CONCLUSION

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Parliament and the Crown are symbiotic institutions. The Crown formally summons, opens, prorogues, and dissolves Parliament, reflecting the legislature's origins as a council called to advise the monarch. Legislation requires royal assent to become law, highlighting that the Crown remains the locus of sovereign authority. Money bills require the Crown's recommendation to make their way through the legislative process, and royal consent is occasionally needed to ensure the passage of laws that affect the Crown's privileges and prerogatives. Ministers of the Crown are almost always parliamentarians and the right of a first minister to form a government depends on his or her ministry holding the confidence of the House of Commons. However, when they hold that confidence, governments use the Crown's powers to dominate the Commons and the legislative process. The executive's dominance over the legislature finds is ultimately rooted in the relationship between the Crown and Parliament.

Since the Glorious Revolution of 1688, Parliament has had the authority to determine the scope of the Crown's authority and the very nature of the monarchy itself. Parliamentary supremacy over the Crown is generally considered a pillar of the Westminster system of government. Yet the doctrine of parliamentary supremacy is more complicated in Canada than in the United Kingdom, where Westminster originated and whose constitution Canada is meant to emulate. The Canadian Crown exists in distinct federal and provincial capacities and the division of powers between Parliament and the provincial legislatures means that legislative supremacy of the Crown is split between the levels of government. While the British Parliament can abolish any of the Crown's prerogatives and privileges through ordinary statute, a codified constitution arguably constrains the ability of Canadian legislatures to do the same without a constitutional amendment. Canada's constitutional amending procedures place the "office of the Queen, Governor General and Lieutenant Governor of a province" under the greatest degree of protection, requiring the

unanimous agreement of Parliament and all provincial legislatures. While it is doubtful that all of the Crown's powers and privileges fall under these offices, those that do cannot be erased by a regular statute. This has raised the question of how the exercise of certain Crown powers might be subject to indirect constraint through the development of new constitutional conventions and democratizing practices.

Greater clarity about the scope of the Queen's Canadian office may be forthcoming when courts in Quebec rule on a challenge to the *Succession to the Throne Act, 2013*. The case focuses on two questions: whether royal succession is a matter of Canada law, and if so, whether the rule of succession form part of the office of the Queen. The answers to these questions will be revelatory about the Crown's place in Canadian law and the constitution. If the case reaches the Supreme Court of Canada, it may also shed light on which aspects of the Crown are susceptible to alteration by regular statute and which require a constitutional amendment. In this way, the succession case promises to do for our understanding of the Crown what the *Senate* and *Supreme Court Act* references did for our comprehension of these institutions.

The chapters collected in this volume address various facets of the relationship between the Crown and Parliament. In so doing, the chapters have sought to deepen knowledge and understanding of these two institutions and their interaction in Canada's constitutional construct.

In the opening chapter, André Émond offers an historical overview of the shared evolution of the Crown and Parliament in the United Kingdom. Émond carefully traces the steps that transformed the monarch's great council of state into a parliament of lords and representatives of the commons. He then examines the establishment of Parliament's legislative role and the importance that the granting of supply played in the gradual ascendance of the institution. Parliament's supremacy over the Crown's power and privileges is outlined, followed by a discussion of the emergence of the prime minister and Cabinet. Émond concludes that the seeds of the Westminster system as we know it today were first planted when the Crown came to depend on Parliament for the granting of supply, which suggest that a certain teleology surrounds the Crown's future in the British constitution.

David E. Smith contribution examines how the dynamic between the Crown and Parliament developed in Canada. The absence of a

resident monarch, the quest for political independence, and Canada's federal structure, Smith argues, have forged a Canadian Crown that is at once more alien yet more resilient than its British counterpart. While "Canadians do not think of themselves as subjects," he notes, if Canada's constitution were captured in a nutshell, "the nutshell would necessarily encase, more than anything else, the Crown." It is this duality that perhaps best expresses how Canadians and their Parliament confront the Crown: as an institution which is not well understood, but which is appears solidly anchored in the constitution. Smith thus concludes that the relationship between the Crown and the courts may be as important in a Canadian context as the interaction between the legislature and the monarchy in the British practice of Westminster government.

