Are citizens up to the task of constitution-making? What citizens’ assemblies might teach us

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Efforts at amending constitutions are fraught with difficulty since these documents not only have legal standing but also represent key principles and values to a society. In the past, political elites, usually academic experts or political parties have been entrusted with the task of making changes to a constitution. While these invariably have meant a debate about values, such traditional processes have excluded citizens from meaningful participation or relegated them to approval after changes have been negotiated.

This paper draws on the work of citizens’ assemblies on electoral reform in Ontario, British Columbia to make an argument about what role citizens might play in constitutional-making processes. Examining the process and decisions of the assemblies it argues that these assemblies – as randomly selected bodies of citizens -- may offer a new way to engage the public, create civic capital and political learning and bring in the citizen to constitution-making processes.
It can be said that constitutions simply are legal documents. They set parameters around the suitable locus of state action. Constitutions are about defining the form of government -- whether federal or unitary -- and the appropriate divisions of power between the two levels of government. In Canada, the allocation of governmental powers has been a significant pre-occupation to executive, judicial and legislative elites since Confederation. This site of contestation has been significant because debates about these powers are debates about regional, cultural and linguistic diversity in the federation. As documents which set the rules of the game, constitutions shape the institutions of the state such as the nature of parliament and the judiciary, dictate the method of selecting our representatives and provide a document for codifying a set of rights.

Such a narrow definition ignores the deeply symbolic role of a constitution. Defined as a “mirror reflecting the national soul” (Cheffins & Tucker 1976, 4), a constitution is much more than a document that delimits the powers of the state. It is the embodiment of the values, tradition and a nation’s culture. Debates about constitutional change, therefore are so difficult because they are debates about the very nature of political community. In Canada, unlike the United States, we do not have a founding myth and we are not one nationality. Rather our constitutionalism is more organic than convenantal (Elazar 1985) and reflects the on-going debates about what it means to be Canadian. Without a single foundational moment, Canadians have struggled to create a document that characterizes our multiple nationalities as French, English, aboriginal or immigrants.

If the symbolism of a constitution is important, then the method of constitutional change is fundamental. Like all nations, the conversation about constitutional change in Canada was dominated – and until recently monopolized – by political élites who saw changing the constitution as a means to further different conceptions of nationalism. There are some who argue that the battle over our identity has nothing to do with constitutional discussions but rather are reflected in our actions toward one another or “the consequences of our life lived together” as John Whyte puts it (1999, 132). If this is true, the debates about how we change such a fundamental document are still profound.

Until 1993, the public was excluded from this conversation. And even then, the role of the public was to ratify constitutional change not to negotiate or deliberate. Our periodic constitutional discussions were like seismic upheavals that affected the political landscape. The public stood idly by while governments of all political stripe attempted to patch over the rifts that occurred. These myriad constitutional changes and their failure may signal that it is time to re-think the role of the public in constitutional change. This paper argues that a viable model does exist for meaningful and vigorous public involvement. It argues that the recent examples of the citizens’ assembly on electoral reform as practiced in Ontario and British Columbia provide a new model for constitutional change. In doing so, politicians may be able to take a fresh look at a problem that has, up to know, proven vexing to solve.

Putting citizens at the centre of constitutional change has several immediate benefits. In addition to democratic renewal, it offers the promise of a novel but sound way to make policy. This paper will first review recent constitutional proposals to demonstrate how peripheral citizens were to their creation and implementation. It will argue that citizens’ assemblies offer a model for meaningful citizen participation in constitutional-making processes. The mandate, structure and operation of a citizens’ assembly will be discussed. While it is not a panacea, they offer a robust form of citizen engagement. Underlying the assumptions of how change should occur is the idea that citizens are not competent to tackle the task of constitutional change, that they would produce proposals that are not sound or that the assembly model itself is unwieldy. This paper hopes to
challenge these myths and in the course of this, re-invigorate how we conceive of constitutional-making processes as well as citizens’ role in policy making.

