



Parliamentary Book Shelf

The Evolving Canadian Crown
edited by Jennifer Smith and
D. Michael Jackson (McGill
– Queen’s University Press,
Montreal, 2012) 248 pages.

In this year of the Diamond Jubilee, Queen Elizabeth II, who succeeded to the throne at the young age of 25 in 1952 following the premature death of her father, King George VI, is celebrating sixty years on the throne. The Queen’s reign has been by most measures a great success. Despite the tremendous changes which have occurred in the United Kingdom, Canada and the Commonwealth over the last sixty years, the Queen and “The Firm” (the other members of the Royal Family) have, with only a few notable false steps, demonstrated a remarkable capacity to adapt to ever-changing circumstances and expectations.

From the accounts thus far, it seems that the Queen will enjoy a joyous year of celebration in the United Kingdom where her subjects seem ready to manifest their warm appreciation and affection to a Sovereign who has fulfilled her commitment of devoting her life to service which has been discharged with dignity and grace. Given her age and that too of Prince Philip, the Queen will limit her heavy schedule to activities this year within the United Kingdom. Other members of the Firm have been assigned the task of traveling to different member states of the Commonwealth. The Prince of Wales and The Duchess of Cornwall are coming to Canada in May.

The Diamond Jubilee and the visit to Canada of the Queen’s heir will doubtless prompt speculation about the future of the monarchy in Canada. Perhaps in anticipation of this, Senators Joyal and Segal chaired a conference of like-minded monarchists in June 2010 on Parliament Hill to examine the role and prospects of the Crown in Canada. The end result is the publication of the presented papers, *The Evolving Canadian Crown*. The book contains fourteen essays plus an introduction by Professor Jennifer Smith. These essays are grouped into four themes relating specifically to Canada with another touching the situation in Australia and New Zealand.

The themes themselves are illustrative of the challenges that the Crown in Canada is facing. For example, under the first theme, the Crown in Canadian perspective, there are two papers. The first, written by D. Michael Jackson and Lynda Haverstock, deals with the confusing concept of the compound Crown that has the Queen recognized separately as the Queen “in right of” each province as well as the country as a whole. Much of the paper recounts the history of the rivalry between the federal and provincial representatives of the Crown, the first directly appointed by the Sovereign not the federal government as is the case with the Lieutenant Governors.

The issue of the role of the LGs and their relationship to the Crown was complicated or

resolved, depending on your point of view, by decisions of the British Judicial Committee of the Privy Council who turned the intent of the *British North America Act* on its head by creating the legal fiction of the compound Crown. The second paper is a pointed critique about the intent and understanding of the Letters Patent of 1947 on the Office of the Governor General. This document, the most important of a series on the Office of the Governor General and the first to be signed by a Canadian Prime Minister, has been used to claim for the Governor General the status of “head of state”, sometimes *de facto*, sometimes *de jure*, but always incorrectly, as Mr. McCreery clearly demonstrates.

The second theme, on the Crown and Parliament, focuses on the unexpected prorogation of a parliamentary session in December 2008. The drama arose when the minority Harper Government suddenly and unexpectedly faced the very real prospect of a defeat on a non-confidence motion just two months after the general election and less than three weeks into the first session of the new Parliament. To escape this likely outcome, the Prime Minister sought to end the session with a request to the Governor General for a prorogation. Nothing as dramatic involving the prerogative powers of the Crown had occurred in Canada since 1926 and the King-Byng affair. Speculation in the media about the proper use of the

discretionary authority of the Governor General was rampant in the days surrounding the event. More analytic are the three papers presented at the conference written by David E. Smith, Patrick Monahan and Andrew Heard. What makes this analysis interesting are the different views of two of the authors.

Patrick Monahan supports the decision taken by the Governor General to grant the prorogation while Andrew Heard does not. Mr. Heard lays stress on the availability of an alternative government as part of the justification to have refused the prorogation while Patrick Monahan emphasizes the fact that the Harper government had proved its credibility by winning the critical vote on the Address in Reply debate with the support of the opposition Liberals. The differences in their analysis provides some reinforcement to the more philosophical approach taken by Professor Smith who speculates on the nature of the role of the Governor General and the paradoxical tendencies of our modern democracy to rely on the integrity of unaccountable agents to ensure the proper functioning of the parliamentary machinery of our elected representatives.

