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From Ancient to Modern: Constitutionalism in Canada

De l'ancien au moderne : le constitutionnalisme au Canada

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Abstract

As a consequence of the introduction of the Constitution Act, Canadian constitutionalism evolved substantively and institutionally. Substantively, the Constitution acquired novel features in becoming codified, supreme, individualized, and entrenched. Institutionally, in part as an effect of these substantive changes, the Constitution came to symbolize the state, advise authorities, constrain cabinet, and legitimize legislation where, in the past, the Crown had primarily fulfilled these socio-political institutional functions. These substantive and institutional changes demonstrate how Canada's constitution evolved from its ancient origins toward modern constitutionalism as a result of Patriation.

À la suite de l'adoption de la Loi constitutionnelle, le constitutionnalisme canadien a évolué sur le plan du contenu et des institutions. Sur le fond, la Constitution a acquis de nouvelles caractéristiques en devenant codifiée, suprême, individualisée et enracinée. Sur le plan institutionnel, en partie à cause de ces changements de fond, la Constitution en est venue à symboliser l'État, à conseiller les autorités, à contraindre le cabinet et à légitimer la législation alors que, par le passé, la Couronne avait principalement rempli ces fonctions institutionnelles sociopolitiques. Ces changements substantiels et institutionnels démontrent comment la constitution du Canada a évolué de ses origines anciennes vers un constitutionnalisme moderne à la suite du rapatriement.

Constitutions define the ambit of state power and provide legal guarantees to safeguard individual liberty. Constitutions, in so doing, state and protect the values of a nation (Hogg 2007). Anglo-Saxon constitutionalism exists in two traditions: ancient and modern. Ancient constitutionalism emerges from the tacit principles and conventional practices that exist in a nation's institutions and history. McIlwain (1947) argues that modern constitutionalism, comparatively, develops from the deliberate creation of fundamental law (7). Canadian constitutionalism underwent an ancient-to-modern transition as a consequence of Patriation, which culminated in the introduction of the Constitution Act 1982 that granted Canada full sovereignty from

Britain. Canada's ancient-to-modern constitutional transition occurred substantively and institutionally. This paper begins by distinguishing between ancient and modern constitutionalism using archetypes, the United Kingdom and the United States. In view of these examples, it next details how Canada, from its ancient foundations, evolved substantively toward modern constitutionalism. Finally, it sets out how the Constitution has come to fulfil some of the Crown's most important socio-political, institutional functions as a result of Patriation. This paper shows that Canada's ancient-to-modern constitutional transition resulting from Patriation manifests in both changes to the formal structure of the Constitution as well as the roles and responsibilities of the Crown (representative of ancient constitutionalism) and the Constitution (representative of modern constitutionalism).

Britain's Constitution, from which Canada's Constitution derives, exemplifies ancient constitutionalism. English constitutional statutes, decisions, and conventions neither codified nor systematically arranged (Turpin and Tomkins 2012, 160). English constitutionalism is built upon inference and deduction. Professor Albert Dicey, for this reason, likened the uncodified British constitution to a "maze in which the wanderer is perplexed by unreality, by antiquarianism, and by conventionalism" (Michener and Dicey 1982, cxxix). The American Constitution, on the other hand, typifies modern constitutionalism. The United States Constitution, in one document, sets out binding principles and provisions touching upon all important questions of public and private life and charges the government with complete political responsibility before the courts (Rogoff 1997, 32). English and American constitutionalism, then, can be defined as ancient or modern based on the presence of certain substantive (formal) features. The English Constitution is part of the ancient tradition because its content is uncodified, ordinary, general, and amendable (Turpin and Tomkins 2012, 7, 45, 61). The American Constitution is part of the modern tradition because its statute is codified, supreme, individualized, and entrenched (Rogoff 1997, 33).

