

Viewpoint

Helen Forsey

Parliamentary Fairy Tales

As we contemplate the pathetic spectacle of Parliament's return after its prorogation in December, the name Eugene Forsey is once again being invoked by thoughtful Canadians. And well it should be. At no time in recent history has the need for my father's constitutional and historical expertise been more acute.

The late Senator, trade unionist and constitutional authority was known across Canada for his encyclopaedic knowledge of our system of responsible parliamentary government and its evolution over the centuries. I grew up hearing history and politics discussed over the supper table, sometimes interrupted by a phone call from a journalist or a politician asking Dad to explain or resolve some constitutional dispute. He had a gift for explaining complex issues and mechanisms in lively and accessible language, and showing their relevance to people's everyday concerns.

But despite his popularity and the respect he garnered as a non-partisan *eminence grise*, Eugene Forsey's struggle against political ignorance was unending. "I shall have to spend my declining years," he used to say, "compiling and debunking a collection of constitutional fairy tales. And it will have to be loose-leaf, because there's a fresh one every day."

Poor Dad! In the eighteen years since his death, ignorance of Canada's system of government has proven to be a growth industry, involving the media, various academics and many of the politicians themselves. The result is that much, if not most, of what passes for fact on the subject of parliament, minority government, prorogation, elections and so on, is actually completely false. Worse yet, much of it is subversive of our Constitution and frankly dangerous to "peace, order and good government."

If we are to preserve the possibility of truly democratic government, it will be essential for Canadians to understand our constitutional options. That understanding is still lacking to a frightening degree, and too few truly knowledgeable constitutional voices are being heard.

So since my father is no longer here to do it, I have pulled together an initial collection of ten of those "constitutional fairy tales" which relate directly to our current precarious situation. I have responded to each one, citing relevant material from my father's writings. I offer it as a partial antidote to the poisonous misinformation and engineered confusion of the past few months.

Fairy tale #1

That the possibility of the House of Commons voting non-confidence and defeating the government creates a "constitutional crisis."

The only "crisis" is a crisis of ignorance. Canadians need to know that our Constitution explicitly provides for a smooth and democratic transition of power in such a case.

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Parliamentary cabinet government is both responsible and responsive. If the House of Commons votes want of confidence in a cabinet, that cabinet must step down and make way for a new government (normally the Official Opposition) or call an election right away so the people can decide which party will govern. (Eugene Forsey, How Canadians Govern Themselves)

Fairy tale #2

That if the Opposition actively opposes the government's program, Parliament is "not working," is "dysfunctional."

The truth is the exact opposite. It is the Opposition's democratic duty to oppose and try to stop or change any government measures it believes are not in the best interests of Canadians.

Parliament is not just a voting place. It is also, pre-eminently, essentially, a talking place, a parlement... Parliamentary government is not just a matter of counting heads instead of breaking them. It is also a matter of using them. It is government by discussion, not just by majority vote.

[Opposition] parties also get public money for research. Why? Because we want criticism, we want watchfulness, we want the possibility of an effective alternative government if we are displeased with the one we have. (Eugene Forsey, How Canadians Govern Themselves)

Fairy tale #3

That if a minority government meets active opposition in the House of Commons, with the possibility of being defeated in a confidence vote, then the nation's business is at a standstill and a new election is necessary.

This is hogwash. Minority governments are by definition minorities; they cannot govern like majorities. Minority governments must govern by negotiating and working co-operatively with opposition parties to create policies that a majority of MPs will support.

When a government knows it may be hanged in a fortnight, the knowledge may broaden its mind wonderfully. Having to get support from outside its own party may not only help a government to do good and sensible things, but also prevent it from doing bad and foolish things. (Eugene Forsey, "The Problem of 'Minority Government' in Canada")

Fairy tale #4

That if a government is defeated in the House of Commons on a matter of confidence, this automatically means a fresh election.

Wrong. If this happens in certain circumstances, especially in the early months of a new parliament, the Governor General can call on the Leader of the Opposition to form an alternative government and seek the support of the House.

If a cabinet is defeated in the House of Commons on a motion of censure or want of confidence, the cabinet must either resign (the Governor General will then ask the Leader of the Opposition to form a new cabinet) or ask for a dissolution of parliament and a fresh election. (Eugene Forsey, How Canadians Govern Themselves)

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We shall certainly have to get rid of the notion that every defeat in the House means a fresh election... Elections are not picnics... [They] are held to choose a parliament to transact public business, and parliament should transact that business until it becomes unable to do so, or until some great new issue arises on which it is imperative to consult the people, or until the parliament's utility is exhausted by the efflux of time. (Eugene Forsey, "The Problem of 'Minority Government' in Canada")

Fairy tale #5

That such a change of government by majority vote in a duly elected parliament is undemocratic, a "seizure of power" or a "coup."

Not at all. The essence of our system of "responsible government" is that the cabinet is directly answerable to the elected House of Commons. Our elected Members of Parliament decide, every time they vote, whether the government stays in office or not. What is undemocratic is a government that tries to hold on to power regardless, when its support in the House of Commons is lost or threatened.

