

**LEGISLATIVE ASSEMBLY OF THE
NORTHWEST TERRITORIES
9TH ASSEMBLY, 11TH SESSION**

TABLED DOCUMENT NO. 7-83(2)

TABLED ON AUGUST 31, 1983

Tabled Document No. 7-83 (2)
Tabled AUGUST 31/83.

Constitutional Development in the Western Northwest Territories

liberal-democratic government: principles and practice

Western Constitutional Forum

Liberal-Democratic Society and Government in Canada

**Prepared for:
The Western Constitutional Forum**

**By:
Gurston Dacks
Edmonton, Alberta
May 16, 1983**

Liberal-Democratic Society and Government in Canada

Table of Content

Executive Summary	(i)
Introduction	1
The Function, Nature and Scope of Government	1
The Theory and Social Basis of Liberal Democracy	4
Liberal Democratic Principles in Provincial Governments	6
The Electoral Principle	7
The Sovereignty of the Legislature	8
Guarantee of Rights and Freedoms to Individuals	8
The Executive	9
a) Parliamentary Supremacy	9
b) The Rule of Law	10
c) Impartial Bureaucracy	11
The Judiciary	11
Problems of Liberal-Democracy as Practiced in the Provinces	12
The Assumption that the Individual is the Basic Unit of Society	13
The Assumption of Equality Among Individuals	14
Deficiencies of the Electoral Process	14
The Balancing Act of Parliamentary Supremacy	15
Judicial and Bureaucratic Neutrality	16
Reforming the Practice of Liberal-Democracy	16
Individualism and Ethnicity	17
Equality	18
Consociationalism	18
The Electoral Process and Other Devices to Link Citizens and Legislators	20
Parliamentary Supremacy	25
Judicial and Bureaucratic Neutrality	25
Conclusion	26

EXECUTIVE SUMMARY

Purpose

This report argues that a government will only work well if it reflects the values and assumptions of the society which it rules. In describing liberal-democratic government as found in the provinces, the report attempts to demonstrate this point--which is crucial for establishing the logic which should underlie discussions of the constitutional future of the western NWT--and also to provide a reference point for these discussions.

Function and Nature of Government

The function of government is to provide a set of binding rules for structuring society and distributing costs and benefits among the members of society (1)*.

The special nature of government is that it is sovereign. Its rules are binding and its ability to make them is, within the bounds of the Constitution, unlimited (2).

Scope of Government

The scope of government is the sum total of governmental activities. The "correct" scope of government varies from one society to another depending on factors of social philosophy, administrative effectiveness and politics. The scope of government in Canada has increased greatly in recent decades, but this pattern is now being resisted (2-3).

Theory and Social Basis of Liberal Democracy

Liberal-democratic theory rests on the concepts of:

- 1) Individualism--the belief that the individual is the basic building block of society and that individual rights are fundamental.
- 2) Equality among individuals.
- 3) Moral Relativism--the belief that in the absence of ultimate truths and values, ideas and interests should enjoy the greatest possible freedom to

* Numbers in brackets refer to page numbers in the report.

compete, on the assumption that the freer the competition among others, the likelier it is that the best one will win (4-5).

These concepts flow logically from the large-scale, complex, specialized and market-oriented nature of liberal-democratic society (5-6).

Liberal-Democratic Principles in Provincial Governments

These governments follow a modified British parliamentary model in pursuing two goals:

- 1) Efficiency--the handling of governmental business in a reasonably well-informed, financially responsible and prompt fashion.
- 2) Democracy--proceeding in ways which respect individuals, treat them equally and maximize the free competition of ideas for public acceptance (7).

Structural Elements of the Provincial Government

- 1) Elections, held regularly, without coercion of the voters, on the basis of equality among all voters (7-8).
- 2) The Sovereignty of the Legislature (8).
- 3) Guarantee of Rights and Freedoms to Individuals (8-9).
- 4) The Executive, the basic function of which is to put into effect the laws passed by the legislature, but which has become active in preparing legislation as well. The executive is limited by Parliamentary Supremacy (the requirement that the executive maintain the support of the legislature); the Rule of Law (the principle that government should only act on the basis of legislation which has been properly passed; applied by legal means; carried out by the proper authorities; and administered uniformly for all citizens); and the principle of Bureaucratic Impartiality (9-11).
- 5) The Judiciary, which must be independent of the legislature and executive if it is to rule impartially (12).

Problems of Liberal Democracy

- 1) The assumption of individualism fails to reflect the binational and multi-ethnic nature of Canada and also, and most importantly for the Northwest Territories, ignores the special history, identity and claims of the

indigenous peoples of Canada (13-14).

2) The assumption of equality may provide a goal for Canadian society, but it fails to recognize the fact that some people enjoy much better access to politics in Canada than do many others (14).

3) The electoral process is not precise in reflecting the party preferences of voters, does not adequately address issues and may not prove effective in disciplining politicians (14-15).

4) Parliamentary supremacy has been replaced by a situation of domination by the executive (15-16).

5) Judicial and Bureaucratic neutrality, while much fuller than in many countries, tends to fall below the high standard set by the liberal-democratic model.

Reforming Liberal-Democratic Practice

1) The need to accommodate ethnic claims within a system which rests on the assumption of individualism is a most pressing problem. It has received much attention, but has not been resolved, least of all regarding the claims of native people (17-18).

2) Political equality would be increased by changes to the Election Expenses Act and the Access to Information Act (18).

3) Consociationalism may provide a model through which native desires for a special role in the politics of the western NWT might in part be satisfied (18-20).