Before Patriation, Canada's colonial constitution existed in the British North America Act 1867 and was virtually identical to the English Constitution. After Patriation, the introduction of the Constitution Act rendered Canada's constitutional architecture much more similar to that of the United States. The Constitution Act moved Canada away from the tradition of its mother toward the practice of its brother in four ways. First, the Constitution Act partially codified Canada's Constitution by, for the first time, enumerating statutes holding constitutional status (Section 53). Second, the Constitution Act firmly stated that it had effect as supreme law and prevailed over ordinary legislation passed by Parliament (Constitution Act 1982 s 52). Third, the Constitution Act individualized Canadian constitutionalism by introducing the Charter of Rights and Freedoms. The Charter began to guarantee individual rights beyond the protections of ordinary law, which was "an idea utterly alien to English modes of thought" (Michener and Dicey 1982, 124). Fourth and finally, the Constitution Act entrenched the Constitution with a difficult amending procedure. Before Patriation, Canada's constitution had been ordinary, flexible law. Britain's Parliament demonstrated the flexibility of Canada's colonial constitution by enacting fifteen of twenty amendments to the BNA Act, Canada's confederating constitutional statute, between 1867 and 1975 through conventional parliamentary procedure. Modern constitutionalism is characterized by imposing "legal limits to arbitrary power and a complete political responsibility of the government to the governed" (McIlwain 1947, 85). The Constitution Act substantively changed the structure of Canada's Constitution to establish these novel features in it.

The ancient-to-modern transition of Canadian constitutionalism is also demonstrated in how the Constitution Act changed the roles of the Crown and the Constitution. The Crown is an institution that exists at the core of the ancient English constitutionalism from which Canada emerged as a nation. The Crown is the whole of the discretionary prerogative powers, conventional constitutional functions, and ceremonial duties exercised by the sovereign and her representatives. The post-Patriation Constitution, which established modern constitutionalism in Canada, includes provisions and protections which exist predominantly in the BNA Act 1867, Constitution Act 1982, and related case law. In the following paragraphs, this essay shows how the post-Patriation Constitution came to fulfil some of the Crown's most important socio-political roles (symbolizing the state, advising authorities, constraining cabinet, and legitimating legislation) as a result of the introduction of the Constitution Act. The manner in which the post-Patriation Constitution supplants the Crown demonstrates the ancient-to-modern evolution of Canadian constitutionalism.

Symbolizing the State

At the moment of Confederation (1867), the Crown existed as the sun in whose orbit Canada would revolve and, in whose light, the young federation would unite, mature, and expand. The BNA Act envisioned a symbolic imperial Crown residing in London and reigning over Canada. However, calls for colonial independence problematized this ideal. The British Empire responded by transforming itself into the Commonwealth, a consensus-based association of states, to reconcile calls for colonial equality with the benefits of imperial unity (Hall 1953, 1001). The British Parliament, as a related measure, enacted the Statute of Westminster 1931 to give colonial nations the ability to control their own legislation. This statute entailed dividing or localizing the imperial Crown. Former colonies established their own national legal and political conceptions of the Crown to govern themselves (Twomey 2017, 37). In order to display independence but retain the Crown as an effective national symbol, Canada's government rebranded the Crown and titled Queen Elizabeth II as 'Queen of Canada' (Heard 2018, 115). Before Patriation, Canada had only the Crown to serve as a symbolic repository for and expression of national values. Canada's Constitution, planted in the British ancient constitutional tradition via the BNA Act, could not serve symbolically given that it was composed of many unstated principles and focused on the colourless task of facilitating federalism by dividing state powers. Walter Bagehot, understanding these limits, considered that the intelligibility of monarchy gave the Crown a symbolic advantage over "impersonal laws" to which citizens are "unable to feel the least attachment" (Bagehot 1873, 61, 63).