The need to bolster the image and appreciation of the Crown is the principal focus of the theme on the Crown and Civil Society. Paul Benoit suggests that a greater regard for the Crown as a unifying force can be enhanced through the introduction of more meaningful "pomp and circumstance" in the ceremonial functions surrounding the Governor General on national holidays, specifically Canada Day, Victoria Day and Remembrance Day. Mr.

McCreery, in his second paper in this collection, argues that the role of the Crown as the font of honours could be improved by clarifying some aspects of the established system of honours that has developed in Canada since the reign of King George V. David Arnot, on the other hand, sees a need to restore the recognition of the Crown as the mediating agent between the federal and provincial governments and the first nations, the aboriginal peoples of Canada, so as to better ensure the recognition of native rights and claims based on Treaties signed in the name of the Sovereign.

There were two papers from a different Commonwealth perspective. The first describes the events surrounding the Australian referendum of 1999 to consider a republican option and the second looks at the stable position of the Crown in New Zealand. Finally, the fourth, and perhaps most important theme of the conference, turns to current issues facing the Crown in Canada. Father Jacques Monet and Senator Hugh Segal both take approaches that echo propositions put forward by Paul Benoit. Father Monet raises several "modest proposals" to enhance the prestige of the vice-regal office. One is to extend the term of tenure beyond the customary five years to perhaps as long as fifteen years. Another somewhat far-fetched idea, resembling the election process for a pope, is to have a "lockup" of the privy councillors under the age of eighty in the East Block for the purpose of identifying the next Governor General when there is a vacancy. Still another is to restore the practice of more frequent communications and briefings between the Governor General and the Prime Minister.

More realistic and even more modest is Senator Segal's suggestion to abandon the practice of using the Justices of the Supreme Court as vice regal deputies who assent to bills passed by Parliament on behalf of the Governor General when he is unable to do it. His objective is to avoid the appearance of conflict between the Executive and the courts with respect to legally contentious legislation.

The underlying anxiety for the future of the monarchy that represents the flipside of the celebrations surrounding the Diamond Jubilee is explored most fully in the final paper of the collection written by Senator Serge Joyal. He catalogues the many different factors and developments that have undermined the role of the Crown in Canada which are contributing to its slow and seemingly irreversible reduction in prestige and purpose. Of these, certainly the most important that cannot be mitigated is the fact the Queen is not actually resident in Canada. Her role must be performed by a surrogate.

But no matter the qualities of the Governor General, a "substitute Crown" risks becoming an increasingly a poor option. It simply is not real enough and, ironically, "Canadianizing" the Crown seems only to compound the problem by highlighting the difference between the stature of the Queen and her Governors General. The Queen remains an important constitutional and public figure in the United Kingdom, but her Governor General in Canada seems more and more peripheral and marginal. The situation calls to mind Plato's allegory of the cave. Canadians, the public and

politicians alike, seem less willing to accept the shadows on the cave wall as reality. The Governor General lacks the mystique, standing and duration of the Queen that are at the centre of the monarchy's appeal. The abiding allure of the Crown in the United Kingdom depends on traditions, practices and trappings that are wholly absent here in Canada. Despite their best efforts, our Governors General simply do not have the same profile or means that can sustain the image of the Crown. There is but a shadow performance.

The participants at the Ottawa conference on the monarchy

are well aware of the challenges facing the Crown in Canada. At the same time, they clearly value the role that the Crown plays in our constitutional arrangement and, through their papers, are looking for ways to support and sustain it. Who knows whether their efforts will succeed in the long run? The celebration the Queen's Diamond Jubilee provides confirmation that the monarchy will survive in Canada during the lifetime of the Queen who is much revered and admired. How it will continue when the Crown passes to her successor is less certain. In any case, no

Governor General can ever hope to play a role that matches that of the Queen. The title of this collection, *The Evolving Canadian Crown*, suggests a prospective outlook based on our history, but it may instead be a tribute to a system that has run its course, that has no way to really grow and develop in its current form. Can it find other ways to grow or adapt as the Queen has done? The authors are hopeful.

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