THE DEVELOPMENT OF A SEPARATE CROWN IN NEW ZEALAND

Noel Cox[1]

1 Introduction

The development of the concept of the divisible Crown occurred as the Dominions obtained control of the prerogative. One king, several kingdoms gradually became several distinct kingships. This was not as the result of any conscious policy decision, but as a result of the natural evolution of domestic laws and practices in the absence of an insistence by the imperial authorities on uniformity.

The Sovereign might have lost his or her personal power, but the institution of the Crown continued. The powers of the Governors-General were generally extended at the expense of the Sovereign, though seldom were they exercisable at the Governor-General's discretion. Rather, they became a significant source of governmental authority, exercised at the behest of Ministers.

The subsequent evolution of this process will be traced in Canada, Australia, and New Zealand. In each country different forces and influences were at work, but each shared certain common aspects. The development of national Crowns depended particularly upon two factors: the identification of the Sovereign with the individual country, and the patriation of the office of Governor-General. It is the latter which has been most decisive, as it has affected the way in which the office of Governor-General has been perceived. But the former is important also, as the Sovereign is the ultimate personification of the Crown.

The gradual increase in control over the Crown in the Dominions led to the adoption of distinct royal styles and titles,[2] and eventually the acceptance of a separation of the one imperial Crown into many.[3]

National identity did not yet demand abandonment of the Crown, but did demand that it be a national Crown. Yet this partial unity is still reflected in elements of the constitutions of many of the realms of the Queen, including New Zealand.

The first section considers the succession to the throne. This shows how there is now uncertainty as to the unity of the succession, something which should have been clarified after the Abdication Crisis in 1936, yet was only seriously considered more recently. The symbolic and practical importance of the Sovereign owing their title to national laws, rather than to the laws of the United Kingdom, is very important.

The second section looks at the development of national Crowns. In particular, this compares and contrasts the different approaches to the Crown in the principal realms. As a

---

[1]LLM(Hons) PhD GradDipTertTchg CertTertTchg FRHistS, Barrister of the High Court of New Zealand, and of the Supreme Courts of the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, Tasmania, and Victoria, Senior Lecturer in Law at the Auckland University of Technology.

[2]Royal Titles Act 1901 (1 Edw VII c 15) (UK), Accession Declaration Act 1910 (10 Edw VII & 1 Geo V c 29) (UK), HM Declaration of Abdication Act 1936 (10 Edw VIII & 1 Geo VI c 3) (UK), Regency Act 1937 (1 Edw VIII & 1 Geo VI c 16) (UK), Regency Act 1943 (7 Geo VI c 42) (UK), Regency Act 1953 (2 & 3 Eliz II c 1) (UK), Royal Titles Act 1953 (1 & 2 Eliz II c 1) (UK), Royal Titles Act 1953, Royal Titles Proclamation, 28 May 1953 (SR 1953/79), Royal Titles Act 1974.

[3]HM King Edward VIII's Declaration of Abdication Act 1937 (South Africa).

generalisation, in Canada the Crown has tended to be used as a tool of government (in which its practical importance is paramount), whilst in Australia there has been an inclination to remove the Crown altogether. New Zealand has adopted a middle way, though one which is perhaps inconsistent and lacking in certainty.

The third section examines the changes in the royal style and title. This has evolved as the Crown has evolved. But not only has it reflected changing notions of independence, it may also have been one of the influences which encouraged acceptance of some of the symbolic attributes of independence.

2 Legislation affecting the Unity of the Crown

There was formerly a convention that statutory uniformity of laws of succession to the Crown would be maintained in those parts of the Commonwealth that owed allegiance to the Crown.[4] This convention was recognised in the report of the 1930 Imperial Conference,[5] and was recited in the second paragraph of the preamble to the Statute of Westminster 1931. That Statute itself provided the mechanism of request and consent to maintain the unity of the Crown:[6]

> And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.[7]

The preamble to the Statute of Westminster could not of course be completely effective, as it purported to bind subsequent Parliaments, something which orthodox theory did not allow. The absence of a statement as to concurrence would not invalidate a statute.[8] But the Statute of Westminster procedure was generally followed for some decades.[9]

The Royal Titles Act 1953 (UK)[10] and companion legislation in the Dominions departed from one of the two principles enunciated in the preamble to the Statute of Westminster,

---

[4]See Cox, Noel, "The Law of Succession to the Crown in New Zealand" (1999) 7 *Waikato Law Review* 49.

[5]*Imperial Conference* (1930) Parliamentary Papers, vol 14 1930-1 cmd 3717.