However, after Patriation, the Constitution transformed from legalistic abstraction to leading national symbol. The Charter made this transformation possible. The Constitution Act brought about structural changes that evolved these institutions' functions. The Charter boldly advanced Canadian jurisprudence by, for the first time, guaranteeing individual rights in supreme law. Consequently, the Charter reframed how citizens think of themselves in relation to the state. Through conferring universal individual rights, the Charter "elevate[ed] citizenship to a constitutional category"(Cairns 1992, 619). After Patriation, being Canadian became inseparable from possessing the Charter's protections. In this way, Cairns (1995) maintains that the Charter “was a nationalizing, canadianizing constitutional instrument intended to shape the psyches and identities of Canadians.” The Constitution Act thus aligned Canadian constitutionalism with the modern American tradition as the Charter formed a pluralistic, pan-Canadian national identity by connecting citizens to one another in their shared respect for human rights (197). The Crown, on the other hand, ceased to be a core component of Canada's identity. Canadians regard the Crown as an imperial figure, not a national one (M.D 2014). The Constitution facilitates a democratic and mutualistic connection between the citizen and state in contradistinction to the deferent and hierarchical relationship that exists between subject and sovereign. The introduction of the Constitution Act marked the end of a symbolic Canadian Crown.

Beyond reshaping what it means to be Canadian, the post-Patriation Constitution became symbolic by embracing liberalism and legalism, contemporary principles to which the majority of Canadians subscribe. The Constitution, unlike the Crown, is not criticized for being representative of undemocratic hereditary privilege or suggestive of colonial injustice. The Constitution Act, via the Charter, embraced liberalism by recognizing and affirming contemporary doctrines of equity, multiculturalism, affirmative action, bilingualism, feminism, and reconciliation (Constitution Act 1982). The post-Patriation Constitution's demanding amending formula entrenches these liberal principles such that the Constitution serves as a source of societal continuity. The Constitution Act serves as a fount of societal continuity of which divisive politics or a distant Crown cannot be the source.

Furthermore, the Constitution’s symbolic and unifying character developed through legalism and the rule of law: the modern conception of democracy accords with limiting the state’s discretionary authority, contemporary egalitarianism agrees with the Constitution's universal applicability, and the Charter as a direct manifestation of individual rights personally connects citizens to their nation through the courts. Thus, it is unsurprising that the preamble of the Constitution Act recognizes the “supremacy of God and the rule of law” instead of focusing on the “Queen's most Excellent Majesty” as had the BNA Act. Canadians broadly approve the Charter and Constitution because it is connected to their identifies and representative of their values. Despite Quebec’s withdrawal from the Patriation process, a 1981 poll identified that 84% of Canadians supported the Charter (Weiler 1984). The Crown, however, fared less well after Patriation as evidenced in a 2002 poll that found that about half of Canadians supported abolishing the monarchy after the death of Queen Elizabeth II (Ipsos 2002). In 1970, by comparison, ⅔ of Canadians favoured maintaining the monarchy in principle (Michener 1971). The Constitution enjoys greater support as a symbolic figure. The magnetism of the Constitution, charged by its embrace of modern political ideals (liberalism) and the rule of law (legalism), resulted in the post-Patriation Constitution (representative of modern constitutionalism) supplanting the Crown (representative of ancient constitutionalism) as Canada's leading national symbol in practice.

Constraining Cabinet

The Crown safeguards and sustains democracy in a nonpartisan manner by tempering the will of the government with its customary prerogative powers (Smith 2012, 68). For instance, viceroys can dismiss a first minister who refuses to resign after losing the confidence of the legislature. Viceroys also have powers of reservation (withholding passing a bill into law) and disallowance (annulling a law) pursuant to the BNA Act. Responsible government, the principle that the government is accountable to the people and not the sovereign, has long been established in Canada since Confederation (Messamore 2018, 33). Viceroys, therefore, rarely act without or against the orders (technically known as 'advice') they receive from first ministers. Modern viceroys have been especially careful to follow the direction of first ministers for fear of overstepping their bounds and trespassing upon the principle of responsible government. Lord Byng caused a constitutional crisis as governor-general in 1926 by refusing the advice of Prime Minister Mackenzie King and denying him a dissolution of Parliament (Hogg 2007). The principle of responsible government has progressively weakened the constraining function of the Crown. Viceroys disallowed legislation on 112 occasions up to 1943 and reserved legislation on 70 occasions up to 1961 (MacKinnon 1977, 108). The use of these powers lessened and virtually terminated by 1948 (Bélanger 2001). Only in rare cases, such as in 1937 when the Alberta lieutenant-governor refused to assent to Premier William Aberhart's statute imposing government control of newspapers, has the Crown acted without ministerial direction (Hogg 2007).

