

for “traditional norms on gender and sexuality,” is in tension with its celebration of the ever-expanding individual autonomy that has undermined these very norms. This is an interesting, but underdeveloped, claim which demands further reflection.

Wide-ranging, stimulating, and brimming with insight, this work is an excellent addition to existing scholarship on the character of Canadian conservatism.

**Mathew Giroux**

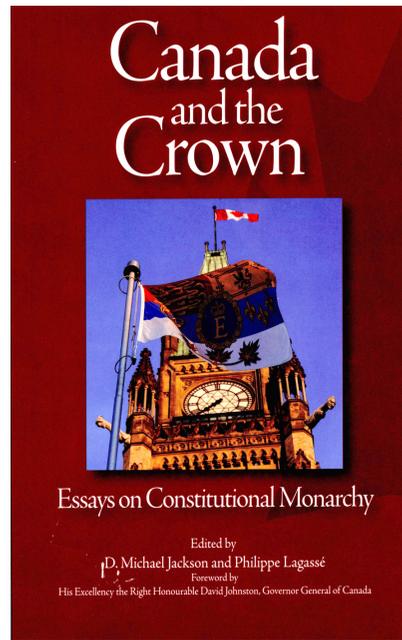
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**Canada and the Crown: Essays on Constitutional Monarchy**, edited by D. Michael Jackson and Philippe Lagassé, Institute of Intergovernmental Relations, Montreal, 2013, 312 pp.

and

**The Crown and Canadian Federalism**, by D. Michael Jackson, Dundurn, Toronto, 2013, 336 pp.

The Diamond Jubilee of Queen Elizabeth, celebrated in 2012, provided monarchists and constitutionalists alike with an opportunity to re-examine the significance and role of the Crown as a part of Canada’s identity and government in the 21st century. The task was not without its challenges. For many, there is something curious about having the person who is Queen of the United Kingdom as Canada’s Sovereign as well as the head of state of more than a dozen other realms of the Commonwealth. The fact that Elizabeth II is personally respected, admired and even revered, for her sense of duty and near faultless service over many years is not really

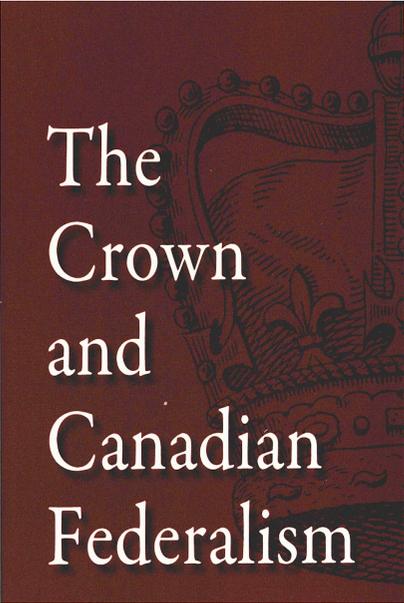


relevant to those who question the value of the Crown as an undemocratic institution and a pointed reminder of our colonial past. For others, however, the Queen’s long reign represents the best of a modern monarchy; its stability, continuity and almost mystical prestige provide a counterpoint to the leadership of government that, at its worst, is often seen as too partisan and divisive.

Explaining and defending the Crown in Canada has become the mission of a number of scholars, writers and parliamentarians. Chief among them are D. Michael Jackson, David Smith, Serge Joyal and Christopher McCreery. They and others have contributed essays to *Canada and the Crown: Essays on Constitutional Monarchy*. This is the second volume on this topic to be published in recent years by the Institute of Intergovernmental Relations of Queen’s University – the first, *The Evolving Canadian Crown*, appeared in 2010. In this new collection, a mix of history, constitutional theory, law and

practice is used to support the ongoing importance and relevance of the Crown in Canada. Contributions cover a wide range of topics including the tenure of the fourth Governor General, the Crown and Quebec, recent changes to the Law of Succession, the use of prerogative powers, and the Crown’s relations with First Nations. Overall, it is a useful collection describing how and why the Crown is still relevant in today’s Canada. For those who believe in the value of the monarchy, this book provides ample justification for their convictions.

The complex nature of the Crown in its multiple relationships involving the United Kingdom, the Commonwealth, Canada, and the provinces is currently being revealed through a legal challenge in the Quebec Superior Court. The case questions the process followed by Ottawa to accede to changes to the rules of succession implemented by statute at Westminster. Following their approval by all the Commonwealth realms, these changes will allow a first-born child, regardless of sex the right to inherit the Crown. They will also eliminate some restrictions with respect to marriage of members of the Royal Family to Catholics. The court challenge is based on the degree of consent required under the *Constitution Act, 1982* to effect these changes. The federal government insists that it has the authority, acting on its own, to give Canada’s approval to these new rules of succession. The opponents, two professors from Laval University, contend that approval requires the consent of all the provinces under the section 41 unanimity clause. The case is now scheduled to be heard next June.



# The Crown and Canadian Federalism

This court case touches upon two of the major themes raised in *Canada and the Crown*: the Crown's unambiguous British identity and its pivotal role in Canada's constitutional architecture. For many, the British reality of Canada's Sovereign recalls a time when the nation was not independent and when tolerance of anything non-British, if it existed at all, was limited to a begrudging acknowledgement of the French fact. Little of this has anything to do with the Canada of today, which openly embraces official bilingualism and celebrates the cultural diversity of its large immigrant population. In addition, the successful Canadianization of the office of the Governor General, including the popular tenure of two recent occupants who were born outside the country, also encourages some, including contributor John Whyte, to believe that the time has come to let go of the British Crown and consider an alternative model of government. Whyte contends that a hereditary monarchy is a poor reflection of Canada's social values and that civic republicanism is a better

model for the modern state. For others like David Smith and Robert Hawkins, the higher profile of the modern Governor General actually supports the need to maintain the British dimension of the Canadian Crown. The short tenure of the Governor General challenges the occupants of that office to fully comprehend and exercise their vice-regal duties. They argue that abandoning the direct connection to the Queen would risk the loss of non-partisan stability and continuity anchored in a hereditary monarchy older than Canada itself. Indeed, the British Sovereign serves as the model for the Governor General in the exercise of both its dignified and its efficient responsibilities.