[6]Statute of Westminster 1931 (22 Geo V c 4) (UK), ss 1, 4 (in relation to Canada, Australia, and New Zealand); Republic of Ireland Act 1949 (12 & 13 Geo VI c 41) (UK), s 3(3); British North America Act 1867 (30 & 31 Vict c 33) (UK), s 1, Schedule, para 48; South Africa Act 1962 (10 & 11 Eliz II c 23) (UK), s 2(3), Sch 5; Northern Ireland Constitution Act 1973, s (2) (1), (2), Sch 2, para 1.

[7]Preamble to the Statute of Westminster 1931 (22 Geo V c 4) (UK).

[8]*British Coal Corporation v the King* [1935] AC 500 (PC).

[9]As in 1936.

[10]The style and title proclaimed for the United Kingdom and its dependencies was: "Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith"; Royal Titles Act 1953 (1 & 2 Eliz II c 1) (UK) (in effect 26 March 1953).

namely unity of title. But it may have been constitutionally inappropriate to depart from the second, unity of person.[11] Since 1953 however, the prospect for just such a division has grown, if indeed there was any doubt after 1936.

The law of the succession can only be understood in the context of the history which formed it, whose roots extend beyond the reach of historical memory.[12] Although the modern notion of a separate sovereignty would see the Crown as potentially divisible in actuality as well as in law, the only occasion of an actual separation of inheritance occurred in 1936.

Any alteration by the United Kingdom Parliament in the law touching the succession to the throne would, except perhaps in the case of Papua New Guinea,[13] be ineffective to alter the succession to the throne in respect of, and in accordance with the law of, any other independent member of the Commonwealth which was within the Queen's realms at the time of such alteration. Therefore it is more than mere constitutional convention that requires that the assent of the Parliament of each member of the Commonwealth within the Queen's realms be obtained in respect of any such alteration in the law.[14]

One effect of New Zealand's adoption in 1947[15] of sections 2-6 of the Statute of Westminster 1931 was that any alteration to the law of New Zealand on the succession to the throne or the royal style should be made by or with the consent of the New Zealand Parliament.[16] But s 26(1) of the Constitution Act 1986 declared that the 1947 Act "shall cease to have effect as part of the law of New Zealand".

Since the same Act also declared that the Parliament of the United Kingdom no longer had the authority to legislate for New Zealand, legislation by request and consent was also ended. The cumulative effect is that any change to the law of succession in the United Kingdom would have no effect in New Zealand.[17]

Section 5(2) of the Constitution Act 1986 states that every reference in any document or instrument to the Sovereign shall, unless the context otherwise requires, be deemed to include a reference to the Sovereign's heirs and successors. But it is not immediately clear what precisely is meant by to Sovereign's successor as determined in accordance with the Act of Settlement 1701[18] and any other law which relates to the succession to the Throne. It would

---

[11]Bogdanor, Vernon, *The Monarchy and the Constitution* (Clarendon Press, Oxford, 1995) p 269. Bogdanor seems to believe that this is still true today, but this would seem to not necessarily be so, at least for those countries where the succession is not restricted to the British Sovereign; Cox, Noel, "The Law of Succession to the Crown in New Zealand" (1999) 7 *Waikato Law Review* 49.

[12]See Cox, Noel, "The Law of Succession to the Crown in New Zealand" (1999) 7 *Waikato Law Review* 49.

[13]Papua New Guinea Constitution Act 1975 s 83.

[14]Statute of Westminster 1931 (22 Geo V c 4) (UK), preamble; His Majesty's Declaration of Abdication Act 1936, preamble.

[15]New Zealand Constitution (Amendment) Act 1947.

[16]The right to legislate on the succession contrary to cl 2 of the Constitution of Australia was denied by Sir Robert Menzies in 1936, though conceded as Prime Minister in 1953; Commonwealth Parliamentary Debates (House of Representatives, 11 December 1936) vol 153, pp 2908-2909; Commonwealth Parliamentary Debates (House of Representatives, 18 February 1953) vol 221, pp 55-56.

[17]See Cox, Noel, "The Law of Succession to the Crown in New Zealand" (1999) 7 *Waikato Law Review* 49.