4) The weaknesses of the electoral system could be addressed by replacing the current single-member constituency system with some form of proportional representation (20-22). However, the ideas of changing the role of the legislator from "representative" to "delegate" and of the use of referenda are seen as posing many problems, and particularly as undermining the efficiency of government (22-24). A closer link between the people and their legislators might be found more successfully in scheduling of the legislature to allow more frequent contact between the two, or in giving more responsibility to the local level of government.

5) The domination of the executive over the legislature could be reduced through stronger access to information legislation and by fuller, guaranteed

levels of funding for both legislative committees and opposition parties (25).

6) Judicial and bureaucratic neutrality can be limited by the presence of an ombudsman; strong access to information legislation to make bias less easy to conceal; and implementation of personnel policies which over time will cause the composition of the judiciary and public service to reflect more faithfully the composition of society, particularly regarding ethnicity and gender (25-26).

Conclusion

The Western Constitutional Forum must examine two questions when considering liberal-democracy theory and practice:

1) Does the social fabric of the western NWT contain enough of the liberal-democratic ethic to make liberal democracy the best basic model on which to begin to build a government system?

2) If the answer to the first question is yes, what modifications to liberal-democratic institutions ought to be implemented to allow for the full and fair expression of the aspects of the western NWT which do not conform to the liberal-democratic model?

Liberal-Democratic Society and Government in Canada

The people of the western Northwest Territories are currently debating the shape of the political institutions which will govern their lives in the future. As with any debate, the meanings of words are very important. Confusions over these meanings can unnecessarily stand in the way of agreement. What is needed is a shared vocabulary so that all at least understand one another, even if they may not agree.

What is also needed is a starting place in the form of a description of a society and the government which logically "fits" that society. An appreciation of the logic which links society and government in a particular case will give northerners a valuable method of analysis. It should assist them to look at their own society and to debate its nature and the system of government which best fits it.

This report will examine in a general and summary fashion the logic of liberal-democratic government as practiced in the provinces. Where relevant, it will also refer to aspects of government at the national level. It will then identify problems and controversies concerning this form of government and discuss possible responses to these issues.

This report will focus on the provincial, not the present territorial model of government. The two are similar in some ways, but different in others. They should not be confused nor should either be judged on the basis of preconceptions based on readers' experiences with the other form of government.

The Function, Nature and Scope of Government

The function of government is to provide a set of binding rules for structuring society and distributing costs and benefits among the members of society.

Government is special for two reasons. First, the rules it sets are binding. It is hoped that citizens will willingly and

spontaneously support the rules, for example, that they will honestly report their incomes and pay the proper amount of tax. However, even if they prefer not to do so, they are legally obliged to obey the law. Second, the rules are basic; they structure many other relationships by means of which people pursue the values which are important to them. For example, government has the final say over the rules by which people participate in the marketplace as producer, employee or consumer or in the family as wife, husband or child. The family and the marketplace may establish their own rules, but government can decide whether these rules will be allowed to operate. For example, child welfare authorities may bring the power of government to bear on families whose methods of raising children do not meet its standards. The final power to set rules regarding, not only politics, but potentially all relationships is what is known as sovereignty. It is this monopoly of the ultimate power to make binding rules which gives government such great importance.

It also makes the question of the scope of government an issue of great practical importance. There is no one "correct" scope of governmental activities, no set of relationships, activities and aspects of society which government "ought" to treat as of public concern and to regulate, thus defining everything else in society as private. The actual scope of government varies from time to time. For example, in the brief period from 1969/70 to 1977/78 the total of all spending by all governments in Canada as a proportion of the gross national product rose from 34.4% to 41.8%. This is a 25% increase in less than a decade.

Citizens and politicians always debate the most desirable scope of government activity. The debate will turn on questions of social philosophy. How much does society need authoritative direction to achieve its goals? It also involves administrative questions. For example, to what extent does government have the capacity--managerial and otherwise--to accomplish society's goals if it does decide to get involved? How well can it regulate the economy, reduce crime or produce a just society? The twentieth century has so far assumed that

governments do have this capacity. The development of Keynesian economics, the demands of organizing to fight a "total war" and the evolution of the welfare state and the regulated economy have all led to an enormous growth in government. It is hard to imagine any aspect of human life which is not in some way affected by government. Governments control the level of medical care available to us from the time we are born until the time we die. Indeed, government regulates the decision as to whether we will be born and the registration and correct explanation of our death. Between birth and death, the quality of the food we eat and the air we breathe, the terms under which we will be educated and employed, our personal safety and minimum standard of living, even our ideas and values are all subject to the programs of one or more governments. This growth of government in turn has produced the reaction that government today is too big, intrudes too much into our lives and needs to be trimmed. While this view has many supporters, it would appear that to date in Canada it has at best only managed to limit the further growth of government, but not actually to reduce its size.

The term, "scope" may refer to the sum total of governmental activities. However, in Canada, questions of the scope of governmental activity often address the federal fact. Is the federal or the provincial order of government best equipped to handle a certain issue or aspect of society? Should the country be more or less centralized than it is today in terms of both the revenue raising powers and the legislative authority of the two orders of government? Ultimately, the answers to these questions turn on people's views of the significance of the regional diversity of Canada, precisely the type of question which is raised by the concepts of division and regional government in the NWT. In both instances, the answer lies in the nature of the societies to be governed. Some may want governmental power kept close to home so that it can be controlled by a relatively small, familiar and trusted group. Others may prefer to entrust to a more distant government the power to pursue broader goals which are more easily sought by a large government representing many people.

The Theory and Social Basis of Liberal Democracy

Liberal-democratic theory rests on three fundamental concepts: individualism, equality and moral relativism.

