

THE CROWN IN THE PROVINCES: CANADA'S COMPOUND MONARCHY

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Canada: a “compound monarchy” (Smith, D.E., 1995, 12). This succinct phrase by David E. Smith, dean of Canadian scholars of the Crown, neatly sums up a key dimension of the constitutional monarchy in Canada. We contend that the Crown is an institution belonging jointly to the central and provincial governments and that it is crucial to the co-sovereign status of the provinces in Confederation. It is, therefore, of vital interest to the Province of Quebec and holds promise for First Nations’ governance. This aspect of our nation’s constitutional monarchy merits far more examination by scholars and policy-makers than it has received.

Attention to the Crown in Canada – and attention there has recently been – has focused primarily on the Office of the Governor General. In part, this stems from a spotlight on the federal vice-regal reserve powers of dissolution and prorogation in 2008 and 2009 (Russell and Sossin, 2009). In addition, there has been debate in the media about the appropriateness of using the term “Head of State” in reference to the Governor General. In most cases, those who call for the end of the monarchy ignore its vital provincial dimension. Few commentators have drawn attention to the provincial Crown and the Lieutenant Governors who embody it; among those few are Michael Valpy and Ian Holloway (Valpy 2009).

The present paper will discuss what we call the “provincial Crown” and how it evolved. By doing so, we will make the case that it is integral to how Canada has evolved as a fascinating federation and that to ignore its significance diminishes thoughtful discourse on the nation’s strengths.

I. THE PROVINCIAL CROWN – FROM SUBORDINATE TO COORDINATE

It is well known that the first Prime Minister of Canada, Sir John A. Macdonald, wanted a centralized state with most of the levers controlled by Ottawa. This was reflected in the text of the *British North America Act*, now the *Constitution Act, 1867*. The colonial Governors had exercised most of the Sovereign’s powers in the British North American colonies. But the new Lieutenant Governors lost some of those prerogatives. They were - and still are - appointed and removable by the Governor General, not the Queen, on the advice of the federal Prime Minister and with no input from the provinces. They were and are paid by the federal government. True, they exercised some of the royal prerogative in their provinces: reading the Speech from the Throne, granting Royal Assent to legislation in the name of the Queen (not the Governor General), signing Orders-in-Council, formally appointing the Premier and swearing in the Cabinet. Yet they were not considered as directly representing the Queen but rather as subordinate to the Governor General and intended to function as

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federal officers. This role was reflected in their power of reservation of Royal Assent for the Governor General (i.e., the federal Cabinet) – a vice-regal equivalent of the federal power of disallowance of provincial legislation.

The 19th century historian Goldwin Smith did not believe Canada could survive as a nation and called for annexation to the United States. He was caustic about the monarchical institution in the Dominion and particularly its provincial manifestation. “The King who reigns and does not govern is represented by a Governor-General who does the same, and the Governor-General solemnly delegates his impotence to a puppet Lieutenant-Governor in each province” (Smith, G., 1891/1971, 118). Less bluntly, J.R. Mallory also noted the original subservience of the Lieutenant Governors to Ottawa:

The office [of lieutenant governor] was conceived by the federal government as an important element in preserving the dominant role of Ottawa over the provinces. Canadian federalism in the beginning was, in Sir Kenneth Wheare’s phrase, ‘quasi-federal.’ It was clearly based on the old colonial model, with the government in Ottawa playing the role previously played by the British government... (Mallory, 1991, 43).

This quasi-colonial provincial vice-regal status was evident in symbols. Instead of the 21-gun salute to which the colonial Governors and now the Governor General were entitled on formal occasions, the Lieutenant Governors received a 15-gun salute, a respect grudgingly conceded by the British Admiralty in 1905. Instead of the title “Excellency” enjoyed by their colonial predecessors and the Governor General, the Lieutenant Governors had to be content with the half-baked “Your Honour”, also used by magistrates. “Pour bien marquer la subordination des lieutenants-gouverneurs, le gouverneur général lord Dufferin (1872-1878) insiste pour que ceux-ci soient appelés non pas *Votre Excellence* comme lui, mais plutôt *Votre Honneur*” (Lemieux, Frédéric; Blais, Christian; Hamelin, Pierre, 2005, 43).