[18]Preserved for the purposes of the law of New Zealand by the Imperial Laws Application Act 1988.

appear, as a simple matter of statutory interpretation, to mean the law of New Zealand, not that of the United Kingdom.[19]

Any change in the law of succession would have to be enacted in each of the Queen's realms for unity of person to be maintained.[20]

No legislation purporting to affect the unity of person, as distinct from the unity of title, of the Sovereign, has been passed since 1936. However, in London on 27 February 1998, Lord Wilson of Mostyn, Parliamentary Under Secretary of State for the Home Office, announced that the British government supported changing the law of succession to the throne.[21] This came in a debate on a private member's Bill, sponsored by Lord Archer of Weston-Super-Mare, intended to allow for the succession of the eldest child of the Sovereign regardless of sex.[22] The enactment in the United Kingdom of the Human Rights Act 1998 makes alteration of the law of succession more likely.[23]

The law of succession is now, in part because of the development of the doctrine of a divisible Crown, but largely because of the Constitution Act 1986, determined solely by the law of New Zealand. Were the United Kingdom Parliament to enact any changes to the law, these would effect a separation of the Crown, as they would be legally ineffective in New Zealand.

But New Zealand political leaders have not yet fully appreciated this situation. In a letter to the author, the Rt Hon Jenny Shipley, Prime Minister (or a member of her staff), wrote that:

> The Government would expect to be consulted, along with other Commonwealth countries, before any changes to the law of succession were made.[24]

Clearly, it was still believed that any changes by the United Kingdom Parliament would be effective in New Zealand law, though this is not the view of the British Government.[25] Some constitutional uncertainties thus remain to be settled, but they are now few. But they illustrate nevertheless the dangers of relying too much on the assertion that Elizabeth II is

---

[19]The 1988 Australian Constitutional Convention recommended the insertion of an additional power under s 51, enabling the Parliament to make laws for "the succession to the throne and regency in the sovereignty of Australia".

[20]Another private members' Bill, introduced by Lord Forsyth of Drumlean, was refused a first reading in the House of Lords on 2 December 1999; *The Times*, London, 3 December 1999.

[21]Rachel Sylvester, "Queen agrees to end succession inequality", *Daily Telegraph*, London, 28 February 1998.

[22]Bruce Beetham, MP, attempted to introduce a similar Bill into the New Zealand Parliament more than ten years earlier. The Bill was opposed by the government on the grounds that alteration in the law of succession was a matter for the Commonwealth as a whole, and that it was not the New Zealand Parliament to force the issue; New Zealand Parliamentary Debates 1982 vol 443 pp 113-117, 164-173.

[23]David Bamber & Jonathan Petre, "Catholics to regain right to the throne" *Daily Telegraph*, London, 5 November 2000. The Guardian newspaper has also launched a campaign to challenge the succession, as part of a wider attack upon the monarchy; Noel Cox, "Royal succession campaign curious" *New Zealand Herald*, 13 December 2000.

[24]Letter from the Rt Hon Jenny Shipley, Prime Minister, to author, 20 May 1998.

[25]David Bamber & Jonathan Petre, "Catholics to regain right to the throne" *Daily Telegraph*, London, 5 November 2000.

Queen of New Zealand. She is, but only because she is the British Sovereign.[26] Legal notions of separate sovereignty have practical and conceptual limitations.[27]

South Africa asserted this notion in 1936, but while the person of the Sovereign remains common to all the realms, there appears to be a reluctance to take the divisibility of the Crown to its logical conclusion. It appears probable that this is because although the realms enjoy the benefits of independence, they do not appear to be willing to accept the possibility of a local Sovereign.

The division of the Swedish and Norwegian Crowns was a viable option in 1903.[28] But it appears to be an unlikely option for the Commonwealth, given the attitude exemplified by Mackenzie King, that Dominion autonomy was symbolised in the subservience of the monarchical Crown to the local political Crown, that is, the Cabinet.[29] Indeed, one of the arguments raised for the abolition of the monarchy in Australia, perhaps facetiously, was the fear that the Queen and the Royal Family would move en mass to Australia in the event of Great Britain becoming a republic.[30]

The consequence is that, although legally and conceptually the Crown may be divisible, its retention in the realms would appear to be conditional upon the maintenance of a unity of person. Thus the Crown may be legally distinct, but the person of the Sovereign appears to be inherently common to all the realms. But this has not prevented the development of symbolic independence, for the person of the Sovereign is but one aspect of the Crown. The focus has often, therefore, been upon the other aspects of the Crown, whether symbolic or practical.

3 The development of national Crowns

As the Sovereign came to act solely on the advice of the appropriate Ministers, and, at the same time the Governor-General ceased to be an agent of empire, so the Crown extended its role as the legal and symbolic embodiment of each country in turn.

As the doctrine of the divisibility of the Crown developed, so the Crown began to develop distinct features in each of the Dominions and later realms. The Governors-General was chosen from among the people of the country, and represented less the Sovereign than the country itself. Both the symbolic aspects of the Crown, and its practical role, changed.