**The Mega-Proposals and the Elusive Search for A Process**

Until the mid-1960s constitutional politics was dominated by specific proposals that were not tied to conceptions of nationhood nor were linked to ideas of citizenship. These were affairs largely dominated by British law lords and attorneys-general who worked in relative quiet over important but particularistic claims over divisions of powers or quietly searched for an amending formula. Peter Russell calls this “normal constitutional politics” to distinguish it from the subsequent multiple rounds of “mega constitutional politics”. Normal constitutional politics is about the regular tinkering on specific issues such as the bill of rights debate in the UK or the impediments to budget deficits in the US. Mega proposals differ from normal constitutional politics in two ways, according to Peter Russell. They are not about specific proposals but go to the very nature of political community and fundamental principles of citizenship. Second, and because of this, they dominate public discourse and the nature of the conversation is “emotional and intense” (Russell 1993, 75). While one might expect citizens to be full participants in these national debates, it was as if the players were picked, the game was on and citizens were expected to be content on the sidelines.

In a seven year period, two attempts would be made to develop an amending procedure. In 1964, the Fulton-Favreau formula ushered in the first of these mega constitutional proposals. It required unanimous consent of the Parliament and all provincial legislatures for the most significant changes and was agreed to by all provinces except Quebec. The second set of proposals was decidedly more flexible and formed the basis for the amending formula in the *Constitution Act, 1982*. The Victoria Charter proposed amendment only with consent of Parliament and two of the western provinces having 50% of that regions population plus two of Atlantic provinces and either Ontario or Quebec (because both had 25% of the population of Canada). Though Quebec had a veto it was rejected by Premier Bourassa. Thus began the paradox of the politics of constitutional change. As Banting and Simeon wrote at the time, the lack of consensus makes change necessary but also makes resolution difficult (1985, 25).

The next mega constitutional change was the patriation of the constitution in 1980 that saw Pierre Trudeau win an election and begin the process of bringing home the constitution. On the tails of a failed referendum that year, Quebec Premier René Lévesque rejected the constitutional changes of 1982 and sought refuge in the Supreme court without success. These were élite dominated exercises when the phrase “eleven white men in suits” became the popular mantra describing the marginalization of the role of the public. This rejection of the constitution in 1982 by Quebec would begin a series of attempts over the next 13 years to reconcile Quebec’s demands in a federal union. The failure to obtain élite consensus during this period lead to a re-examination of how to forge agreements that were acceptable to political elites as well as mass publics who were growing increasingly disenchanted with the politics of constitutional change. These attempts at constitutional change indicated that old constitutional processes were dead but the new had yet to be born.

**Citizens as outsiders**
When one traces various attempts at constitutional efforts in Canada there are many variations but one constant is the virtual absence of citizens in the process. It would be a mistake to say that there was no public participation but that the integration of the public was a rarity. However, well before the patriation of the constitution, the Molgat-MacGuigan committee, a joint Senate-Parliamentary committee established in 1972, canvassed the views of Canadians in 47 cities across Canada. There were over 13,000 citizens present at the 145 meetings and the committee heard testimony from 1486 witnesses and received over 8000 pages of evidence (Canada 1972, 4). While the report noted that it was the first parliamentary committee to undertake such an ambitious series of hearings, it recognized that its findings may not have been representative of the public and even noted that its structure limited the participation of disadvantaged groups whose efficacy was low. Nevertheless, despite its report being greeted by “deafening silence” (Russell 1993, 92), it provided a rare deviation from the norm of how government integrates the public on constitutional matters.

The lesson of public involvement was not heeded in the first mega constitutional fissure after the patriation of the constitution. The Meech Lake Accord brought constitutional issues back to the table and yet again, citizens’ involvement was an afterthought. Meeting in Mont Gabriel in May 1985 to discuss Quebec’s role in Canada were civil servants, journalists, academics and business representatives. Four years later in November 1989, both in closed door meetings and under the glare of the television lights, the public caught a glimpse of the epic battle being fought between strong willed premiers and the prime minister. Though Canadians had opinions and voiced them on radio phone-in programs, citizen meetings and party conferences, they had little formal opportunity to shape the process or even provide input. What little consultation that was done was peripheral and not important to the views of decision-makers. Perhaps this is why only half the provinces avoided any public consultation (Cohen 1990, 271) on Meech Lake.