Canada has certainly changed a great deal from the quasi-centralized state that was envisaged in 1867 – and so has the provincial vice-regal office. David E. Smith makes the important historical point that “although Canada’s federation was conceived as a highly centralized form of government, the provinces inherited cohesive societies that pre-dated Confederation and monarchical forms of government to give those societies institutional expression” (Smith, D.E., 1991, 471). Based on his thesis that “the Crown is the organizing principle in Canadian government,” Smith says that, using the powers of the Crown, “the provinces evolved a degree of autonomy unimagined by the Fathers of Confederation” which “led to a constitutional amalgam in Canada [...] called compound monarchy” (Smith, D.E., 1995, 11).

JUDICIAL ACTIVISM

From the earliest days of Confederation, the courts had to rule on numerous federal-provincial disagreements over their respective powers. The delineation of legislative powers between Parliament and the provinces was reasonably clear in the *British North America Act*, although not clear enough to prevent frequent federal-provincial litigation. On the other hand, the delineation of prerogative and executive powers was not so clear. It was up to the courts to sort it out and this they did, generally asserting the co-ordinate, not subordinate,

status of the provinces in the federation. While judgments of the provincial superior courts and the Supreme Court of Canada tended in this direction, it was the Judicial Committee of the Privy Council (JCPC) in London that most forcefully asserted provincial co-sovereignty.

The legal cases referred to the Judicial Committee involved curious and apparently trivial matters such as alcohol and saloons, escheats, and the right to appoint Queen's Counsel. Between the 1880s and the 1920s, especially under the leadership of Lord Watson, then of Viscount Haldane, the Judicial Committee interpreted the *British North America Act* in a way that tilted Canadian federalism from the centralized model of Sir John A. Macdonald to a much more decentralized form where the provinces enjoyed genuine autonomy. The JCPC's ruling in *Hodge v. The Queen* (1883) established that provincial legislatures were co-sovereign and not delegates of parliament and that provincial legislation was not subordinate to federal legislation. In 1892, in *Liquidators of the Maritime Bank v. Receiver General of New Brunswick*, Lord Watson "summarily dismissed" the argument that "Confederation had severed the connection between the Crown and the provinces" and ruled conclusively that, "[t]he lieutenant-governor, when appointed, is as much a representative of Her Majesty, for all purposes of provincial government as the Governor General himself is, for all purposes of Dominion government" (Saywell, 2002, 127). In short, provincial autonomy revolved around the Office of Lieutenant Governor.

The culmination of the JCPC's pro-provincial jurisprudence came in 1925, in *Toronto Electric Commissioners v. Snider*, where Lord Haldane went so far as to say that the provinces were "in a sense like independent kingdoms with very little Dominion control over them" and "should be autonomous places as if they were autonomous kingdoms" (*Ibid.*, 161). This would be music to the ears of the Quebec nationalists today, if they supported the monarchy!

DECLINE AND REVIVAL OF THE LIEUTENANT GOVERNOR

It is ironic, then, that in the eighty years or so following the *Liquidators of the Maritime Bank* case, the prestige and profile of the Lieutenant Governors steadily declined despite their enhanced juridical status. The role of the Lieutenant Governor as federal agent gradually disappeared, epitomized by the obsolescence of the power of reservation of Royal Assent by 1940 (it should be noted, however, that there was a one-time revival of this power in Saskatchewan in 1961). There was even talk of abolishing the Office of Lieutenant Governor as redundant and useless, although this was a constitutional non-starter.