It becomes less clear that the Crown can act as an effective constitutional safeguard if viceroys take orders strictly from first ministers. If viceroys are overly obedient, they may accept requests from first-ministers intent on using prerogative powers for objectionable purposes. For example, Prime Minister Harper used prerogative power as a partisan tool in 2008–09 to prevent the defeat of his minority government by an impending motion of non-confidence by proroguing Parliament. Another controversial use of prerogative power occurred when Premier Devine of Saskatchewan used viceregal special warrants to fund his 1991 government without passing a supply bill, thereby circumventing the scrutiny and control of the provincial legislature (Smith 2013, 83-85). Provincial first ministers could theoretically use prerogative power to govern indefinitely without convening the legislature. Devine's use of prerogative power is what the Bill of Rights 1689, a statue formative to the Westminster constitutional tradition, sought to prevent (Bill of Rights Act 1689 (England) 1688, c.2, s. 4). It is unclear that the modern Crown does act as an effective constitutional safeguard by constraining the executive. Canadian first ministers appear neither to be the servants of the Crown, whom they instruct, nor of the people whose legislatures they whip in strict discipline.

After Patriation, however, the Constitution clearly began to fulfil the role of safeguarding and sustaining Canadian democracy. The Constitution Act did not achieve this by limiting the executive's ability to directly employ prerogative power for partisan purposes. Rather, the Charter became an effective check on executive power by enlarging the grounds upon which citizens can seek constitutional remedies. Charter-based litigation significantly expanded after 1982 from composing six percent of total Canadian Supreme Court cases in 1984 to twenty-three percent of cases in 1989 (Morton, Russell and Withey 1993, 5). While the modern Crown ceased to use prerogative power to constrain the executive in its obedience to first ministers, the Constitution Act enabled the courts to check the executive as they had not before Patriation. Indeed, the Constitution Act may have extended the democracy sustaining function of Canada's Constitution too far. The Constitution Act 'judicialized' or 'legalized' politics such that the Supreme Court of Canada has been required to decide on public policy issues such as reconciliation and gay rights (Mandel 1994, 37) . The Supreme Court's post-Patriation expanded role elicits concerns that the Charter allows for judicial activism and creates a problematic state wherein judicial power ceases to be constrained by constitutional limits (Manfredi 2004, 190). In any case, the Constitution (representative of modern constitutionalism) supplanted the Crown (representative of ancient constitutionalism) as the institution chiefly responsible for constraining first-ministers and the governments they lead.

Advising Authorities

The Crown is an advisor accessible to first ministers. In the United Kingdom, the Queen’s long reign gives her a unique perspective with which to offer counsel. British prime ministers, for this reason, appear before their sovereign in a weekly audience to discuss state affairs. In Canada, viceroys are generally distinguished persons who enter office with considerable experience in a specialized field. Viceroys are well equipped to exercise the Crown’s modest conventional political rights of advising, encouraging, and warning first-ministers (Bagehot 1873, 85-6). However, the relationship between the Crown and first ministers is far more tenuous and less cooperative in Canada compared to the United Kingdom (MacKinnon 1977, 92, 105). Canadian first-ministers regard viceroys with a sense of equality, if not superiority. Unlike in Britain where the Queen’s majesty commands respect, Canadian first-ministers appoint their own viceroys who serve short terms. As viceroys do not enjoy judicial-like independence, they are vulnerable to being ignored, punished, and controlled by first-ministers (McCreery 2018, 173). Moreover, viceroys do not have a democratic mandate to proactively advise first-ministers on any given issue under consideration. Indeed, even if they did, acting as an advocate for a certain position would endanger their role as advisors. The Crown’s non-political character guarantees it the constitutional authority necessary to exercise prerogative power (Bagehot 1873, 68). Any indication of a viceroy advancing a partisan position prejudices or can be seen to prejudice their capacity to justly employ prerogative power. Just as the Court's role of "defender of the Constitution requires that they be completely separate in authority and function" from partisanship(*R.D.S. v. The Queen* 1997), so too must be the Crown. The Crown in Canada, for these reasons, has stopped serving as an active advisor.