In the spring of 1990, on the verge of Meech Lake’s eventual failure, Canadians were agonizing about the constitution which had become daily fare in the media. While the substance of the issues was fiercely debated, the public was angry at being excluded from the process. Perhaps the real legacy of Meech Lake is not the impact that it had on federalism but the that its failure ushered in a new form of constitutional-making processes. Elite domination of the process offended Canadians. They resented that they were kept in the dark and told as little as possible. Andrew Cohen calls Meech Lake “a revolution from above, a new regime contrived by politicians for politicians. It was constitution-making by stealth” (ibid.).

A number of other parliamentary commissions and committees such as the Allaire Report and Beaudoin-Dobbie Commission followed. Some see these as “cynical public relations campaigns” that merely provided the veneer of participation (Morton, 1994, 88).While others noted that citizens who were opposed to the government’s proposals were discouraged from making an appearance and noted the oddity of consulting on vague principles (Bayefsky 1992, A13). Still, others grudgingly admit that the lesson had been learned that citizens need access to constitutional processes. The Spicer Commission, formally known as the Citizens’ Forum on Canada’s Future, was the most ambitious of these new forms of citizen engagement. Spicer called it “open-soul surgery on 26 million Canadians” (Canada 1991, 1). As an exercise in government outreach, it was impressive. Over 400,000 citizens participated in the Forum and 300,000 students were involved in a parallel students’ forum. Contributions took the form of presentation of briefs at meetings but also the creation of short plays, songs and hundreds of poems. Seventy-five thousand people let their opinion be known through a toll free phone line, 315,000 attended group discussions around the country including electronic town hall meetings (ibid, 22).
While laudable in its inclusivity and embrace of participation, the Spicer Commission did not allow for the development of constitutional policy. Rather, it echoed the same kind of grievances found around the world. Janet Ajzenstat (1994, 125) argues that it gave voice to the public whose postmaterialist politics were not confined to Canada but characteristic of the age and whose claims about the state of advanced liberal democracies were echoed in Western Europe, Australia or the United States.

The Charlottetown Accord in 1992 gave all Canadians a voice in a referendum. Some, like Janet Ajzenstat and Robert Jackson pointed to the referendum as an example of the failure of democratic participation. Ajzenstat likens opening up formal mechanisms of participation to a Pandora’s box that can’t be shut. Others, like Thomas Courchene argued that the virtue of ‘old’ constitutional politics was that it represented an “incredible balancing act” among competing interests and that the Accord symbolized the “genius of the underlying elite-accommodation system”. Decrying the new democratic nature of this round as “another bit of the American creed creeping into our society” Courchene painted future options as a choice between new a more inclusive process that was fragile and easily destabilized versus the old order, which while respecting “parliamentary federalism” was secretive and undemocratic (Courchene 1992, A1).

**What kind of democracy?**

Are these predictions about the role of the public correct? Answering this question depends on conceptions of democracy. The advent of representative institutions, the nation-state and capitalism lead to a conception of democracy which favoured a clash of interests. Individuals were self-interested and democracy was the result of competing demands made on the political system. Jane Mansbridge calls this “adversary democracy”. It is at odds with an older version that privileged reciprocity and consensus that she calls “unitary democracy” (1980). Theorists as diverse as Charles Taylor and Benjamin Barber have lauded a new form of political community that was based on the importance of dialogue among equals, a model that has been absent in our constitutional processes. In Canada, constitutional politics has been practiced in the style of adversary democracy – either by élites or by competing groups of citizens advocating for different conceptions of who we are and where we ought to go.

Outside of the reports themselves, there are very few accounts of successful public participation in constitutional efforts. Anne Bayefsky went so far as to call public participation in the Charlottetown Accord a “massive effort by the federal government to create the illusion of public consultation” (1992, A13). Many have seen these two elements – adversarial democracy and the failure of public participation – to be a reason why the public ought to be excluded. Failure of public involvement, however, with its large scale public consultation exercises and relentless mediated nature, may not be a failure of public participation but rather a failure of the venue, the assumptions that underlie the process and ultimately the conception of democracy.