Individualism is the belief that the individual--rather than God, the tribe, the nobility or some other social subgroup--is the essence of society. The rights of the individual, the basic building block of society, are fundamental. Society must be structured to promote the individual's right to pursue happiness and fulfillment and to maximize the individual's ability to realize his or her potential. Moreover, the more society succeeds in enlarging freedoms, the more smoothly it functions for the benefit of all. Individuals do participate in society at the cost of some of their freedom. However, liberalism views their participation as voluntary, rather than based on any ethical claim society has on them. It justifies any loss of freedom they suffer in obeying society's rules by the ultimate benefit of social cooperation to the individual rather than by the reference to the needs of society as a whole.

Equality follows logically from individualism because liberalism views individuals as essentially identical in their capacity for pain and pleasure and their wish to avoid the former and seek the latter; it does not recognize any legitimate grounds for discriminating in favour of certain individuals over others. As equality is rooted in the nature of mankind, it becomes the basic principle to be sought in constructing and operating governments.

Moral relativism is the belief that humankind does not enjoy access to any ultimate and eternal truths. People may hold certain ethical values very strongly, but their beliefs are precisely that--beliefs. They are opinions rather than true knowledge and they emphatically do not provide the moral certainty implied by concepts such as "divine law". The pluralism of modern society, the different upbringings, personalities and self-interests of citizens, guarantee that a variety of views and proposals will appear in response to any political issue. In the absence of absolute answers and revealed truth, it is conceivable that any of these ideas might turn out to provide the best

answer to a question facing society. Moreover, as all individuals are equal, no philosophical basis exists for suppressing the ideas of any member of society. In this situation, liberal-democracy does not try to seek the "true" answer. Rather, it defines politics as a competition among ideas and interests competing on the freest basis possible. This definition has three crucial elements. The first is the acceptance of competition based on diversity of opinion. The second is the desirability of maximizing the free expression of ideas. The third is the adoption of whichever idea or position has the most support, not because it is the correct position in any absolute sense, but because it has more support than any other idea. It follows that liberal democracy is flexible. If support patterns shift, a different policy may come to be adopted, an outcome which is less easily obtained where values are viewed as ultimate, hence competition among ideas as heresy.

Liberal democracy evolved as society became more pluralistic: large-scale, complex, highly specialized and market-oriented. At the risk of gross oversimplification, the links between social structure and social philosophy may be summarized as follows:

a) The marketplace works most efficiently if jobs go to the people best suited to perform them. In other words, productivity is maximized if traditional practices of distributing jobs on the basis of religion, caste, class, tribe or family are rejected. Instead, workers should be considered equal in the sense that jobs should go to those whose skills and energy make them the most productive holders of those jobs, and not to those who might be selected for traditional reasons having no relationship to productivity. In the history of the world, this value came to power as the power of merchants eclipsed that of more traditional power holders such as religious leaders or the nobility. Gradually, it came to be transferred to the political realm under pressure from this new group of people. Over time they diminished the political significance of such barriers to political activity as the institutions of nobility and caste, and substituted in their place the rights of the individual.

b) Traditional society defines the whole of the individual's identity, his or her social relationships, economic activities, and spiritual life in terms of the individual's place in society. To be a peasant or a noble, a member of a guild or a churchman was to have a total identity. More than that, it was to enjoy a great sense of psychological security in that all of life's significant questions were answered by the traditional order. Not surprisingly, ideas were held with great intensity and unconventional ideas were vigorously attacked.

In contrast, modern society fragments the individual's identity. Meaning in life now comes from a variety of not necessarily related sources: one's spiritual life, family, friends, employment and recreation. Each of these sources of meaning and value in life is only partial. With less emotionally at stake regarding any one of them, people are more willing to consider alternative ideas in a society of specialized and relatively independent roles than in a traditional society. For example, divorce is more easily debated in a society in which it will affect family life, but will not necessarily affect the religious life, or economic activities of either the individuals involved.

c) Moral relativism follows logically from the skepticism of the scientific revolution which has created modern society. Science proceeds by asking questions or at least by testing old truths rather than by clinging to ideas which are seen as absolutely and eternally true. The successes of science have led to questioning in non-scientific aspects of life.

Liberal Democratic Principles in Provincial Governments

Provincial government in Canada is basically patterned after the British parliamentary model. This means that it is the product of a long historical evolution from a monarchy to a liberal democracy which retains much of the symbolism, but little of the reality of monarchy. The description which follows will ignore the symbolic

features of provincial governments in favour of reporting how these governments both govern and do so in a liberal democratic fashion.

In other words, the governmental institutions of the provinces must perform two functions. First, they must provide for reasonably efficient and authoritative government. Their structure must promote the handling of public business in a reasonably well-informed, financially responsible and prompt fashion. This is a very challenging task in view of the great scope of the activities of the provincial governments and the scale and complexities of the societies for which they are responsible. Second, as liberal-democratic governments, they must respect individuals, treat them equally and maximize the free competition of ideas for public acceptance.

These two sometimes conflicting functions underlie the following fundamental features of provincial government. These features are stated as theoretical ideals which do not necessarily mirror actual practice in the provinces.

The Electoral Principle

Elections lie at the heart of liberal-democratic government. Direct democracy, in which all citizens actively participate in government, would most closely satisfy the requirements of liberal democracy. However, realistically, representative government is the only manageable way of governing large-scale, complex societies. The crucial importance of elections is that liberal democracy relies on them to link legislators and citizens. Elections must make legislators feel responsible to the citizens and sensitive to their wishes, in the process, legitimizing the government which results from the election and the policies which that government produces. For this reason, elections must scrupulously conform to the requirements of liberal-democratic theory. They must be regularly held. All citizens (except for members of ineligible groups, such as convicts and judges) must be equal in the electoral process. All must be permitted to vote and all citizens' votes must carry the same weight. Citizens must be free from coercion regarding the nature of their vote, a condition which is

satisfied by the institution of the secret ballot which makes it impossible to determine whether a voter has succumbed to coercion, hence not worth a partisan's effort to attempt coercion. All forms of electoral fraud are to be guarded against as they deny citizens an equal say in determining the outcome of the election, by giving additional votes to the cheaters or causing the votes of non-cheaters to be overlooked.