The Crown's role in the legislative process are analyzed three chapters by John Mark Keyes, Charles Robert, and Rob Walsh. Keyes' chapter explores the executive's role in the legislative process through the granting of royal recommendation, royal assent, and royal consent. He analyses how these functions of the Crown relate to the other branches of the state, notably the judiciary. He finds that these functions are largely non-justiciable. Accordingly, responsibility for ensuring that these functions are performed correctly lies with parliamentary institutions, not the courts. Robert's contribution provides a comparative analysis of these royal functions, along with the speech from the throne, in Canada and the United Kingdom. As with Smith, Robert finds that the Sovereign's absence from Canada has resulted in the development of particular Canadian practices regarding the Crown. Royal recommendation has produced comparable frustrations amongst members of Parliament in both countries, though the Canadian House of Commons as proved more willing to accept the need for recommendations. Royal consent is applied differently in Canada than the Queen's consent in the United Kingdom, likely owing to a lack of experience and understanding of the practice. Royal assent in Canada differs from the United Kingdom as well, notably through the not uncommon reliance on a deputy of the Governor General to perform the function. The speech from the throne, on the other hand, resembles British practice in Canada, though the pageantry and length of the allocution are quite different. Walsh's commentary on the royal recommendation rounds out these chapters on the royal functions. He offers an overview and defence of recent rulings by the Speaker of the House of Commons. As he colourfully explains, when determining the requirement for a royal recommendation, "it was not good enough that you *smell* money, damn it!"

Contemporary debates about the roles and powers of the Crown, and Parliament's ability to affect them, guide the next four chapters. Lieutenant-Colonel Alexander Bolt's chapter engages with recent claims that a constitutional convention requires a vote in the House of Commons before the executive can exercise the Crown's prerogative to deploy armed forces. Looking at both the United Kingdom and Canada, Bolt argues that talk of a convention of Commons control over military deployments is unsupported by the logic of constitutional conventions or the available evidence from either country. In a direct challenge to the prevailing wisdom and British and Canadian jurisprudence, Paul Benoit challenges the very notion that Parliament can supplant Crown prerogative. He argues that "the prerogative" must be understood as the privilege and duty of making decisions in particular contexts. In that context, "the prerogative" that the Crown enjoys as the executive power over appointments and foreign affairs cannot be ceded to Parliament without denigrating the Westminster system of government. These are necessarily decisions that the Crown makes on the advice of its counsellors and servants, rather than matters that concern the legislature.

Parliament's ability to alter the Crown's roles, powers, and functions are then assessed in a chapter by this author and Patrick Baud. Focusing specifically on what aspects of the Crown are likely to fall under the ambit of paragraph 41(a) of the *Constitution Act, 1982*, we argue that the offices of the Queen and vice-regal representatives are open to three interpretations. While one of these interpretations views the offices quite narrowly, thereby giving Parliament significant leeway to unilaterally alter the Crown, the other two suggest that there is little room for Parliament to change the Crown's place in the constitution without a unanimous constitutional amendment. In his contribution, Christopher McCreery outlines how the Conservative government has reformed one aspect of the Crown, the procedure to appoint the Governor General and Lieutenant Governors. Specifically, the government has introduced vice-regal appointment committees inject greater merit and reduce partisan considerations in the nomination process. McCreery also offers a critical analysis of an increased reliance on the Secretary to the Governor General to act as a deputy to the Queen's representative.

As the debate over the validity and constitutionality of the *Succession to the Throne Act, 2013* heads to the courts, the four final chapters of the book provide an overview of the arguments for and against the statute. Writing in favour of the Act and the federal government's position, Mark D. Walters posits that there is a "simple

rule of Crown identification" in Canada's constitutional architecture. That rule is that whomever is the monarch of the United Kingdom is the monarch of Canada. This is supported by the preamble to the Constitution Act, 1867, the now repealed section 2 of that same act, and the oath of allegiance. Owing to this rule of identification, and the preamble to the Statute of Westminster, the Canadian Parliament correctly passed legislation that merely assented to British legislation altering the rules of succession. Senator Serge Joyal complements Walters' analysis with a further elaboration of the Crown's place in Canada's constitutional architecture. Joyal argues that the Succession to the Throne Act, 2013 follows past precedents and the rule that the monarch of the United Kingdom is the Canadian monarch is an essential feature of the Canadian constitution.

Anne Twomey's contribution questions the validity of the succession act on legal and historical grounds. She outlines how the law of succession applied to Canada prior to the Statute of Westminster and examines why the Canadian government did not consider that a rule of Crown identification existed during the abdication crisis of 1936. Past precedent and the evolution of the Canadian constitution from the Statute of Westminster on, she argues, belie the idea that Canada can merely assent to British legislation to alter the rules of succession to the Canadian throne. Julien Fournier, Patrick Taillon and Geneviève Motard reinforce Twomey's analysis with an "autopsy" of Canada's response to the abdication crisis of 1936. They detail how the laws of royal succession extended to Britain's colonies and the legal reasoning behind the Canadian government's decision to have the British Parliament legislate for Canada to alter the law of succession in 1936, rather than simply assenting to the legislation passed in the United Kingdom. They conclude that Canada's response to the abdication crisis mean that country has its own unique law of royal succession and that these cannot be altered by assenting to British legislation alone.

Far more remains to be written and said about the Crown and Parliament in Canada. To encourage greater reflection, the underlying aim of this book has been to stimulate this discussion and encourage further analyses of these two foundational institutions of the Canadian state. Having evolved together over nearly a thousand years, the Crown and Parliament can only be understood together.