Bayefsky, Ajzenstat and other élite democrats have a particular view of democracy that stems from assumptions about the capacity of citizens. This debate, which has been around since Aristotle disagreed with Plato, centres around conceptions of human nature. Are citizens reckless, boisterous and prone to capricious decisions as Plato argued in *The Republic*? Or are we to believe Aristotle’s understanding that “the people, taken collectively, though composed of ordinary individuals, have more virtue and wisdom than any single man among them”? These arguments have been reincarnated over the millennia in different guises and in different venues. Early twentieth century democratic elitists such as Schumpeter (1942) were very sanguine about citizens lack of knowledge. Walter Lippmann (1925, 13) wrote that the “private citizen today has
come feel rather like a deaf spectator in the back row, who ought to keep mind on the mystery off there, but cannot quite manage to keep awake.” Others such as Berelson et.al. (1954) and more recently Neuman (1986), Converse (1990) and Zaller (1992) have been equally skeptical about citizens’ capacity.

**Enter deliberative democracy**

The assumptions about citizens’ capacity and the amount of participation required in a democracy have been challenged by those who believe in a more robust form of democracy. Deliberative theorists like Charles Taylor and Benjamin Barber stress the importance of the collective, communitarian impulse in democracy. Taylor has written of the importance of ‘talk’ as a way to create community (Taylor 1991) while Barber believes public deliberation can strengthen relationships between government and citizens (Barber 1984) thereby increasing the legitimacy of government and its decisions.

Deliberative democracy is the form of this practice. It has been described as

> a form of government in which free and equal citizens (and their representatives), justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible, with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future (Gutmann & Thompson 2004, 7).

While it might seem new, deliberative bodies have an ancient pedigree. The Athenian assembly (ecclesia) was the body that all citizens in good standing could attend and participate in public affairs. This largely ceremonial body was augmented by a council (boule) sometimes referred to as the Council of 500. This body was chosen at random and charged with overseeing many of the republic’s important responsibilities. It is an example of a deliberative body because the boule was given responsibility to make policy, not based on members’ electoral mandate (since they were chosen by random) but on the assumption that the random selection would help prevent partisan cliques from being established (Dowlen 2009, 34). When Aristotle was criticized for the potential of this body for abuse, he replied that the same criticism could be leveled against any form of power and that power was neither good nor bad in itself only in the uses to which they are put (cf. Gastil & Keith 2005, 16).

At the core of deliberative democracy is a faith in public judgment – a term in common currency but with a particular meaning in this case. According to Daniel Yankelovich, public judgment is a form of public opinion that exhibits “more thoughtfulness, weighing of alternatives, more engagement with the issue, more taking into account a wide variety of factors than ordinary public opinion as measured in opinion polls and more emphasis on the normative, valuing, ethical side of questions than on the factual, informational side” (1991, 5). Deliberation is reasoned and enlightened policy preferences based on a discussion of shared interests. Advocates such as Habermas or Barber believe that transformative talk that goes beyond self-interested perspectives lies at the heart of deliberative democracy. Citizens involved in such exercises must eschew choice as simply the aggregation of individual preferences but rather see choice as a result of common interests based on the decision rule of consensus. With its emphasis on equality, common good, mutual respect and organic relationship, the roots of deliberation can be found in friendship rather than competition. Indeed, this echoes Aristotle’s maxim that “friendship [philia]
appears to hold city-states together” (quoted in Mansbridge 1980, 9). Like friendship, it assumes that participation ought to non-adversarial.

Governments tend to conflate deliberative democracy with public consultation. The latter often is understood as seeing citizens as window dressing to decisions that have already been made. Examples of this kind abound. Australian prime minister Kevin Rudd in May 2008 called for an “inclusive policy process that engaged with average Australians”. In 2004, the UK government commissioned the Power Inquiry which sought ways to engage citizens more actively in politics. These are examples of governments feeling they have a duty to consult but not necessarily acting on the advice of citizens. Janette Hartz-Karp describes many public consultation projects as “dead” (decide, educate, announce and defend). In these cases governments have already made up their mind and use public engagement as a way to create legitimacy for a conclusion they have already reached. It’s no wonder that citizens emerge from these exercises frustrated and more disenchanted than when they went in the process.

