

## ►► *The Crown in Canada: A Diamond Jubilee Assessment*

### **Ian Holloway** – *The Succession to the Throne in Canada*

The law regarding accession to the Throne upon the demise of a reigning Sovereign involves among the most simple and straightforward principles of all those underpinning our constitutional structure. Yet they remain among the most misunderstood, and a few years ago they were famously distorted by a Canadian parliamentarian seeking to present a “simple” way of ending Canada’s link with the Crown. This paper discusses the legal principles governing accession, and makes the point that nothing in them negates the requirement, for Canada to become a republic, of unanimous consent of the federal government and the governments of all ten provinces as set out in section 41 of the Constitution Act, 1982.

### **Serge Joyal** – *La Monarchie et les Canadiens français*

Pendant plus de 350 ans, les Canadiens d’origine française ont été de fervents et loyaux sujets des Rois de France et d’Angleterre. Prenant à deux reprises les armes pour que le Canada demeure sous la Couronne britannique, reconnaissants pour les droits et libertés dont ils avaient pu bénéficier, ils ne manquaient jamais de rappeler publiquement leur allégeance à la Couronne chaque fois qu’un membre de la famille royale venait en visite au Québec. Cette loyauté trouvait son complément inséparable dans la fidélité à l’église catholique au sein d’une alliance séculaire entre le Trône et l’Autel.

Au début des années 1960, l’apparition d’un nationalisme revendicateur et agressif, fondé sur une volonté de se défaire de tout ce qui avait pu provoquer la domination économique et religieuse des Canadiens français, prit à partie la Couronne comme symbole d’un passé colonial révolu. Adoptant un ton souvent revanchard, occultant la véritable nature de la monarchie constitutionnelle, les manifestations d’opposition sont devenues un élément récurrent, et inséparable du débat public sur l’avenir du Québec, ralliant maintenant des partisans de tous côtés. Or, depuis le milieu des années 1990, des critiques sur la pertinence de la Couronne par des personnalités du Canada anglais ont élargi la base de la remise en question de la monarchie canadienne, sans que les arguments proférés il y a 50 ans n’aient vraiment évolué. C’est un débat qui s’enlise dans l’ignorance, signe d’une certaine immaturité politique. Mais la réponse à la question fondamentale, comment rendre le chef de l’État pertinent aux yeux de la majorité des Canadiens, tarde encore à venir.

### **Christopher McCreery** – *The Provincial Crown: How Effective is it?*

As the principal members of Canada’s vice-regal family, the lieutenant governors have increasingly come to emulate the public outreach aspect played by successive governors general since Jeanne Sauvé’s tenure. Nevertheless, lieutenant governors have more effectively balanced the concept of the “personal mandate” that accompanies the modern role of serving as the Queen’s representative with the traditional function of promoting the Canadian Crown and provincial identity. Indeed, during periods when the Crown and Sovereign at the federal level was marginalized, lieutenant governors remained persistent promoters and occasionally innovators of this aspect of their duties.

continued...

**Christopher McCreery – *The Provincial Crown: How Effective is it?* (continued...)**

By examining the changing position of lieutenant governors over the past forty years, we are afforded a view of the role of the provincial Crown, its consistencies and also its vulnerability. While the office has completely eclipsed its origins as federal delegate in the provincial capitals, there remain inconsistencies and ambiguities that hamper the ability of lieutenant governors to serve as full members of Canada's vice-regal family.

**Jim Miller – *The Aboriginal Peoples and the Crown***

The relationship between the Crown and Indigenous peoples in Canada historically has been a type of kinship that was created and periodically renewed by use of Aboriginal ceremonies that involved both Indigenous and immigrant peoples. The use of ascribed kinship to link Natives and newcomers represented the adoption of Aboriginal practice by newcomers to Canada. This kin-based relationship underlay commercial and military ties in the seventeenth and eighteenth centuries, and in the nineteenth century undergirded the territorial treaties that were concluded in many parts of the country. Unfortunately, after the non-Native population became numerically dominant and powerful, the Canadian Crown lost sight of the kinship link. For over a century, Canada has related to Aboriginal populations as administered peoples rather than communities with whom it has kinship ties. Returning to a kinlike relationship that practises mutual respect is needed to recapture the healthier and more productive relations of earlier times.

**David E. Smith – *The Crown: How Dignified? How Efficient?***

Is too much or too little made of the Crown in Canada today? In any case, how is one to know, since on what measure can an answer to the question be based? Perhaps, concern about the Crown's prominence (or its opposite) is misplaced. Instead, as this paper argues, the question ought rather to be: 'Of what significance for Canadians and their governing practices is it that Canada is a constitutional monarchy whose monarch lives in another country?'

Writing 145 years ago in his book 'The English Constitution,' Walter Bagehot drew a distinction between what he described as 'dignified' and 'efficient' parts of that constitution. The Crown and the House of Lords, he said, fell in the first category, cabinet and the House of Commons in the second. In this paper David Smith argues that the Crown in Canada – in and of itself – now manifests dignified and efficient personalities, the first, which invokes The Queen, ceremonial and royal in demeanour, the second, focused on her representative, gubernatorial and political in practice. Both have assumed increasing prominence in the country's politics. The paper notes that this domestic dichotomy is of comparatively recent origin and explores reasons for its development.

**John D. Whyte – *A Republican Option for Canada?***

Canada is a liberal democratic republic in which citizens are not subjects with interests protected simply through democratic structures but, rather, are participants in self-governing whose political role is substantive – not only procedural – and who act under the essential self-governing conditions of liberty and entitlement to fair treatment. These conditions are met in the liberal democratic state through accountability mechanisms, one of which, at some political moments, must be the head of state, or some form of separation of the policy function from the legitimacy function, however broadly defined.

continued...