However, the Constitution Act established the courts, as interpreters of the Constitution, as leading government advisors. Canadian Courts have been able to provide advisory opinions to legislative questions posed by first ministers since 1875 (Mathen 2019, 46). Canadian first-ministers availed themselves of this reference function infrequently before Patriation. When they did, their questions were not of overriding national significance and the answers the Court provided were brief, sometimes being only one word (48). The Constitution Act magnified the importance of the Court's advisory function by normalizing and formalizing the use of reference questions. As part of the Patriation process, the federal government sought and received answers on core constitutional questions like the permissibility of a Quebec secession and the propriety of acting without the consent of the provinces in the Patriation process. In keeping, subsequent governments used the reference function in regard to abolishing the Senate, recognizing same-sex marriage, and changing the composition of the Supreme Court. Beyond becoming normalized, reference questions developed a new formal quality. Courts and legislatures started to treat the advisory opinions flowing from reference questions as binding judgements, even when they are non-binding statements (232). Treating judicial opinions as binding gave an advantage to governments keen on using reference questions as political tools to pass off the responsibility for resolving controversial issues to the Supreme Court (187). After Patriation, the Supreme Court began to provide relatively high-profile, frequent, and authoritative advice surrounding the legality and constitutionality of legislation as per questions posed by first ministers. The Constitution Act established a form of modern constitutionalism that empowered the courts to effectively assume the consultative role of the Crown.

Legitimating Legislation

In order to become valid law, Canadian legislation must receive Royal Assent from the Crown. Royal Assent is a prerogative power which originated as an instrument by which monarchs, the prime sources of authority in medieval states (Pennington 1993, 199), sanctioned the legislation proposed by their advisors. In the United Kingdom, Parliament long ago superseded the monarch as the ultimate source of political authority, most notably during the Glorious Revolution. Monarchs ceased to legitimize legislation by virtue of their august ancestry or religious divinity. Nevertheless, the Crown continued to back the parliamentary process by issuing Royal Assent as a stamp of procedural approval. Since Canada's earliest beginnings, legislation emerged as legitimate law because it was created in a democratic deliberative body authorized by an elected mandate. The will of the federal, provincial, or imperial governments was law so long as they respected their jurisdictional bounds and procedural obligations. Before Patriation, legislation became law because legislatures made it legal (given that it emerged from a procedural law-making process) and legitimate (given that it was created by a government holding a democratic mandate).

However, after Patriation, the Constitution became the principal source of both legislative legality and legitimacy. The Constitution became the supreme standard against which to assess the legality of legislation. The Constitution Act reaffirmed the principle of constitutional supremacy in Canada and gave judges a mandate to intervene in the regular operation of government. The federal Department of Justice, for this reason, audits all developing legislation in order to ensure Charter compliance (Department of Justice, 2019). In so doing, the Constitution came to fulfil the role the Crown had once performed. Thus, viceroys now provide Royal Assent irrespective of the content of a bill because the proper form for establishing the illegitimacy of a law is the courts in view to the Constitution (Twomey 2007, 11). The Constitution offers a comparatively richer standard for assessing the content of legislation. Viceroys must assume good faith on behalf of the government and follow its directions. Justices are empowered to inquire into the content of law to determine whether it should remain operative. After Patriation, the Supreme Court backed by the Constitution rather than the Parliament backed by the Crown came to be the ultimate source of determining the legality of legislation.

Nevertheless, one might argue that legislatures remain the ultimate arbiters of legislative legality as they can amend the Constitution or use the Constitution Act Section 33 notwithstanding clause to sustain laws that contravene the Charter. However, this cannot be true. The Constitution Act introduces an amending formula that is sufficiently demanding to prevent legislatures from making constitutional change. Indeed, constitutional amendments have become more difficult since Patriation. The 1992 Charlottetown Accord, a failed proposed constitutional amendment to gain Quebec's formal acceptance of the Constitution, may have set an extra-textual requirement to complete consultative referendum before enacting constitutional change (Albert 2016, 28). Moreover, while the Section 33 override provides the government relief from overzealous judicial review in theory by making otherwise impermissible law operative, it is infrequently used in practice.