Experiments that are more deliberative in nature have occurred in India in its increased citizen participation exercises at the village level in West Bengal (Panchayat Reforms) in the 1970s and more recently in the state of Kerala. Citizens’ juries, created in the US, have been used in Italy to deal with the regulation of traffic in Bologna and Turin; and in Western Australia to examine very specific problems like the location of an exit to a national highway. In New Zealand, the former Labour government proposed the creation of citizen jury as a way to cut through the partisanship of state funding of political parties. Perhaps most famously, Porto Allegre in Brazil initiated a “participatory budgeting” exercise which allows citizens to set priorities for the discretionary part of a municipal budget. To varying degrees, all these offer citizens an opportunity to help shape policy and give government a chance for greater citizen participation.

So what’s so different about citizens’ assemblies? Citizens’ assemblies are different from other engagement exercises in several ways. The first difference has to do with their commitment to real engagement which is about sharing decision-making with the public not selling the public. Second, citizens’ assemblies create social and civic capital. Members emerge from them with a higher degree of efficacy and an awareness of their power to make change. Assemblies are laboratories for policy experimentation for, unlike citizen juries, they do not ask citizens to choose an option put before them but rather to create a policy de novo. Citizens’ assemblies have not been used in constitutional processes but perhaps the time is ripe to re-assess this.
Modern citizens’ assemblies are quite novel institutions. Up to now, only three citizens assemblies have been established, all of them have examined the issue of electoral reform – a subject that is as complex and, arguably, as arcane as the constitution. Electoral reform and constitutional processes are similar in several ways. Both are about particular legal mechanisms that are designed to induce certain behaviour – one affects political parties and voters during elections, the other shapes behaviour of citizens between elections. Both are based on a discussion around broad principles such as fairness, equality and recognition. In the case of constitutions these concepts are applied to sub-national units or people such as women, aboriginal or quebecois. In the case of electoral systems, these principles apply to which political parties should be privileged in an election. While both issues may seem opaque, technocratic and beyond the comprehension of citizens, in both cases, discussions about the details are proxies for larger principles. Interestingly, governments have chosen citizens’ assemblies for issues around electoral reform in part because they have seen the inherent conflict of interest in having politicians choose the method by which they are elected. They have yet to apply this same logic to thinking about constitutional processes.

Citizens’ assemblies have been attempted in British Columbia (BC) in 2004, Ontario in 2006-07 and the Netherlands in 2006. In the case of the first two, the decision of the assembly was put to a referendum. Because of their similarity of structure, the BC and Ontario cases will be examined here. Both shared the same four phases, 1) selection of its members; 2) the learning phase; 3) public consultation and; 4) deliberation where a decision was made.

The selection phase is not insignificant. For them to be successful, citizen led assemblies must be diverse in their make-up. This is so that the body is not ‘captured’ by any ideological or socio-economic position. Surowieki (2004) suggests that good deliberation is dependent in part on a wide sources of knowledge and background. This is important so that any one faction does not dominate but also to enrich the caliber of discussion. In order to achieve this diversity a degree of randomness – similar to the boule in ancient Athens – was introduced. Letters were sent to citizens at random inviting them to participate in the assembly by attending a selection meeting. At these meetings, an overview of the project was given and prospective members were invited to put their names in a hat where participants were drawn at random. In BC, one man and one woman was chosen from each electoral district creating an assembly of 160. In Ontario, there was one member per district resulting in an assembly of 103. There was a mandated requirement for gender equity in Ontario and BC as well as the provision for aboriginal representation (one member from 103 in Ontario, two from 160 in BC). The selection process in both provinces resulted in a very diverse assembly that, in terms of age and socio-economic demographics closely approximated the population at large (Rose, 2007).