Likewise, the Canadianization of the constitution raises other questions about the future sustainability of the Anglo-Canadian Crown. Originally a British statute passed by Westminster acting in its imperial capacity, the British North America Act was finally patriated as the *Constitution Act, 1867* and augmented by the *Constitution Act, 1982*, with the inclusion of a long-sought amending formula and the Charter of Rights and Freedoms. More and more, Canada has assumed, and continues to develop, its own distinct identity beyond its rich inheritance from Britain. Can the current Crown in its multiple relationships and compound capacities continue to be a meaningful focal point of executive powers, legislative functions and judicial authority? Most of the authors of *Canada and the Crown* believe that it can and should.

Nonetheless, some of these authors express their support for the Crown defensively, in a

way that acknowledges serious questions about the value or the need for the institution in the 21st century. This point is clearly underscored by the title of the book's summary essay by Philippe Lagassé, "The Contentious Canadian Crown". It is also evident in the essay by Peter Russell and his lament for an educational system that does not adequately teach an understanding of the Crown's role. Similarly, the advocacy for the use of Cabinet Manuals, by James Bowden and Nicholas MacDonald, to clarify the processes that should be followed in difficult constitutional situations implies some misgivings about the ability of government officials to deal adequately with unusual circumstances, such as the prorogation episode of 2008. The speculation that subsequently swirled around the Governor General raised concerns about the political involvement of the office in carrying out its constitutional responsibilities. This aspect of potential partisanship is also raised by Richard Berthelsen in his account of the history of the Speech from the Throne. Contrary to the tradition of Openings of Parliament at Westminster, where the speeches are invariably short, amounting to little more than a list of bills to be introduced by the Government over the session, the Speeches from the Throne delivered by the Governor General are becoming longer and more clearly partisan in flavour. Over the long term, the essential neutrality and impartiality of the Governor General is being compromised. David Smith, a staunch believer in the Crown, regretfully acknowledges this trend by noting how the position of the Queen and its Canadian surrogate has been depreciated

in every significant respect. While acknowledging how the current government has done much to elevate the status of the Sovereign, Smith also recognizes that the government is prepared to utilize the surrogate for plainly political purposes. This reality as well as other factors undermines the desirability of using the office of the Governor General to build a remedial relationship with the First Nations, a topic explored in separate essays by Stephanie Danyluk and Jim Miller.

The contributors who take a more historical perspective seem less encumbered by this defensive approach. Carolyn Harris, for example, presents an interesting assessment of the Marquis of Lorne as the fourth Governor General. In many ways, his mandate from 1878 to 1883, which was enhanced in its first years by the participation of his wife, the Princess Louise, created the template followed by many of his successors. What was striking about his tenure was the democratic, relatively egalitarian understanding that both he and his wife demonstrated while in Canada. During this time, the Crown enjoyed an immensely positive public profile. This is also reflected in the article by Serge Joyal, who writes of the long history of a favourable association of the Crown with Quebec, an association now lamentably abandoned, as Linda Cardinal points out. For his part, Christopher McCreery, who writes in separate articles of the expanding role of the Lieutenant Governors, as well as that of the vice regal secretary, presents a careful analysis of both positions in sustaining the Crown in Canada.

One of the editors of *Canada and the Crown* is also the author

of *The Crown and Canadian Federalism*. D. Michael Jackson is an unwavering champion of the Crown. His position on its value in Canada's history is exuberant throughout his well-paced account, which focuses particularly on the role and powers of the Crown's representatives in the provinces, the Lieutenant Governors. As Jackson readily admits, his text "contains modest original research" with little reliance on primary sources. Instead, his book seeks to benefit from the recent research of others and communicate their results to a wider public, "providing a readily accessible exploration and explanation of the Crown and Canadian federalism." In his view, it is clear that the Crown has played an indispensable part in fostering the development of Canada's federal system of government, its bilingual identity and its multicultural reality. His boundless admiration for the Crown is based not just on its constitutional importance but equally on its significance as the focus for the nation's "values and traditions and heritage, of loyalty, identity and ethos."

The Constitution Act, 1982 has firmly secured the position of the Crown in Canada's structure of government. Section 41 stipulates that changes to "the office of the Queen, the Governor General and the Lieutenant Governor of a province" can only be achieved through the unanimous approval of the Senate and House of Commons, as well as the legislative assembly of each province. Unless the United Kingdom embraces a republican government, Canada is likely to remain a constitutional monarchy for years to come. However, the security of the Queen's status as the nation's head of state does not

depend exclusively on the law. It relies more fundamentally on the support and consent of the people who appreciate and value the Crown in all its dimensions. This support is harder to secure, but as the publication of these two books attest, there are those who are willing to make the effort.

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**The Global Promise of Federalism, edited by Grace Skogstad, David Cameron, Martin Papillon and Keith Banting, University of Toronto Press, Toronto, 2013, 312 pp.**

Though its title does not indicate as such, the *Global Promise of Federalism* is a well-deserved *Festschrift* for political scientist Richard Simeon, the distinguished scholar of Canadian and broader federalisms. Simeon, whose career coincided with the great challenge to Canadian federalism