What did not change was the federal government's *appointment* of the Lieutenant Governor. It has always been a jealously-guarded prerogative of the Prime Minister, who for many decades usually named supporters of his own party as a reward for past services or loyalty. In the early years of Confederation, when the Office of Lieutenant Governor was relatively powerful, it was therefore seen as more prestigious, worth seeking, and characterized by high-profile appointees. A century later, with the Office less coveted, it was no longer as desirable amongst those with political ambition. Former politicians - Senators, Members of Parliament, provincial Members of the Legislature - predominated among the nominees. By the 1960s, the Office appeared to be dwindling into insignificance.

But the 1970s saw a shift: the Lieutenant Governors started recovering from obscurity. This coincided with the increased clout of the provinces in Confederation, at least those in central and western Canada. Perhaps the relatively low profile of the Governors General following Roland Michener's tenure (1967-1974) provided the climate for raised visibility of the Lieutenant Governors as well. But a key factor appeared to be the people selected for the Office. Individuals with more varied backgrounds were appointed, many without any ties to the governing party in Ottawa. By 1974, the first woman was appointed in Ontario. As of 2010, all provinces except Newfoundland & Labrador had had female appointees. One observer considers that the appointment of women, starting in Canada two decades earlier than in Australia, "has helped transform both the image and the priorities of a lieutenant-governor" (Boyce, 2008, 97).

II. THE CONTEMPORARY ROLE OF THE LIEUTENANT GOVERNOR

THE CONSTITUTIONAL ROLE

In Canada, "sovereignty is vested in one individual, the reigning monarch, acting in Parliament for some purposes and in the provincial Legislatures for others" (Ken Tyler, cited in Jackson, 2001, 49). Thus, the Lieutenant Governor is at the constitutional apex of the province, holding royal prerogative powers in the name of the Queen. It is a crucial role. The Lieutenant Governor is, so to speak, the legal incarnation of provincial autonomy in Confederation. And he or she acts as a constitutional umpire and guarantor - the role emphasized by recent commentators on the Office of Governor General.

THE RESERVE POWERS

The vice-regal reserve powers of dissolution, prorogation, and dismissal, like other aspects of the provincial Crown, have not received much attention. Nor have these powers been used as frequently by Canadian Lieutenant Governors as their Australian counterparts (see Boyce, 2008). However, Saywell (1957/1986) recounts a number of examples of dismissal or refusal of dissolution in the early decades of Confederation, as well as of refusal and reservation of Royal Assent up until the 1940s. Reserve powers came into play in two minority government situations (Saskatchewan, 1929 and Ontario, 1985), where the Lieutenant Governor called on the leader of another party to form government rather than dissolving the House and springing another election.

Presently, provincial vice-regal intervention is usually low key and confidential. But a Lieutenant Governor of British Columbia, David Lam, did lift the veil when he wrote that he was prepared to use the prerogative of dismissal if a disgraced and compromised Premier did not resign. This occurred in 1991. With his government nearing the end of its legal five-year mandate, Premier William Vander Zalm was investigated for allegedly having contravened his own conflict-of-interest guidelines. The Premier was contemplating a request for dissolution to out-manoeuvre a Cabinet revolt. Discreet pressure was applied by the Office of the Lieutenant Governor and Premier Vander Zalm visited Dr. Lam to resign after conclusions of the investigation were made public. It is a telling example of how the vice-regal office can play an effective constitutional role. As Edward McWhinney says, "the exercise was handled with constitutional elegance, as a low-key and graceful interposition of

the reserve powers” (cited in Boyce, 2008, 107), and “has come to be regarded as a paradigm model of economy in the use of the power” (McWhinney, 2005, 70).