Once selected, members underwent an intensive learning phase. In both Canadian provinces this took the form of six full weekends where members began with an intensive introduction and concluded with an advanced course in electoral systems. The curriculum was similar in the two Canadian cases (Rose 2009). Both began the learning phase with an introduction to parliamentary government explaining its functions, the party system and principles of representation. Weekends three and four were an examination of the four broad families of electoral systems (plurality, mixed, majority and PR). Models were described according to both outcome (what kind of government and legislature are produced) as well as their mechanics (ballot structure, district magnitude and formula). Unlike a citizens’ jury, there were no advocates for each model but rather options were presented neutrally. They were also assessed using common criteria of
electoral systems such as the extent to which it offered voter choice, stable government, effective parliament and parties, accountability and increased voter participation. In the second last weekend of the learning phase, members heard from international experts on electoral systems who described the features of electoral systems in different countries as well as discussing implications of electoral change.

Diversity in the presentation of material must be the hallmark of the educational phase in citizens’ assemblies. It is important to remember that the point of deliberative exercises is to transform citizens from individuals who have preferences to the creation of a consensus borne of reflective judgment. If this is so, then full meaningful participation will only occur if the education is information-rich and is presented in diverse ways that allow each member to participate on terms and in language that is appropriate for them. In doing so, it allows power to be shared as members quickly develop areas of expertise. Discussion from the recorded plenary sessions indicates a high level of engagement with the material and a strong facility with using the technical language of electoral systems (See Institute on Governance, 2007). This kind of robust educational environment ensures that participants are able to make decisions based on weighing the strengths of different sides.

The way in which the material was presented was equally important. While learning took place in large lectures and in small tutorial-style groups, it was also important to put faith in the capacity of citizens to teach one another. Learning took place in evenings at the hotel long after the formal teaching was over, on a members-only website and in communities between formal learning weekends. One of the consequences of a residential learning program (where members were away from friends and family for a weekend at a time) was the creation of nodes of expertise. Members who were computer literate ran simulations of election results and altered design variables to see how the outcome had changed. Others, who had a propensity for data collection, would develop spread sheets that could be sorted according to different variables. Still others acted as librarians, searching out information and resources to share with other members. Groups who favoured learning through conversation talked through material with others. As James Surowieki writes, it is important to have a plurality of approaches to solve collective issues using a shared vocabulary.

The second phase in the citizens’ assembly process is public consultation. Here much can be learned for public engagement in constitutional processes. From both a theoretical and practical level, this is one of the most important elements of a citizens’ assembly. At a theoretical level, Gutmann and Thompson (2004, 4) tell us that “to justify imposing their will on you, your fellow citizens must give reasons that are comprehensible to you. If you seek to impose your will on them, you owe them nothing less.” On a practical level, Catt and Murphy (2003, 408) see public consultation deriving “from an understanding of the policy-making process as a forum for weighing competing preferences and priorities rather than as a procedure for uncovering hidden and incontestable truths. Thus consultation aims to improve the policy process by increasing the information or the range of perspectives available to decision makers.” Public consultation can serve several purposes – all of which are important in constitutional processes. First, it can strengthen relationships between government and citizens (Barber, 1984) thereby increasing the legitimacy of government; second, it can have a teaching function where the public has an opportunity to examine policies options (Arnstein, 1969) and it can help produce better policy (Irvin and Stansbury 2004). When consultation is assessed both the process of consultation as well as the outcome should be examined. Moreover a consultation process needs to have advantages to those consulting as well as those being consulted (cf. Irvin and Stansbury 2004, 56).
Perhaps the strongest warrant for the consultation phase is to make the process as well as the content accessible. Guttman and Thompson (2004, 4) argue that deliberative democracy demands accessibility in terms of a public and transparent process as well as making the content of the material accessible so that information about the issue at hand is presented in ways that it could be understood by those to whom it is addressed. The structure of discourse in those hearings made what could be technical issue into one that was driven by values. Complex language was explained in as simple a manner as possible in an attempt to avoid one of the major limitations of deliberation (see Yankelovich 1991, 93).

The citizens’ assemblies consulted through public meetings, on-line consultation and electronic submissions. In both BC and Ontario this phase was important in establishing the legitimacy of the exercise as well as providing an opportunity for fellow citizens to learn what the assembly was up to and where they were in the process. In both assemblies, unlike in constitutional talks, the public participation was an important foundation for the deliberation phase that would follow. That is to say, it provided an important feedback in decision-making.

