronto: University of Toronto Press, 1990)

It is a pity that Andrew Fraser could not have participated in the post-Meech round of constitutional debate. A Canadian teaching constitutional law at Macquarie University in Sydney, Australia, Fraser would have provided a much needed historical and philosophical perspective to the claims and opinions of the many interested and ordinary Canadians who have taken part. Instead, all devotees of our national past-time should content themselves with the remarkable book which he has written. In scope, it is a survey of 18th century British constitutional thought and its transplantation in the United States and the dominions of Canada and Australia. It provides profound insight into the

terms of our current debate, such as "sovereignty", "rights", "equality", "economic development", "association", etc.

Successfully blending his readings in jurisprudence, political philosophy, history, and contemporary culture, Fraser takes us behind the letter of the laws, behind the terms used by politicians, journalists, judges and constitutional experts, and invites us to explore with him the spirit of our constitution in order to discern what direction we are headed in. At the moment, we appear to be adrift.

Having examined important Supreme Court decisions both in Canada and in Australia, Fraser found the judges collectively incapable of making sense of events taking place in either country. (In this connection, Fraser is supported by William Conklin's *Images of a Constitution* published by the University of Toronto Press in 1989.) Neither the civil law or common law traditions of jurisprudence as currently practised in Canada can provide an imaginative understanding of what is taking place. What common good, Fraser asks, is being pursued here?

To answer this question, three distinct philosophical, as opposed to legal, traditions of jurisprudence are invoked: (1) the conservative monarchical, the tradition of authority with, as its hallmark, *majestas*; (2) the natural jurisprudential, the tradition of negative liberty ("liberty from") with its hallmark of *jus*; and (3) the civic humanist, the tradition of positive liberty ("liberty to") with, as its hallmark, *virtus*. All three traditions spring from the sources of Western civilization: Athens, Jerusalem and Rome and carry rich cultural themes which have inspired men to thought and to action down through the ages. But, and this is Fraser's thesis, it is only

the civic humanist tradition that has a chance of transcending the imperatives of modern economic development without succumbing to the enlightened despotism of technocracy.

One of the merits of Fraser's book — what makes it particularly useful and timely — is that he has based his whole philosophical endeavour on a recognition of the imperatives of modern commercial society. Benefitting from the work done of late on the Scottish moralists of the 18th century, Fraser takes for granted what I think practical men everywhere now take for granted: namely, that a political regime can no longer ignore or disparage the market economy. David Hume, Adam Smith and other Scottish moral philosophers were the first to make commerce (or the productive use of property) into an end in its own right, something that brings many beneficent results in the medium and long-term. Until then, commerce had been viewed, at best, as a necessary means for providing other-than-landowners with the means of an independent existence and hence participation in the leisured world of culture and politics. The accumulation of capital in metropolitan centres, the growth of business corporations, the progressive division of labour within and across countries, and the role of public credit were developments which henceforth had to be taken into account. From this economic point of view, the role of the State was to ensure that the self-regulating forces of the market were not turned to an unnatural end, that all strata of society would benefit from these developments, and that their needs would be met to such a degree that, as the phrase went, the humblest of wage-earners in an expanding commercial society would be better off absolutely than

the traditional chief or king who had sway over thousands of lives.

Having accepted the imperatives of modern economic development, Fraser goes on to examine the three streams of political thought already identified to see if any might be capable, not of checking or obstructing, or directly intervening in this economic development, but of transcending this activity, of constructing constitutional spaces which would provide modern man with more than the satisfaction of his needs. Fraser does not mean to denigrate man's need for food, housing, or medical assistance but even taken together they do not provide a purpose or, in Fraser's expression, "a narrative identity" to man's life in common with others. An exclusive preoccupation with the needs of society leads to the sense of alienation and anomie which the arts and literature of the 20th century have so fully documented. It also paves the way, to a new-style enlightened despotism which through rational administration can effectively provide for man's basic needs. It is the danger of technocracy which can penetrate ever deeper into the life and natural processes of society, and steer them at will.