The Sovereignty of the Legislature

Once elected, and within the areas of jurisdiction as set out by the Constitution Acts of 1867 through 1982, the power of the provincial legislature to enact legislation is unlimited*. Social stability requires that there be no question which is not ultimately capable of binding decision; hence the need for government to have sovereignty and a clearly stated institution for exercising that sovereignty. Having stated the principle as forcefully as possible, it must be qualified by the next feature of provincial government.

Guarantee of Rights and Freedoms to Individuals

The Charter of Rights and Freedoms found in the Constitution Act of 1982 entrenches the rights which are so fundamental to liberal-democratic theory and, in so doing, limits the sovereignty of the provincial legislatures (and of Parliament as well). However, the limitation is far from absolute in that rights are guaranteed "only to such reasonable limits . . . as can demonstrably be justified in a free and democratic society" (Section 1). This provision opens up the possibility of some limitation of rights, although the nature and extent of this limitation have not yet been explored by legislatures and the courts. In addition, and probably more importantly, Section 33 of the Charter allows provincial legislatures (and Parliament, itself) to ignore the sections of the Charter protecting fundamental rights, legal

* This statement assumes that the federal government's powers of reservation and disallowance of provincial legislation have died through lack of use, a situation which contrasts with that of the territories.

rights and equality rights simply by explicitly stating an intention to do so. The hope is that governments will override the Charter only in extraordinary circumstances. Such restraint is in no way guaranteed, but undoubtedly much legislation will have to conform with the Charter.

Perhaps most importantly, the existence of the Charter will improve the administrative, as contrasted to legislative, performance of government in terms of ensuring adequate consideration of citizens' rights. Most citizens come face to face with government when particular laws are being applied to them, for example, in cases involving unemployment insurance, taxes or application for jobs or grants. For this reason, the application of the Charter to these interactions may prove to be extremely important.

The Executive

Because a legislature is too large and generalist a body to conduct all of the business of government, an executive must exist. The formal definition of the executive function is to put into effect the laws passed by the legislature. In addition, the weaknesses of the legislature have led to a growth in the functions of the executive to include the preparation of most of the legislation which the legislature considers.

Three fundamental principles govern the executive in conformity with liberal democratic thinking.

a) Parliamentary Supremacy

Textbooks tell us that the relationship between the provincial legislature and cabinet is one of "responsible government", that is that the cabinet only continues in office so long as it enjoys the support of the legislature and that it must resign if it has clearly lost that support. This principle does lie at the heart of the parliamentary system, as it must if the real source of legitimacy of government in a liberal democracy--the people--are to retain even indirect control over the executive. It is often overlooked, however, that the power of the legislature is not the whole story, as the executive can

choose to dissolve the legislature and appeal to the voters. This relationship of balance, termed parliamentary supremacy, argues that neither the legislature nor the executive may dominate the other. Its importance lies in its ensuring both executive action and legislative control.

b) The Rule of Law

The rule of law is the constitutional principle that government should only act, should only affect the lives and rights of citizens (1) on the basis of legislation which has been properly passed; (2) applied by legal means; (3) carried out by the proper authorities; (4) administering the same treatment to all citizens. In other words, the rule of law provides that government shall not act arbitrarily, nor shall it favour some citizens at the expense of others, unless this discrimination is decided in a proper fashion to be in society's best interest. An example of such a case is the policy of giving handicapped Canadians a larger deduction in calculating their personal income tax than other Canadians enjoy.

The rule of law provides the predictability necessary for individuals to calculate the consequences of the choices they face in life. In this way the rule of law performs the governmental function noted earlier of "structuring society". Canadians know, for example, that they can support the opposition party and not risk being thrown in jail or that their union cannot be declared illegal at the whim of some official, but rather only after legal procedures have been followed. The rule of law also provides that all government activity be scrutinized and approved, at least indirectly, by the representatives of the people who presumably are kept attentive to the best interests of people by their electoral dependence on them. Finally, the notion of "binding" rules implies that the state has a legal capacity to exercise coercion. However, coercive rule is very costly rule, in terms of both the cost of the mechanisms of coercion--police, informers and jails--and, more importantly, because coercion discourages mass support which would lead to voluntary action on the part of citizens which would

contribute to the success of policies selected by the government. It is far more efficient if citizens obey the rules established by the state because they feel that the rules are legitimate than because they fear the coercive power of the state. The benefits of legitimacy are particularly great for a large-scale, complex society which can only be governed well if its people feel free to communicate their needs to it, thus enabling it to keep its finger on the pulse of society and identify and promptly address developing problems. Because the electoral principle, the protection of rights and the rule of law embody the principles of liberal democracy, they promote the legitimacy of government, the flow of information to it, and thus its function of creating and maintaining a system of laws which are accepted as binding.

c) Impartial Bureaucracy

A basic guarantee that all citizens will be treated equally, at least in the sense that there should not be discrimination on the basis of political party affiliation, is provided by the principle of the impartial bureaucracy. Public servants are supposed to be appointed and promoted on the basis of merit rather than partisanship. They should enjoy special job security as compared with private sector workers so that they need not feel threatened if the proper performance of their duties requires them to act against the interests of someone associated with the ruling party.