TO BE CONSULTED, TO ENCOURAGE, AND TO WARN

The 19th century British constitutional expert Walter Bagehot made the well-known and oft-cited statement that the Sovereign (and thus her representative) has three rights: to be consulted, to encourage, and to warn - presumably through regular meetings with the First Minister. The Sovereign meets weekly with the Prime Minister in the United Kingdom. In Canada, Governors General met regularly with the Prime Ministers in the 1960s and 1970s, but the practice seems to have fallen into abeyance. Practice in the Canadian provinces and the Australian states varies considerably. In Australia, the Governor of Queensland and the administrator of the Northern Territory only meet with their respective Premiers as and when required. However, the Governor of Western Australia meets with the Premier every two months and the Governors of Tasmania have, since 1995, enjoyed regular monthly meetings.

In Canada, the Lieutenant Governors of British Columbia and Nova Scotia meet regularly with their Premiers. In Prince Edward Island, the two meet quarterly. By contrast, Manitoba Lieutenant Governors and Premiers have not had meetings since the 1960s. Nor do regular meetings occur in Ontario, Quebec, or Alberta. A similar disconnect existed between Premiers and Lieutenant Governors in Saskatchewan. However, after Roy Romanow assumed office as Saskatchewan Premier in 1991, Lieutenant Governor Sylvia Fedoruk asked to see him to discuss a problem over granting Special Warrants. The issue cemented the relationship between Lieutenant Governor and Premier, with regular monthly meetings becoming the norm. Subsequent Premiers have had no hesitation in continuing the practice. Brad Wall, Premier since 2007, has praised the meetings as an opportunity to seek “solace and counsel” from the Lieutenant Governor (Jackson, 2009, 21).

THE COMMUNITY AND CEREMONIAL ROLE

In Canada, as in Australia and New Zealand, the vice-regal office has increasingly focused on civic or moral leadership and in the promotion of what are perceived as national values. Canadian Lieutenant Governors have extended their reach into “civil society”, the intricate web of non-governmental organizations and worthy causes. Lieutenant Governors in Saskatchewan and Ontario have emphasized outreach to Aboriginal peoples. The vice-regal affinity for the First Nations derives, in part, from their traditionally close connection with the Crown dating back to the nineteenth century treaties with Queen Victoria. Although this relationship has been primarily with the monarch, and with the federal Crown represented by the Governor General, the Lieutenant Governors have been playing a more prominent role.

There are prime examples of this. James Bartleman, Lieutenant Governor of Ontario from 2002 to 2007 and himself a First Nations person, organized a highly-successful campaign to promote literacy among Aboriginal youth in northern Ontario by collecting books for them from across the province. In Saskatchewan, Lynda Haverstock (2000-2006) noted community health issues arising from the large number of stray dogs in northern Aboriginal communities. She organized a spay-neutering program, obtaining *pro bono* veterinary services and engaging local youth to participate in pre- and post-operative care. Her

successor, Gordon Barnhart, launched a Lieutenant Governor's Leadership Forum for youth in 2007. The Forum introduces promising young people from across the province to major figures in the public and private sectors. Half of the participants are from northern Saskatchewan where Aboriginals predominate.

HONOURS - MORE THAN ONE CROWN?

The Crown plays another leadership role by virtue of another royal prerogative - presenting honours to deserving citizens. In a monarchy, the Sovereign is the "fount of honours." This means that in Canada, the Queen is the ultimate source of recognition by the state. Given the dynamics of Canadian federalism, it was not surprising that, following the creation of the Order of Canada in 1967, the provinces entered the field of honours. This occurred despite active opposition by the federal government, especially through the Chancellery of Honours at Rideau Hall. Harkening back to the legal struggles over the royal prerogative a century earlier, Saskatchewan argued that provinces could, indeed, create honours of the Crown and that the office of Queen's Counsel, confirmed by the Judicial Committee of the Privy Council for the provinces in 1898, was the first nationally-recognized provincial honour.