The conservative monarchical tradition inherited from Britain provided the basis for Canada. In spirit, it is unitary, indivisible, hierocratic, and embodies the notion of rule from above, the belief that legitimate authority is of super-human origin. Not to be confused with tyrannical or despotic rule, conservative monarchism abides by well-established conventions which are taken to be ethically binding. It is decisionistic. It focuses on the sovereign's judgment in making final decisions for the good of the country. There may be more or less delegation of that indivisible authority. There may be more or less consult-

ation, carried on more or less privately, before the decision is taken, but in the final analysis the decision is left up to the sovereign's judgement. It is a tradition that attaches special attention to the maintenance and strengthening of the State, the centre-piece of which is the sovereign. It is a tradition that has been maintained through the ages by a patrician class which has served in the various interlocking institutions of that State.

Of course, that sovereign's undivided authority has been tempered for a long-time by Parliament, where elements of the two other traditions have to a varying extent found a home. For example, the republican ideal of a balanced government made up of both court and country, a constitution mixed by the different orders of society, was captured in the 17th century concept of commonwealth. But as Fraser points out even if the Sovereign today appears to be without any political power it is wrong to dismiss the institution as an anachronism or simply as a symbol of historical continuity. From the point of view of formal decision-making, the Sovereign and her councillors retain considerable authority.

The American and the French revolutions posed a threat to this form of government. Both ushered in a resurgence of civic humanism. But in the end, what emerged in those two countries, according to Fraser, were regimes the practical effects of which were not that different from the monarchies they supplanted. Instead of locating the source of authority somewhere up above in God, Providence or Nature, it was now taken to proceed from the People down below. Authority was still exercised under the auspices of an abstraction. The People replaced the Crown. Decision-making was still unitary and characterized by the ordering

power of a sovereign will. For Fraser, radical democrats or those advocating popular sovereignty are not to be taken too seriously, at least on a theoretical plane. They are but the obverse of the conservative monarchists. Here it should be pointed out that Fraser deals at some length in his book on how the American revolution went astray, of how the effects of capitalism combined with evangelical protestantism overwhelmed the noble attempts of Federalist politicians who strove to institutionalize the civic ideals of classical republicanism.

In Canada, Sir John A. Macdonald and the other Fathers of Confederation, like the governing class which had preceded them for 100 years, had done everything possible to have their colony grow up in the conservative tradition. Two forces were to make this a difficult if not impossible task: the rapid process of economic development and the adoption of federalism, which, as Fraser argues, is the essence of republicanism.

While Fraser acknowledges that the British monarchical tradition is capable of delivering the goods in a modern socio-economic sense, of overseeing the material abundance so desired by modern man, what he does not like about it is that it fosters habits of obedience in the population, a political lassitude, a dependency which cuts short or prevents the bulk of men and women from becoming fully human. It lends itself too easily to an enlightened despotism of either the old or the new variety.

Like the monarchical, the natural jurisprudential tradition, can also be proud of its Christian and classical lineage. From medieval schoolmen, it was elaborated upon, in turn, by Grotius, Pufendorf and Locke. It takes, as its starting point, what is "proper" to man. What be-

longs to man should be his. What is his he should be able to enjoy in private without interference from others or the State. Of course the limits to what is his will always be subject to debate. In earlier times the debate could focus for example on a man's right to own another man (slavery). Today it is on a woman's right to own her body's reproductive system (abortion). With time, the field of human rights has expanded as men, and I speak generically, became entitled progressively to more and more. Rights once only legal — that is, secured by the State and enforceable by the courts — are now civil and are extended, through administrative programs such as affirmative action, into the actual conditions of society.

Fraser faults this tradition for assisting economics, perhaps unwittingly, in becoming modernity's paradigmatic mode of thought. The invocation of property rights — and all human rights are essentially property rights — has prevented the State from acting in many cases on behalf of the large majority if not all of its citizens. As market thinking prevails in society, the limits of the public realm have been and continue to be diminished. Modern cities and their relative absence of public amenities are a reflection of the domination of this civil jurisprudential tradition. At a philosophical level, Fraser takes issue with this tradition because it defines rights in the sense of dominion over things, a complete possession and mastery over everything belonging to this private sector. (The image which comes to mind of the medieval lord whose domain includes not only his land but also the women, servants and animals living off that land is only half true for rights at that time were not absolute but rather derived from a prior concept of duties.) As Fraser explains, the modern concept of rights largely ignores the

reciprocal and mutual relations that do and should exist between people.