The Judiciary

The rule of law is also sustained by the institution of the independent judiciary. The judges who determine whether the government has acted legally and who also bear the responsibility of judging individual citizens in a non-partisan fashion are not responsible to nor dependent upon either the legislature or the executive. They can decide cases without fear of their jobs because they can only be removed from their positions (except for reason of retirement) under extraordinary circumstances requiring extraordinary procedures. In addition they cannot be squeezed out of their jobs because their

salaries are set by law and cannot be reduced in individual cases. These aspects of their positions shield them from forces which might influence them to violate the liberal-democratic spirit of government which they are responsible for upholding.

While the independence of the judiciary sustains liberal democracy, it should also be noted that the overall activities of the judiciary contribute to the predictability of social structure by providing a mechanism for the interpretation of legislation. This predictability increases the certainty which citizens feel in anticipating the consequences of their actions and in this way increases the confidence which they enjoy as members of society.

Problems of Liberal-Democracy as Practiced in the Provinces

The description above represents an ideal case. In reality the provinces demonstrate a range of problems associated with liberal democracy. One set of such problems is philosophical with authors arguing among other things that liberalism is indecisive and vacillating because it lacks any ultimate standard of what is good which could resolve an issue once and for all; that its tolerance ill prepares it to confront subversion or other challenges from non-liberal opponents; and that it strips the individual of the psychological confidence which absolute beliefs, religious or other, provide and imposes in their place the alienating and anxiety producing responsibility of exercising freedom without firm values to guide the act of personal choice. Additional problems can be identified which touch the very essence of liberal democracy. However, these problems are so fundamental to it that to choose or, more accurately, to acknowledge the existence of a liberal-democratic society and build a government which reflects this society is, in point of fact, to accept these problems. It follows that the only choices are to try to make the best of them or to consider the establishment of basic principles, for example in a Charter or other constitutional document, which would limit the application of liberal-democratic principles, for example by entrenching specified rights for certain groups. This approach would not answer all of the

criticisms of liberalism, nor would most people want all of the criticisms answered because to do so would be to limit freedom of choice. However, it could establish basic principles which would reduce the amount of time spent subsequently debating fundamental questions. Of course, the process of settling these questions would likely be quite difficult precisely because it would be establishing basic principles which might well be seen as helping some more than others.

Two fundamental questions face those engaged in a process of constitution making. The first is how fully liberal-democratic ideas ought to shape their society. The second is how best to decide this very contentious question. Both of these questions should be kept in mind in considering the following specific problems of liberal democracy as practised in the provinces.

The Assumption that the Individual is the Basic Unit of Society

While individualism is a basic element in the political culture of Canada, the strength of ties to groups, particularly of an ethnic nature, must not be overlooked. It used to be assumed that individualism grows hand in hand with the evolution of social modernity, the consequence being that more traditional, ethnic ties diminish as time passes. However, it has come to be realized that this is not necessarily how society is likely to evolve and that both constitutional structures and governmental policies may have to adjust to the enduring and in some cases increasing strength of ethnic feeling. Canada is now officially a bilingual, multicultural country in deference to the strength of ethnic identification and many public policies now reflect the importance of group identity for Canadians. The most controversial of these policies have been the language policies implemented by the Government of Quebec which limit individual rights in order to protect what is seen to be an endangered group right to its identity. Of course, the historic language education policies of anglophone provinces have had exactly the same underlying logic of enforcing a uniform identity regardless of individual's preferences. Other policies

recognizing ethnicity have included the recognition and funding by government of the preparation of aboriginal claims; the growth of publically-funded educational programs using neither of the two official languages and the funding of ethnic cultural activities.

The Assumption of Equality Among Individuals

This assumption, fundamental to liberal democracy, fails in that individuals in Canadian society enjoy grossly unequal resources with which to participate in politics. Those with less wealth, education, social status, and self confidence are less likely than are those who are better off to find themselves candidates for election, public service or judicial appointment. When legislators, bureaucrats and judges do consider their cases, less advantaged Canadians tend to receive less sympathetic treatment than do those citizens who have the resources to press their cases more effectively. In other words, the independence of the judiciary and the impartiality of the public service may shield Canadians from partisan discrimination, but they are no protection against unequal treatment which reflects other biases on the part of public officials or the unequal abilities of citizens to make their cases to government.

In the end, the operation of these factors, the disinterest in politics of many people and the competitive advantages which those in office hold over all the rest produce a tendency toward oligarchy, which is defined as government by a few. Usually, the few govern more in their own interest than in the interest of all, a situation which runs counter to the liberal-democratic ethic and raises the question of how the tendency to oligarchy can be reduced or what counterbalancing institutions can be created.

Deficiencies of the Electoral Process

Ideally, electoral systems should produce a result which precisely reflects the will of the voters. However, the single member constituency, plurality electoral system used in the provinces (and also federally) can produce significant distortions between the

proportion of votes gained by a party and the proportion of seats it receives in the legislature. For example, in the recent British Columbia election, the Social Credit Party's 49.7% share of the vote translated into 63% of the seats in the legislature while the New Democrats' 44.9% of the vote yielded them only 37% of the seats.

If elections in Canada do not precisely reflect the will of the voters on the important question of partisan choice, neither have they proven effective in communicating public feeling on issues. As society becomes larger and communication technologies more powerful, campaigns are increasingly tending more to image and less to substance, a tendency reinforced by the parties' tactic of attempting to appear to be all things to all people. The result is to limit the usefulness of elections as a device by means of which individuals can bring their ideas to bear on the political process.

