

Frank MacKinnon

A Response

I welcome Professor Myers's interesting revisit with "The Crown in a Democracy." As he indicates, the article was written 25 years ago, in Roland Michener's time, and much has changed since.

The changes are not just in the Crown. Canadians' appreciations of *all* their institutions of government have been subjects of controversy and investigation. And the public image of politicians and bureaucrats and the prevailing belligerency among them is dismal in both federal and provincial governments. Improvements are hard to see, and failures are both obvious and largely inexcusable. It is nobody's fault but our own. And the country itself may break up. It is not surprising that the headship of state is being critically assessed in the political gloom.

I would emphasize several observations of the situation in relation to Professor Myers's comments.

1. My emphasis on emergency powers and "colour in democracy" still stands. The nation is certainly in a state of emergency which an effective Crown can help change. I still believe both federal and provincial government in Canada are drab, often to the point of boredom, probably because politicians have been unsuccessfully taking over many of the functions of governors general and lieutenant-governors. We cannot even agree on how to fly our flag or sing our national anthem.
2. We discuss our institutions and powers, but often forget that we are not handling them well.

3. There are constitutional, executive, and absolute presidents. The leading monarchs are all constitutional, but today's absolute heads of state are all presidents. Indeed, several provincial premiers in Canada, having been elected, became absolute heads of government in practice, such as Aberhart, Hepburn, Duplessis, and Smallwood, all of whom trespassed upon the office of the Crown with undesirable and undemocratic results.
4. Many parts of the constitution are unwritten, often purposely, to make the written part work, and some useful Crown powers are among them.
5. As a feature of our democracy we have an opposition called "Her Majesty's" and "Loyal," which has its own status and is not the government's opposition. Whatever changes are made, both sides should relate to the headship of state. But the status and operation of oppositions in Ottawa and the provinces are now inadequate for parliamentary government.

Patronage underlies almost all our constitutional crises. It is inefficient wherever appointments are made by affiliations rather than abilities and experience. Professor Myers describes the progress of partisan patronage in the governor generalship: it is worse in the lieutenant-governorships. While criticizing it, I nevertheless think it unfair to bar able politicians from the highest offices. They should be eligible on their abilities and successful experience rather than their affiliations. And, just as important, able and experienced non-politicians in other professions and occupations should be eligible too.

My main criticism of Professor Myers's views concerns group patronage versus personal qualifications in the practical operation of the headship of state. Pages 16 and 17 of the article weaken many of his arguments and politicize the highest office. He says that "having individuals from these groups serve as head of state is an excellent means of making a symbolic statement that the members of their group are equal partners in the Canadian political community." I don't believe it. That is not a function of a head of state, and his or her personal qualifications to fill the office should be paramount without the conflicting demands of group patronage.

The author would "help redress the traditional under-representation in our political system of particular groups of Canadians." He is being nice

but impractical. There are just too many groups, and he is encouraging the inevitable indifference of those who see the head of state as representing some other group, not theirs. But Myers kills his argument by recommending life tenure (13). Simple mathematics indicate how impractical it is to satisfy group representation only every three or four decades. In any event I suggest most citizens would prefer their head of state to represent Canada.

It is expecting too much to rely on prime ministers or cabinets for appointments to Rideau Hall, or to the Senate, or to the bench. But I have not been convinced by some suggestions of a nomination committee, including Professor Myers's. Some of his members are unsuitable in practice: the Clerk of the Privy Council, a lieutenant-governor, and the President of the Canada Council who has in recent years often been a professional in the now difficult cultural field.

I suggest that such a committee, perhaps called the appointments council, should be kept within the parliamentary system with the Chief Justice of Canada as a member, and chair only for selecting the Governor General and lieutenant-governors. (The Chief Justice is too busy with the Court to get too involved with selecting senators and judges.) The other members could be the Speaker of the House of Commons who is now elected, the Speaker of the Senate provided he or she too is elected, the Prime Minister, the Leader of the official Opposition, and a retired chief justice of Canada or a retired justice of the Supreme Court to be selected by the other members of the Council to sit as a member and to act as chair for the selection of senators and judges. All the final nominations should be the Council's own choice. But the procedure should be open for nominations from the public, and recommendations from the Canadian Bar Association for federal judicial appointments, and from the provincial bar associations for the provinces concerned, made to and through the Canadian Bar. The Council will need a small staff appointed by itself and responsible to it.

I suggest the nomination of a Governor General by this committee would be carefully made with a minimum of partisanship and wide consideration of possible distinguished candidates from outside of government. I do not think life tenure would work. Ten years should be satisfactory.

One of the biggest changes in public life in 25 years is the enormous increase in chips on shoulders. Canadian writers have often called us a nation of whiners, and observed that we have the least justification for whining of most countries of the world. Indeed I suggest we should knock chips off many shoulders. And we should get our political drama clear, such as it is. Canadian federal and provincial government today reminds me of a mixture of Richard Wagner and Gilbert and Sullivan, an opera in which one is uncertain what is tragic and what is comic. If we lose the country it will not be because of the Constitution and structure of government, but because we are careless in handling our political system, too timid in discussing and remedying our mistakes, and insufficiently appreciative of our good fortune and successes.

Herein lies a great and urgent purpose of our head of state as both symbol and practical official. One might call it a high level constitutional PR job in this day of PR in almost every organization. But this purpose is dead in both Rideau Hall and the provincial government houses. And in the offices of federal and provincial politicians PR is at its lowest ebb. It seems obvious, therefore, what the way ahead should be for the representatives and advisors of the Crown. I still believe that in discussing the Crown we should thoroughly examine what it can do, and what the alternatives are and how they will actually work in practice.

I can hear some of my colleagues saying there goes Frank again with his "colour in democracy." I suggest all the evidence in Canada today indicates that the old article is still relevant, and that we need much more "hurrah" in our affairs and far less "oh, woe is me."