According to Fraser, a more positive concept of liberty is required than the safeguarding of human rights. Men are not just possessive individuals; they are, more importantly, citizens of a State: that is, co-participants or co-actors on the public stage of their community. Drawing deeply on the work of John Pocock (*Machiavellian Moment*) and Hannah Arendt (*The Human Condition*), Fraser sketches for us an outline of the civic humanist tradition through its classical, Florentine and 18th century English and American conceptions.

The civic tradition can be characterized, in the first place, by its pluralism. Not only does it allow but it also ensures that authority is distributed throughout society, that there are many foci of decision-making. Secondly, these many stages of deliberation and decision-making are open to public scrutiny; what we call nowadays transparency. Thirdly, all participants on these public stages are treated equally. Not everyone can be a participant but those who are should be entitled to an equal voice and an equal vote. Only by being given the chance to participate in public debate and by being treated equally can human beings develop the classical virtues traditionally associated with the best of our Western heritage.

An interesting section of Fraser's book is devoted to the efforts in the early 19th century of American Federalists to instill these republican ideals into the business corporation after they had failed to get them adequately embodied in the institutions of the State. Oddly enough, according to Fraser, the British dominions of Australia and Canada are better placed to become truly

republican because of their stronger federalist nature, which has provided them with at least a latent understanding of the associative quality of politics, of how a plurality of individuals can cooperate in the pursuit of some public good. That is not to say that Fraser thinks provincial governments in Canada for example are on the verge of heralding in a new era of republican civic-mindedness. In fact they are probably more of a hinderance in both an economic and political sense. Rather the renewal, though perhaps inspired by the sight of federal and provincial ministers continuously coming together to pursue some constitutional objective, must in fact take place in business corporations, trade unions, voluntary associations, churches, schools, universities, municipalities, in short in all those institutions rooted in civil society. For civil society is the soil from which might spring little republics and the human virtue associated with them.

In conclusion, conservative monarchists and liberal human rights supporters may feel that the merits of their tradition have been down-played by Fraser while those of republican civic-mindedness have been expanded into wishful thinking. All however should acknowledge that the *Spirit of the Laws* has helped them to reflect on the profounder implications of our on-going constitutional discussions. At first glance it may strike one as presumptuous that Fraser should re-use the title of Montesquieu's famous work but it captures most concisely the essence of the book. Moreover, in reusing the title Fraser pays homage to Montesquieu, another "multi-disciplinarian", who sought to perch delicately on that thin branch of human thought which is both practical and theoretical and which used to go by that venerable

old term of jurisprudence, a rightfully big word for the difficult task of drawing guide-lines.

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*Constituent Assemblies: A Comparative Survey* by Patrick Fafard and Darrell Reid, Institute for Intergovernmental Relations, Kingston, 1991, 52p;

*Constituent Assemblies: The Canadian Debate in Historical Context* by Patrick Monahan, Lynda Covello and Jonathan Batty, York University, Centre for Public Law and Public Policy, 1992, 52p; *What If The Wheels Fall Off The Constitutional Bus*, by Gordon Gibson, Canada West Foundation, 1992, 15p.

The demise of the Meech Lake Accord in 1990 was widely interpreted as a failure of executive federalism (First Ministers Meetings) to provide the mechanism for serious constitutional negotiation. The August 1992 agreement by First Ministers plus aboriginal and territorial representatives has bolstered the argument of those who say executive federalism was not dead but merely sleeping. Nevertheless during the two year intermission some Canadians began to dream unCanadian dreams about a new constitution worked out not by leaders of governments with vested interests in the outcome but by a wider and representative body of Canadians chosen specifically for the task of devising a new constitution.