Both federal and provincial elections in Canada have also managed only modest success in enforcing the discipline of the electoral test upon politicians. The frequent instances of single party domination of legislatures has created situations in which the politicians feel less need to remain attentive to the wishes of the electorate than is consistent with the liberal-democratic model. In part, these situations reflect public choices. However, they also reflect the artificial translation of votes into seats by the electoral process as well as other structural features of Canadian government, such as the insufficient resources given to opposition parties.

The Balancing Act of Parliamentary Supremacy

Both because of the increased complexity and volume of governmental policy making and because of the institution of party discipline (the general practice that legislators of a party will all vote in the legislature in support of the party's position, even if they personally would prefer not to), the balance of power in the provincial and federal governments now clearly favours the cabinet. Legislators may contribute ideas to their party leaders regarding issues, but their contribution is only one factor in a policy process which is dominated

by the cabinet and public service and greatly influenced by the activities of interest groups. This generalization applies both to the process by which policy is researched, sketched out and then finalized before presentation to the legislature and also to the process by which the detail of policy is rounded out by means of Orders-in-Council and then applied to specific cases by the public service. The legislature enjoys some means of reviewing executive activity and of obstructing its legislative plans. However, this does not compensate for the overall strength of the executive, a strength which weakens the link between government and the individual.

Judicial and Bureaucratic Neutrality

In contrast to the ideal liberal-democratic structure, partisan appointment to judicial and senior bureaucratic positions occurs with some frequency in the Canadian provinces. While there is relatively little evidence that judicial decision-making displays a partisan bias as a result, the evidence is greater that bureaucrats find it difficult to avoid partisanship when they offer advice and technical support to the elected politicians who appointed them and/or with whom they have jointly developed policies over the long terms of office which reflect the fact of single party dominance in some provincial legislatures.

As has already been noted, regardless of their level of partisanship, judges and public servants tend to share the biases of the social groupings to which they belong and to apply these prejudices in the performance of their duties. Indeed, it is only human that they should act on the basis of their understanding of the world, but undesirable if their views taken as a whole lead to unequal treatment for individuals from different sectors of society.

Reforming the Practice of Liberal Democracy

While the details vary among political systems, all liberal democratic parliamentary systems operate roughly the same institutional structures, as described above, in order to attain the goals of liberal democracy. It is difficult to conceive of a fundamentally different

set of structures which would still qualify as liberal-democratic. However, there is significant room for improvement in the structure and some suggestions regarding these will now be discussed, in the same order in which the problems were identified in the previous section.

Individualism and Ethnicity

The compelling pull of ethnic attachment is partly honoured in Canada through the institution of federalism itself. In the Northwest Territories, ethnicity raises absolutely fundamental questions about the rights of aboriginal peoples and their role in NWT society in the future. These concerns have found expression in the pursuit of division of the Territories and clearly relate to the concept of regional government.

The Constitution Act recognizes bilingualism, multiculturalism, and aboriginal rights, suggesting that the constitution of whatever future jurisdiction develops in what is now the western portion of the NWT might well contain a similar component--whether a statement of principle or actual guarantees.

In addition, the federal government has attempted not only to increase bilingualism in the federal public service but more than that to increase the proportion of people of francophone origin in the service. In part this policy increases the legitimacy of the federal government in the eyes of Francophones. In another sense, partly related, a public service which is more representative of the significant groups in Canadian society is likely to contain less of a systematic bias against any one of them. This principle of representative bureaucracy, which might well be extended to include as representative a judiciary as possible, will be a concept which constitutional planners in the NWT may wish to consider as an ideal to seek over time, even if it is unattainable in the short term.

The matter may be taken farther by noting that in some instances the provincial governments permit certain groups to govern some of the activities of their members, for example, doctors and lawyers, or religious denominations operating their own school systems. The

right to self-determination has not been extended to ethnic groups, but the pursuit of some form of sovereignty by native people in Canada in general and certain of the proposals found in the document Public Government for the People of the North raise this question in a fashion which puts in a most fundamental fashion the conflict between the individualistic assumptions of liberal democracy and the collective assumptions of ethnic group identification.

Equality

The inequalities in Canadian society cannot be eradicated by restructuring government in that inequality expresses the social philosophy and distribution of power in Canada. However, government may be structured to reduce the political inequalities which result from the more general fact of inequality in society. First, legislation such as the federal Election Finances Act can reduce the advantages enjoyed by the wealthy in the electoral process. In view of the inequalities which this Act still permits, even more rigorous legislation might be desirable. Second, strong Freedom of Information legislation may assist less well endowed interest groups by informing them of the activities of lobbyists paid by groups wealthy enough to be able to afford the often expensive services of these individuals. It would also make available much research. Poorer groups could use this research to develop their positions or to critique the arguments of their opponents, activities which they find difficult today because they lack the large sums of money needed to perform the research on their own.

Consociationalism

The problem of establishing structures which promote successful and stable government in ethnically divergent countries is not unique to Canada. While the problem often proves insurmountable, one European device which has had some success in bridging the gap between ethnic groups has been termed by political scientists "consociationalism". In the words of Arend Lijphart, a leading theorist of consociationalism,

"The essential characteristic of consociational democracy is . . . overarching cooperation at the elite level with the deliberate aim of concentrating disintegrative tendencies in the system". In other words, consociationalism acknowledges and accepts the fact that the members of the political system are divided into several groups whose interests diverge quite strongly and bring them into conflict which is very difficult to resolve. Rather than placing great emphasis on integrating the groups at the risk of intensifying the conflict, consociationalism stresses the resolution of the groups' differences by means of cooperation among the leaders of the groups, with contact among members of the groups remaining limited as it is not seen as necessary for the solution of political disputes. Lijphart stresses that the precise institutional arrangements for implementing consociationalism are less important than (1) the recognition by the leaders of the various groups that cooperation is essential if politics is to work at all; (2) their sincere determination to make the system work and (3) the acceptance of their authority by the mass of members of the social subgroups they lead so that they will accept compromises which their leaders have worked out. This having been said, it may be helpful to note that the structures which have been put in place embodying consociational principles have included:

- 1) coalition cabinets

- 2) powerful advisory boards on which representatives of the groups sit in proportion to the number of votes their party has received or the size of their social grouping, but with great respect being given to dissenting views of any of the groups represented, even if a minority

- 3) the principle of proportionality in the appointment of public servants and members of regulatory boards and in the distribution of funds to educational systems, cultural activities or any other programs or expenditure items which are undertaken independently by the different groupings.