Governments are reluctant to use Section 33 to sustain their laws for fear of the political and public backlash coming from defying the considered views of the justices interpreting the Constitution. Indeed, the very fact that this fear exists shows the "dominance of legalism over democracy in the realm" (Petter 2007, 161).

The post-Patriation Constitution also came to determine whether law is legitimate in a moral sense. The Constitution became a meta-legal standard against which to assess the legitimacy of government policy and executive action. Prime Minister Pierre Trudeau, for this reason, chose not to pursue unilaterally patriating Canada's constitution after the Supreme Court ruled such action legally permissible but unconstitutional (Session of Quebec 1998). The Constitution effectively pressures government to adhere to constitutional norms even when they are legally permitted to do otherwise (Petter 2007, 161). The post-Patriation Constitution emerged as a standard to assess the legality of legislation where the Crown and Parliament had once fulfilled this role. The Supreme Court of Canada recognizes that the legitimacy of their judgments often flows from the Constitution and that, in turn, the Constitution's legitimacy depends upon their interpretations of it. The Court, therefore, takes measures to maintain public and political confidence in their legal authority. The Court may, for instance, endeavour to issue unanimous judgements on important political cases. As another example, the Court may attempt to craft minimalist judgements by "decid[ing] cases on narrow grounds and to avoid clear rules and final resolutions" (Macfarlane 2011, 168). This allows the Court to produce less controversial judgements in order not to compromise its legitimacy with government or public groups. The Constitution, after Patriation, came to provide both legislative legality and legitimacy where, before Patriation, the Crown fulfilled these roles.

References

Albert, Richard. 2015. "The Conventions of Constitutional Amendment in Canada." *Osgoode Hall Law Journal* 53 (2): 399–441. Hein Online.

Bagehot, Walter. 1873. *The English Constitution.* 2nd ed. np. https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/bagehot/constitution.pdf.

Bélanger, Claude.n.d. "The Powers of Disallowance and Reservation in Canadian Federalism." Marianopolis College. Last Modified February 19, 2001. http://faculty.marianopolis.edu/c.belanger/quebechistory/federal/disallow.htm.

Bill of Rights Act 1689 (England) 1688, c.2, (1 Will and Mar Sess 2), s. 4.

Cairns Alan. 1995. "Reflections on the Political Purposes of the Charter: The First Decade," in *Reconfigurations: Canadian Citizenship and Constitutional Change*. Edited

Cairns, Alan. 1992. "The Charter: A Political Science Perspective." *Osgoode Hall LJ* 30 (1992): 615. HeinOnline.

"Eight in Ten (84%) Canadians Believe Queen Elizabeth Has Done a Good Job as a Monarch. However, Canadians Split on Future Role of Monarchy When Queen's Reign Ends." 2002. Distributed by Ipsos. https://www.ipsos.com/en-ca/eight-ten-84-canadians-believe-queen-elizabeth-ii-has-done-good-job-monarch-however-canadians-split.

Government of Canada. N.d. "Charter Statement." Last Modified November 1, 2019. https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/index.html.

Hall, H. Duncan. 1953. "The British Commonwealth of Nations." *American Political Science Review* 47 (4). Cambridge University Press: 997–1015. doi:10.2307/1951121.

Heard, Andrew. 2018. "The Crown in Canada: Is There a Canadian Monarchy?" in *The Canadian Kingdom: 150 Years of Constitutional Monarchy*, edited by Michael Jackson, 115. Canadian Electronic Library/desLibris.

Hogg, Peter W. 2007. *Constitutional Law of Canada*. Fifth edition supplemented. Thomson, Carswell.

Macfarlane, Emmett. 2011. "Failing to Walk the Rights Talk - Post-9/11 Security Policy and the Supreme Court of Canada." *Review of Constitutional Studies* 16 (2): 159–80. Hein Online.

Mandel, Michael. 1994. *The Charter of Rights and the Legalization of Politics in Canada*. Toronto, ON: Thompson Educational Publishers, 1994. Print.