Ontario established the first modern provincial honour in 1973 - the Ontario Medal for Good Citizenship. This was soon followed by the Ontario Police and Firefighters Bravery Medals, all with insignia bearing the Crown and presented by the Lieutenant Governor despite objections from Ottawa. Quebec established the first provincial order, *l'Ordre national du Québec* in 1984; the Saskatchewan Order of Merit followed in 1985, the Order of Ontario in 1986, and the Order of British Columbia in 1989. All ten provinces now have orders and half of them - Ontario, Saskatchewan, Alberta, British Columbia, and Newfoundland & Labrador - have decorations and medals as well. In all provinces except Quebec, provincial honours come under the aegis of the Crown and are presented by the Lieutenant Governor. They have had the indubitable effect of raising the profile of the vice-regal representatives and that of the provincial Crown.

III. IMPROVEMENTS TO THE PROVINCIAL VICE-REGAL OFFICE

In the light of the positive developments noted above, could the provincial vice-regal office be improved or reformed?

The first issue is the selection and appointment of the Lieutenant Governor. As previously noted, this is entirely within the prerogative of the federal Prime Minister. The provinces have no role to play in the choice of their own vice-regal representative. At most, they may be informally consulted before a final decision is made. Although the Australian system of appointment of Governors by the Queen on the advice of the Premiers may seem appealing (see Twomey, 2006), it is impractical in Canada. No one has the appetite for seeking a constitutional amendment to make this happen, even if Buckingham Palace could be convinced to accept it. Instead, the writers suggest that the federal and provincial governments work out a genuine and mutually-acceptable method of consultation on the appointment.

The provinces could present a short list of potential names to the Prime Minister. This list should be prepared through consultation between the Premier and, for example, the Leader of Her Majesty's Loyal Opposition, the Speaker of the Legislative Assembly, Chief Justices and Chief Judge, senior Aboriginal leaders, and possibly former Lieutenant Governors, acting as a "College of Elders." A promising development occurred in 2009 when Prime Minister Stephen Harper publicly announced that, in selecting Philip Lee as Lieutenant Governor of Manitoba, he had directly consulted with the Premier and Leader of the Opposition, both of whom expressed their support. The Prime Minister pursued this policy in the appointment of Graydon Nicholas as Lieutenant Governor of New Brunswick later the same year. Mr. Harper's pragmatic, inclusive approach may well be the solution to the conundrum of provincial vice-regal appointments.

The symbols of the provincial vice-regal offices should also reflect today's reality that the Lieutenant Governors are royal representatives in co-sovereign jurisdictions in Confederation. Lieutenant Governors should be entitled to a twenty-one gun salute. They should also have the title "Excellency". This simply requires an administrative decision like the one made by the federal government in the 1980s to grant the title "Your Honour" to the spouse of the Lieutenant Governor.

These changes are the prerogative of the federal government. Internally, what could the provinces do to enhance their vice-regal offices?

Lieutenant Governors need more resources. Peter Boyce points to the practical constraints on the Canadian vice-regal offices in terms of budget and staff. Lieutenant Governors' private secretaries lack the bureaucratic status of the Australian official secretaries. The smallest Australian vice-regal establishment has a bigger budget than the largest Canadian one. This limited support means that Canadian Lieutenant Governors are restricted in "the quality of available in-house advice on constitutional matters, as well as an understanding of important precedents in protocol" (Boyce, 2008, 113).

The relationship of vice-regal representatives with their First Ministers is, or should be, a vital one. As has been noted, regular meetings have continued between four Saskatchewan Lieutenant Governors and three Premiers since 1991, a practice that has been publicly recognized as of immense value to both parties. Commenting on the monthly meetings between the Governors and Premiers of Tasmania in Australia, the vice-regal official secretary in that state said that three recent Governors "have each been eminently qualified to provide reasoned, impartial advice" (letter to the authors, December 2009). It is unfortunate that so few provincial governments have followed the examples of Saskatchewan and Tasmania. We submit that it would greatly enhance not only the vice-regal office but the entire political process if they did.