Consociationalism is quite compatible with a parliamentary system of government, such as is practiced in the provinces, as it

would merely represent an overlay on top of the existing practice. This overlay would in all likelihood be an informal one, reflecting informal understandings among the leaders of the various groups in the western NWT. Given this status, the real question which the idea of consociationalism raises is whether the preconditions for it exist in the western NWT. Do the leaders of its various social groups believe that some form of institutionalized cooperation is a more promising route to overcoming their problems than is the assumption of conflict? Do they believe that conflict will produce more problems and frustration all around than will some attempt to institutionalize or at least experiment with informal institutions of cooperation? The Western Constitutional Forum need not answer these questions in that its major concern is the formal institutions of government which may evolve in the western NWT. However, it might wish to keep the consociational model in the back of its collective mind. Indeed, it may be a fledgling model of consociationalism and its activities may be the best evidence of the prospects for successful consociationalism in the future.

The Electoral Process and Other Devices to Link Citizens and Legislators

The distorted translation of party vote shares into seat shares found in southern Canada will not pose a problem in the Northwest Territories so long as elections remain nonpartisan. However, it would be wise to anticipate the problem developing in the future; the gaining of responsible government inevitably leads to party competition in order to provide the secure legislative support required by the executive if it is to remain in office. The method usually selected to deal with this problem is one of the very many forms of electoral system based on **proportional representation**, which is the principle that proportion of seats in the legislature held by each party should reflect as closely as possible the proportion of votes which each obtained in the most recent election. The most complete form of PR treats the whole country as a single constituency and simply handles

the selection of legislators as an exercise in arithmetic. The total number of votes cast is divided by the number of seats in the legislature and the resulting quotient is divided into the vote total of each party to determine how many seats it obtains. For example, if 9,000,000 votes were cast for a legislature of ninety members, 100,000 votes would be needed to elect each. Parties gaining 4,000,000, 3,000,000 and 2,000,000 votes would respectively receive forty, thirty and twenty seats.

In addition to bringing party seat shares in line with vote shares, proportional representation offers the added benefit of reducing the likelihood of single party dominance of legislatures, but in a multiparty system it increases the likelihood of minority governments being elected. The task, then, is to assess the respective costs and benefits of the tendencies on the one hand to minority government and on the other hand to single party dominance and unrepresentative electoral outcomes, and to devise the form of electoral system which best suits the needs of the western NWT.

Those performing this task will have to bear in mind that the present Canadian system does offer the advantage of identifying specific legislators as specifically responsible for particular parts of the province or nation. It creates a clear link between a relatively small proportion of the total province or country and a legislator. The voters know to which legislator to turn. The pure system of proportional representation which would treat the province as a single large constituency would lose this close link or identification between the voters and their legislator and make government more impersonal, a result which would be particularly undesirable in the North in view of the strong emphasis given to local participation in the political process. It would seem then that some hybrid system must be developed which both retains the local link embodied in a constituency system, while also addressing the problems of malrepresentation produced by that system.

This report identifies two additional problems associated with the electoral system in place in the provinces. The first of these is

the tendency of campaigns to emphasize image rather than issues, a tendency which, it must be noted, is significantly more pronounced in federal than in provincial elections. While there are several reasons for this pattern, a basic one is that the electoral system itself encourages parties to seek votes in the broad middle of public opinion and to avoid strong stances on issues which might alienate middle of the road voters, which is what most Canadian voters are. The system has this effect because in each constituency only the party with the highest number of votes wins anything. A party representing even a large minority group or opinion will get nothing. In contrast, proportional representation permits parties which have views which appeal to minorities to gain representation in the legislature and in this way make it possible for issue or group based parties to compete with some hope of success rather than to submerge themselves and their interests in some bland centre-seeking party.

The final problem of the electoral system is that of single party dominance. It has already been noted that proportional representation would reduce the likelihood of this situation developing, but with the consequence of increasing the likelihood of minority government. While the desirability of minority government is a matter of opinion, most Canadians appear to link it to indecision and instability.

Can the existing electoral system be further modified or supplemented to increase the linkage between citizens and those whom they elect and to enhance the role of citizens in the governmental policy process? A variety of possibilities exist, but they have generally not been adopted by the provinces. One is to consider the person elected to be a delegate of the voters whose responsibility is to represent them. It has been proposed that this relationship be guaranteed by the provision for a "recall", that is, a vote which could be taken at any time to determine whether the voters wish the person whom they elected to stop serving as their legislator. Such a device would guarantee that the elected person accurately represents the views

of his or her constituents. However, it would violate the prevailing philosophy that a member of a legislature or of the House of Commons is not a delegate, but rather a representative. This means that his or her duty is to govern in the best interests of the province or Canada as a whole. The question here is the relative importance of the constituency versus the province or nation or, in the context of the NWT, the importance of each community to its residents versus the need to find the best possible decisions for the western NWT, considered as a whole. In the present system the legislator is expected to consider the feeling of his or her constituents, but that is one factor of many to be considered.