Manfredi, Christopher P. 2004. “Judicial Power and the Charter: Reflections on the Activism Debate.” *University of New Brunswick Law Journal* 53: 185–98. Hein Online.

Mathen, Carissima. 2019. *Courts Without Cases: The Law and Politics of Advisory Opinions*. Oxford: Hart Publishing. doi:10.5040/9781509922529.

M.D. 2014. “Why the Queen still reigns in Canada.” *The Economist,* May 20, 2014. https://www.economist.com/the-economist-explains/2014/05/19/why-the-queen-still-reigns-in-canada.

McCreery, Christopher. 2018. “The Vulnerability of Vice-Regal Offices in Canada” in *The Canadian Kingdom: 150 Years of Constitutional Monarchy,* 158-178. edited by Michael D. Jackson. Canadian Electronic Library/desLibris.

McIlwain, Charles Howard.1940. *Constitutionalism, Ancient and Modern*. Ithaca, N.Y., Cornell University Press. Hathi Trust.

MacKinnon, Frank. 1977. *The Crown in Canada*. 3rd ed. Np: McClelland & Stewart. Print.

Messamore, Barbara. 2018. “Confederation, Continuity, and the Crown: Some Reflections on Canada 150” in *The Canadian Kingdom: 150 Years of Constitutional Monarchy,* 31-50. edited by Michael D. Jackson. Canadian Electronic Library/desLibris.

Michener, Roger, and Dicey, A. V.. 1982. *Introduction to the Study of the Law of the Constitution*. Indianapolis, IN: Liberty Fund, Incorporated. ProQuest Ebook Central.

Michener, Roland. Dinner in Honour of His Excellency, The Right Honourable Roland Michener C.C., C.D., Governor General of Canada. Transcript of Speech Delivered at Toronto, Canada. November 19, 1970. https://speeches.empireclub.org/details.asp?ID=60367&n=1.

Morton, F. L., Russell, Peter H., and Withey, Michael J. 1989. “The Supreme Court's First One Hundred Charter of Rights Decisions: A Statistical Analysis.” *Osgoode Hall Law Journal* 30 (1992):1–56.

Pennington, Kenneth. 1993. *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition*. 5th edition. Berkeley: Univ of California Pr.

Petter, Andrew. 2007. “Taking Dialogue Theory Much Too Seriously (or Perhaps Charter Dialogue Isn’t Such a Good Thing after All).” *Osgoode Hall Law Journal* 45 (1): 147–68. Hein Online.

R.D.S. v. The Queen, [1997] 3 S.C.R. 484. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1549/index.do.

Reference re Secession of Quebec, [1998] 2 S.C.R. 217. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do.

Rogoff, Martin A. 1997. "Comparison of Constitutionalism in France and the United States." *Maine Law Review*. 49(1): 22-83. https://digitalcommons.mainelaw.maine.edu/mlr/vol49/iss1/3.

Smith, David. 2012. "The Crown and the Constitution: Sustaining Democracy?" in *Evolving Canadian Crown*, edited by Jennifer Smith and Michael D. Jackson. N.p: McGill University Press.

Smith, David E.. *The Invisible Crown: The First Principle of Canadian Government*. 2013. Toronto: University of Toronto Press. https://doi.org/10.3138/9781442669147.

Turpin, Colin, and Adam Tomkins. 2011. *British Government and the Constitution: Text and Materials*. 7th ed. Law in Context. Cambridge: Cambridge University Press. doi:10.1017/CBO9781139060738.

The Constitution Act 1867, 30 & 31 Vict, c 3. https://canlii.ca/t/ldsw.

The Constitution Act 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11. https://canlii.ca/t/ldsx

Twomey, Anne. "Royal Succession, Abdication, and Regency in the Realms."2017. *Review of Constitutional Studies* 22, no. 1 (2017): 33–54. HeinOnline.

Twomey, Anne. 2006. "The Refusal or Deferral of Royal Assent." *Public Law*, October, 580–602. Print.

Weiler, Paul. 1984. "Rights and Judges in a Democracy: A New Canadian Version." *University of Michigan Journal of Law Reform* 18(1): 51-92.