IV. THE CROWN AND FEDERALISM

Strengthening the provincial vice-regal office as suggested appears to the writers a logical concomitant of the status of the provinces in Canada's compound monarchy. Given the constitutional evolution led by, but not limited to, the Judicial Committee of the Privy Council, the Crown in Canada is not the exclusive preserve of the federal Parliament – far from it. Even if centralists hostile to the monarchy try to discount the key provincial role in the Crown thus established, the more recent confirmation of that role in the *Constitution Act, 1982* is conclusive. The *Act* specifies in Section 41 that any constitutional amendment “in relation to the Office of the Queen, the Governor-General and the Lieutenant-Governor of a province” requires the agreement of both Houses of Parliament and the legislatures of all ten provinces. “The plain intent of section 41 is to signal that the Crown in Canada is owned jointly by the country and the provinces,” says Ian Holloway (communication to the authors, 2009). “For the federal government to try to republicanize Canada through the back door,” he adds, “would be [...] contrary to the inferred principles underlying Section 41” (quoted in Valpy, 2009).

If, as we have argued, the Crown is essential to the status of the provinces in Confederation, the provinces are equally essential to the status of the Crown in Canada. The Canadian Crown is a “50-50 deal” and the provinces are one-half of that deal. What then does the term “Head of State” signify in Canada?

WHO IS THE “HEAD OF STATE”?

The long-standing debate about the Canadian “Head of State” surfaced again in 2009, when Governor General Michaëlle Jean referred to herself as such in a speech in Paris. In response to media inquiries, Rideau Hall maintained that the Governor General was *de facto* Head of State and cited the 1947 Letters Patent of King George VI as evidence.

Indeed, these letters have been interpreted by some as making the Governor General the Canadian Head of State. But a more nuanced view of the Letters Patent seems appropriate. For one thing, the Letters Patent do not assert that the Governor General is Head of State. Rather, they empower that person to *exercise* the powers of the Sovereign, who presumably remains their source of legitimacy. In other words, the powers are delegated. It is more accurate to say, in the words of a recent federal government publication, that the Letters Patent “authorized and empowered the Governor General to *exercise most of the royal prerogatives in right of Canada* [our emphasis]” (MacLeod, 2008, 35).

While the Letters Patent apply to the Sovereign in right of Canada as a whole, they do not and cannot affect the realities of the provincial Crown. *The governor general does not and cannot exercise the royal prerogative in provincial jurisdiction.* In Canada, the “headship of state” is tripartite. We differ, then, with Sir David Smith of Australia, who argues that the Governor General is Head of State in that country (Smith, Sir D., 2005). Furthermore, we argue that in the interest of federalism the term “Head of State” should be avoided, and certainly not applied to the Governor General; if it must be used at all, it should be reserved for the Queen. Not surprisingly, in 1978, Quebec Premier René Lévesque was at the

forefront of the premiers in resisting the Trudeau government's Bill C-60, which purported to make the Governor General to all intents and purposes the Head of State.

THE CONUNDRUM OF QUEBEC

The Office of Lieutenant Governor in Quebec has had a rocky road in recent years, with concerted attempts made by sovereigntists to discredit the Office and little or no effort by federalists to defend it. In our view, this is unfortunate, not only for the institution of the provincial Crown but also for the best interests of Quebec.

Historically, going back as far as the British conquest of 1759, the Crown was, at first grudgingly, then more positively, viewed as an instrument of survival for Francophones isolated on an Anglophone continent. Janet Ajzenstat noted that, despite disputes with the Governors, the first leader of the "French party" in the Lower Canada assembly, Pierre Bédard, urged his constituents in 1808 "to honour and obey the governor as the king's representative" (Ajzenstat, 2007, 140). A prominent Quebec leader in 1849 hailed the royal Governor, Lord Elgin, as "the guardian of our constitutional rights" (Hector Langevin, cited in Monet, 1969, 230). After all, it was Lord Elgin who, in implementing responsible government, "a donné de sa propre initiative [...] une sanction royale à l'utilisation officielle de la langue française au Canada" (Monet, 1976, 30). In the 1860s, French-Canadian leaders showed complete solidarity with their English-speaking colleagues in wishing Canada to remain a monarchy under Queen Victoria at the time of Confederation. In the course of Canadian history, illustrious names like de Salaberry and Vanier have featured among the most loyal supporters of the Sovereign and the Crown.