Among the others are the requirements of observing party discipline. An absolute application of the delegate philosophy would make party discipline impossible. This would destroy parliamentary government as it is known in Canada and probably replace it with some form of presidential government. This might not be an unacceptable outcome for the members of the Western Constitutional Forum but they should appreciate the link between the delegate theory and the recall on the one hand and, on the other, the decline of parliamentary government.

All of this is not to say that the link between legislators and voters should not be closer. However, it may be more advisable to secure this closeness through informal means such as a commitment on the part of legislators to consult their constituents more actively than tends to be the case in the South. While the large size of constituencies in the NWT makes this difficult, the relatively small number of voters in each makes the task easier. Special arrangements for the legislative assembly, such as more and briefer meetings of the legislature will provide more frequent periods between sessions during which legislators can return to their constituencies to consult on current issues with their voters. It might even be worth considering a rule of the legislature that no bill be adopted at a single session. In this way, legislators will have an opportunity to return home and discuss legislation. The cost and delay implicit in this idea are significant and would have to be weighed against the benefit of

whatever degree of greater citizen input to the legislative process WCF members feel the device is likely to produce.

Another device for linking the people and policy is the referendum. This is an unparliamentary device in that it detracts from the basic principle of parliamentary sovereignty. However, it has achieved some popularity in recent years, having both been proposed by Prime Minister Trudeau and actually used by Premier Levesque. The advantage of the device is that it would allow the people to act as legislators. The disadvantages, however, are several. First, a referendum only allows for a yes or no answer and thus denies the possibility of negotiation which may produce a creative solution. Second, a referendum splits a community into winners and losers, hardly a desirable outcome for anyone concerned about social unity. Third, referenda are costly, time-consuming and if overused are likely to become irritating to the electorate. In other words, there is a limit to the number of issues which can be settled by referenda in a given period of time. Fourth, referenda are very open to manipulation. For example, Premier Levesque manipulated the timing, wording and rules of the Quebec referendum of 1980 to favour his side. The fact that he still lost does not lessen the potential for unfairness. Finally, referenda tend to impose the wishes of the majority upon the minority. While majority rule is essential to liberal democracy, so also are minority rights, including the right not to have imposed on the minority any governmental policy which harms its fundamental interests. The institution of referenda can provide a justification superficially based on liberal-democratic philosophy for an act which, in effect, violates an important norm of liberal democracy. This is not to say that referenda should be shunned like the plague, but rather that their use should be very carefully considered, and if adopted, very carefully regulated.

If it is felt that a very close citizen-representative link and the opportunity for active citizen participation in decision-making are essential, it may well be decided that the best method of obtaining these goals is to give substantial jurisdiction to the communities.

This decision would involve administrative inefficiencies, would weaken the territorial government and might overburden the most politically active people in the communities by placing even more demands on them than they now face. In this sense, it calls on those making the decision to weight the importance of efficiency against the importance of local control and participation.

Parliamentary Supremacy

While the volume and complexity of government business require a strong leadership role on the part of the executive, provincial legislatures need bolstering in order to be able to scrutinize the executive and to hold it accountable. One device which would promote this end is strong Freedom of Information legislation which would make more easily available to the opposition information on which they could base their inquiries into government activities. A second device would be the legislatively guaranteed provision of generous research funding for opposition parties which are at present sometimes limited in their ability to do the kind of research necessary to hold the executive accountable. A third device would be to fund adequately legislative committees so that they can develop expertise in their subject areas. For example, they could conduct more of their own research and hold more hearings without waiting for draft legislation to be presented to them, and thus contribute more to the policy process and the overseeing of the administrative activities of the executive. Of the various mechanisms in place in most of the provinces by means of which the legislature may check the activities of the executive, one which particularly deserves note is the ombudsman, an officer of the legislature whose task is to investigate complaints of unfair treatment of citizens by the public service and to recommend remedies where the complaint is deemed valid.

Judicial and Bureaucratic Neutrality

Beyond the personnel policies currently in place to discourage partisanship on the part of judges and public servants, devices to

encourage neutrality in all senses might include any of the following:

- 1) the office of the ombudsman
- 2) strong Freedom of Information legislation to increase the ease of demonstrating bias where it does in fact exist
- 3) implementation, probably gradually, of programmes to make the public service and judiciary more representative of the composition of society.

Conclusion

The task confronting the members of the Western Constitutional Forum reflects the fundamental need for government to reflect society. A liberal-democratic government should only be selected for the western NWT to the extent that it possesses a liberal-democratic society. The issue is the strength of a consensus on the balance between two sets of beliefs or values. One set includes individualism, individual rights and freedoms, moral relativism and the relatively unhindered operation of the marketplace. The other set emphasizes ethnicity, more specifically, the rights of aboriginal peoples; the absolute need to guarantee their future as peoples, not just as individuals; and the demands which ethnicity may place on the operation of the marketplace. For example, what principles should protect native wildlife harvesting in a case where an incompatible nonrenewable resource project promises a greater financial reward, although to the NWT generally, rather than to native people specifically?

To the extent that NWT society does not perfectly fit the model of a liberal-democratic society--and no real-life society does fit it perfectly--two questions arise. All other questions are either different ways of asking these questions or subsidiary to them. The questions are:

- 1) Does the social fabric of the western NWT contain enough of the liberal-democratic ethic to make liberal democracy the best basic model on which to begin to build a government system?
- 2) If the answer to the first question is yes, what modifications to liberal-democratic institutions ought to be implemented to allow for

the full and fair expression of the aspects of the western NWT which do not conform to the liberal democratic model?

In the final analysis, the Western Constitutional Forum will find its place in history in its success in finding a consensus on precisely these questions of the best match between social patterns and governmental structure.