The third and final stage of the citizens’ assembly is the negotiation around what recommendation would be made. Both assemblies were tasked with either recommending a continuation of the present first-past-the-post electoral system (i.e., the status quo) or recommending another electoral system which had to be described in full detail. Both assemblies spent an additional six weekends narrowing down options and choosing a model which best represented their collective values.

Deliberation in constitutional talks takes place in two principal venues. The first venue is under the glare of television lights where politicians play to the audience back home and assume a role of regional champion. The second venue, behind closed doors, can be characterized as a high stakes gambling game, a metaphor embraced by Brian Mulroney’s use of the phrase “a roll of the dice”. Both styles of constitutional deliberation are unsatisfactory as they place a premium on individual interests over collective ones and is based on antagonism rather than cooperation.

Gutmann and Thompson argue that the standards that govern deliberation are accountability, publicity and reciprocity (2004, 133). Constitutional processes in their present form meet two of these three standards. Accountability is met by requiring legislative approval for executive decisions at first ministers’ meetings and in the case of the Charlottetown Accord, a referendum to endorse élite decisions. Publicity means not just transparency through televised proceedings but rather the need for governments to give reasons for decisions so that specific choices are related to broad principles. It is difficult to know how much debate was at the level of specifics and whether governments gave justifications for their decisions but arguably this standard was met.

Citizens’ assemblies are instructive as they arguably meet all three standards. Accountability was ensured both by external audits of the process as well as a requirement for its proposal to be endorsed in a referendum. Publicity, in the sense of transparency, was met by having all meetings open to the public. Because they were principle-led exercises where design choices were clearly related to democratic principles, this standard was clearly followed (for details see Ontario Citizens’ Assembly on Electoral Reform 2007 and British Columbia Citizens’ Assembly on Electoral Reform 2004). The link between the policy choice (the electoral system chosen) and the principles that determined that choice was more closely tied in citizens’ assemblies than among international experts (Bowler & Farrell, 2006). If anything, this should provide some evidence of the capacity of citizens to get it right.
Reciprocity is an important difference between the way citizens’ assemblies deliberate and governments negotiate in constitutional processes. The basic premise behind reciprocity is that citizens (or political élites) owe one another justifications for decisions they take. Reciprocity sees the process of reaching a decision by equally valuing the participation of all members as important as the substance of the decision taken. What underlies this is the idea of mutual respect where negotiation is based on shared interests rather than the position-based negotiation of constitutional talks. Position taking is avoided in these assemblies as it would lead to either a defensive or offensive dialogue. Instead, articulation of interests was seen as the way in which to accommodate diversity. Gadamer argues that in such philosophical dialogue, “one does not seek to score a point but to strengthen the other’s argument” (quoted in Yankelovich 1991, 212). This was exactly the mode of interaction that characterized the citizens’ assemblies.

**Conclusion**

For the present time, formal constitutional negotiations are not on the table in Canada. Governments and citizens have grown weary of the successive rounds of failed talks and brinkmanship that mega constitutional proposals create. As we look for new methods of resolving and discussing our constitution, it might be time to examine a different model which allows for increased citizen participation and makes very different assumptions about the capacity of citizens and the nature of our democratic conversation.

Citizens’ assemblies might provide some clues about meaningful public participation, public accountability and different assumptions about democracy – the things that have been lacking in constitutional processes. There are, to be sure, limitations in a citizens’ assembly model but the model reminds us about the importance of participation that is not based on adversarial activities that place a premium on individual interest aggregation but stresses the importance of talk that is framed around consensus. According to this view, citizens talking to citizens about politics is the essence of democracy. This talk-centric form has its roots in a unitary democracy that focuses on communicative processes of opinion and sees accountability to the public as a replacement to consent as the core of legitimacy (Chambers 2003, 308).

The fact that these assemblies are new forms of participation should not be seen as a liability but rather a recognition that like all institutions, they will evolve as they mature. When we are discussing citizen participation and constitutional reform, it might be useful to recall James Farr’s advice that “more light might come of our theoretical and empirical research if we look not to public opinion or to elites but to actual discussions held between citizens (1993, 378).
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