This positive attitude towards the Crown has regrettably dissipated since the 1960s. Jacques Monet commented in 1976 that "la Couronne est associée au Québec avec un colonialisme désuet et un ordre social démodé" (*Ibid.*). Quebec opponents of the 1964 royal tour blamed Ottawa for using it as a centralizing tool to "détourner les sympathies provinciales pour les orienter vers Ottawa... La reine, instrument des centralisateurs!" (quoted in Smith, 1999, 230). We respectfully ask Québécois to think again. Quebec has benefited enormously from the Canadian compound monarchy. The Office of Lieutenant Governor is far from representing "un colonialisme désuet"; the Queen is far from being "un instrument des centralisateurs." On the contrary, the Crown in right of Quebec is a powerful instrument of co-sovereignty in Confederation.

THE FIRST NATIONS

As First Nations seek to redefine their relationship with Canada, evolving towards what they view as a "third order of government," the role of the Crown is crucial. This is a work in progress. Much more study is required as the federal government, the provinces, and the First Nations grapple with the implications. However, the tried and proven flexibility of the Canadian compound monarchy holds much promise. First Nations are paying increasing attention to the Lieutenant Governor and the provincial Crown. The 1999 Nisga'a Agreement with Canada and British Columbia provided for concurrent law-making power by the First Nation; arguably, it constituted a third order of government.

Institutions that predate Canada that Aboriginal and non-Aboriginal Canadians share, and that can serve as organizing principles for building a new future, do exist. In fact, the most elemental building block of Canadian political institutions, the Crown, may well provide the answer [...] the Crown may provide an integrative force that at once provides for greater autonomy for Aboriginal governments and binds these governments as essential members within the Canadian body politic (Pelzer and Coates, 2006, 162, 164).

The traditional, historic, deeply-rooted treaty relationship of the First Nations with the Crown and the Sovereign is, then, not archaic folklore or mere sentimentality. Like the Treaty of Waitangi for the Maori people in New Zealand (see Cox, 2008, Chapter III), it is the grounding of a dynamic future for the Aboriginal peoples in Confederation.

CONCLUSION

The Crown was instrumental in the evolution of the Canadian state towards true federalism. This was in spite of the initial constraints of the original constitutional texts and the centralizing thrust of the first federal governments and some subsequent ones. It is, in large measure, attributable to the Crown and the Lieutenant Governor that, through the courts, the provinces, and notably Quebec, secured jurisdictional autonomy. The same potential now exists for integrating a “third order” of Aboriginal government in Confederation. “Since the Queen transcends and encompasses both the central and provincial governments, the Canadian headship of state is not a creature of either jurisdiction. Through the offices of the Governor General and the Lieutenant Governor, the Queen reigns impartially over Confederation as a whole” (Jackson, 1990, 14).

In Australia, hesitations associated with the adoption of a republican form of government revolve in part around a perceived threat to federalism. David E. Smith quotes a former Chief Justice of the High Court, who contended that “the legal complexities associated with a change to a republic involve difficult questions that go to the very heart of the federation.” In Canada, “whether or not tension between republicanism and federalism is endemic is not the point,” says Dr. Smith. “For a country like Canada, where federalism is the bedrock of national existence, the possibility that the two systems are incompatible is enough to prompt unease” (Smith, D.E., 1999, 220-221).

For our part, the writers believe that Canadians should reject a change of this magnitude to Canada’s political culture and institutions. Such a fundamental shift holds the risk of far-ranging, unintended consequences to the political order. Indeed, we assert that the advantages of the present system of constitutional monarchy far outweigh its defects. Given past history, Canadian provinces, like the Australian states, should be very wary indeed of the centralizing implications of a republic.

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