(A Governor General to a Prime Minister): Responsible cabinet government means government by a cabinet with a majority in the House of Commons. I don't know whether you have such a majority. No one knows. The only way to find out is by summoning parliament and letting it vote. It is not for me to decide who shall form the government. But it is for the House of Commons. (Eugene Forsey, "Position of the Governor General if No Party gets a Clear Majority in the Election")

Fairy Tale #6

That the imminent prospect of a non-confidence vote justifies the shutting down of parliament through prorogation or dissolution.

On the contrary. The elected House of Commons must always be allowed to vote, and to do so without delay. Even if a Prime Minister advises the Governor General to suspend the democratic functioning of Parliament by proroguing or dissolving it, the Governor General has the "reserve power" to refuse advice that undermines constitutional principles.

(A Governor General to a Prime Minister): I cannot allow you to prevent the House of Commons from performing its most essential function. To permit you to do that would be to subvert the Constitution. I cannot allow you to usurp the rights of the House of Commons. (Eugene Forsey, "Position of the Governor General if No Party gets a Clear Majority in the Election")

Fairy tale #7

That if a non-confidence vote is imminent, the Governor General should grant a Prime Minister's request to prorogue Parliament or dissolve it and hold an election.

Absolutely not. In fact, such a request attacks the very basis of parliamentary government. Until 2008, only one other Canadian Prime Minister had ever had the audacity to attempt such a thing: Mackenzie King in 1926, when he asked Lord Byng to dissolve Parliament with a motion of censure pending.

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[Mackenzie King's request] was tantamount to allowing a prisoner to discharge the jury by which he was being tried... If the Governor General had granted the request, he would have become an accomplice in a flagrant act of contempt for Parliament. (Eugene Forsey, "Mr. King, Parliament, the Constitution and Labour Policy", Canadian Forum, Jan. 1942)

The only protection against such conduct is the reserve power of the Crown, the Governor General, to refuse such prorogation or dissolution, and, if necessary, to dismiss the government which advised such prorogation or dissolution. (Eugene Forsey, "Position of the Governor General if No Party gets a Clear Majority in the Election")

Fairy tale #8

That the passage of three and a half calendar months since the October 2008 election means that a fresh election call now would be justified.

This new Parliament was in session for less than 13 days before its democratic functioning was suspended by prorogation. The MPs elected in October have not had the chance to respond to the actions of the current government. On January 27th, the last election will be exactly as recent in parliamentary terms as it was on December 4th.

In a parliament which is recently elected, if one government cannot carry on with the existing House, and an alternative government is possible, and there is no great new issue of public policy, then the government which cannot carry on should resign and make way for one that can. (Eugene Forsey, "The Problem of 'Minority Government' in Canada")

Fairy tale #9

That minority governments cannot provide stability or good government, that "stability" and "efficiency" are the highest political values, and that therefore that the purpose of elections is to produce a majority government.

None of the above is true. Numerous provincial and federal minority governments have lasted for years, and some, like the Pearson government in the 1960s, are noted for the positive and far-reaching measures, such as medicare, which they put in place.

The official theory... has seemed to be that elections are held to give some party a clear majority, and that if one election does not do it, there must be another at the earliest possible moment. The electors have just done their sum wrong and must be made to do it over again until they get it right ... We may have to learn to live with minority government. It may have certain inconveniences. It will certainly be nerve-racking at times. But it may turn out to give us quite tolerable or even very good legislation and administration ... A government with a clear majority may go lickety-split in the wrong direction. A government without a clear majority is more likely to stop, look and listen ... Minority government can be not a 'problem' but an opportunity, not a threat but a promise ... (Eugene Forsey, "The Problem of 'Minority Government' in Canada")

Fairy tale #10

That a coalition cannot legitimately govern unless the parties explicitly campaigned as a coalition in the preceding election.

Representative government means we elect our representatives to make decisions about governing. If an election gives no party a clear majority, and the existing

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cabinet does not have the confidence of the House of Commons, the democratically elected opposition MPs should try to work together to continue to transact public business with an alternative government, whether by a single party or a formal coalition. If the new government has the support of the House, it should go ahead and govern, saving the country the expense and hassle of an unnecessary election.

The supporters of all parties may persist in voting for the party they think best. They may refuse to be bullied by a series of elections into voting for anyone else. And they will be right... The politicians will just have to lump it. They have no right to inflict on us the conspicuous waste of a series of general elections just because we elect a parliament that does not suit them. It is our parliament, not theirs. They are our servants, not our masters. (Eugene Forsey, "The Problem of 'Minority Government' in Canada")

Sources

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Helen Forsey is a writer and activist based in rural Eastern Ontario and Newfoundland's Avalon Peninsula. Daughter of the late Senator and constitutional expert Eugene Forsey, she has just completed a book on her father's legacy to Canadians.

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