These developments continue, in the case of Australia, to the point where the Crown may be removed altogether from the constitutional framework of the country, and in Canada, that the focus of the Crown is on the Governor-General, rather than the Sovereign. These contrasting approaches will be compared and contrasted with that in New Zealand.

3.1 The Crown as a tool of government: Canada

Although, for Canada, the final legislative links with the United Kingdom were finally removed only in 1982, well before then the British origins and nature of the Crown were being deliberately symbolically de-emphasised. Though few would have been concerned with

[26]This would also seem to accord more with the popular perception of the Queen (though not necessarily of the Crown); Interview with Sir Douglas Graham, 24 November 1999.
[27]Interview with Sir Douglas Graham, 24 November 1999.
[28]Leiren, Terje, "National Monarchy and Norway, 1898-1905- A study of the establishment of the modern Norwegian monarchy" (1978) University of North Texas PhD thesis.
[29]Smith, David, "Bagehot, the Crown, and the Canadian Constitution" (1995) 28 *Canadian Journal of Political Science* 619, 624.
[30]"'Why we won't have Charles' by Whitlam", *Auckland Star*, 4 March 1981.

the legal niceties of the Constitution, the apparent continuance of the British Queen as the Sovereign of Canada was too obvious for political leaders to ignore.

Yet, what might be thought the obvious conclusion, that Canada become a republic, was not widely advocated.[31] Although support for a republic was much more pronounced amongst the French nationalists of Quebec that elsewhere in Canada,[32] this did not equate to active steps being taken in this direction by Canada as a whole. Separation from Canada, or recognition of Quebec as a distinct society, were more important to the leaders of the Francophone community.[33]

Various reasons might be advanced as to why the Crown has continued to be regarded as a useful tool of government. Trudeau held the pragmatic view that abolition of the monarchy would be more trouble than it was worth.[34] Aside from the constitutional pre-occupation with Quebec, Canada's desire to distinguish itself from the United States of America makes it less likely than Australia to abandon the monarchy.[35] Smith would go further, and rejects a minimalist interpretation of the Crown's position in the polity. He advances the proposition that the Crown as a concept should be taken seriously, and asserts that the Crown is the organising force behind the executive, legislature, administration, and judiciary.

According to Smith, in the Canadian federal structure the Crown exercises determinative influence over the conduct of intergovernmental relations. The result is a distinctive form of federalism best described as a system of compound monarchies.[36]

The Crown played an essential role

> in converting the highly centralized constitution originally designed by the Fathers of Confederation into the more balanced and decentralized system of today, a system in which the provinces are not inferior, subordinate governments but instead exercise de facto coordinate sovereignty with that of the federal government.[37]

The Crown has also been important precisely because it is the established mechanism through which Canadian government is conducted. The Canadian Constitution of 1867 was deliberately unclear in several key areas. This was because, as the Quebec Resolution stated:

> The Conference ... desire to follow the model of the British constitution so far as our circumstances will permit ...

---

[31]Though certain groups, particularly the French population, were opposed to the monarchy as symbolic of the heritage of English Canada.

[32]National Angus Reid/Southam News Poll released 3 February 1996; cited in "Support for Monarchy Rises in Canada" (1996) 21(1/2) *Monarchy Canada* 14.

[33]Conley, Richard, "Sovereignty or the Status Quo?" (1997) 35(1) *Journal of Commonwealth and Comparative Politics* 67.

[34]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 47.

[35]Fennell, Tom, "Royal challenge" (1998) 111(8) *Maclean's* 27; Smith, David, *The Republican Option in Canada, Past and Present* (University of Toronto Press, Toronto, 1999) p 230.

[36]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p x.

[37]Task Force on Canadian Unity, *Formal Executive*, section 4, chapter 3, part 3, 9 July 1978 (RG 33/118, vol 3, file no 322), cited in Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 184.

and

> the Executive authority or government shall be ... administered according to the well-understood principles of the British constitution.[38]

Flexibility was important, and this the Crown gave Canada.

Canadian governments benefited from the vagueness of a system of government based upon conventions rather than written rules. But not only the federal government gained, provincial governments benefited also. Thus the practical importance of the Crown lay in the authority which it conferred upon the provincial governments.

The Crown had assumed a dual nature in Canada long before the concept of the divisibility of the Crown was fully developed in the Dominions.[39] But the application of this later concept also led to the Canadian Crown changing. Acting only on the advice of Canadian Ministers, and no longer an agent of empire, the Governor-General assumed a position increasingly analogous to that the Sovereign held in the United Kingdom, leaving little room for the Sovereign.[40]

The symbolism of the Crown was therefore reworked, rather than discarded. In Canada, rather than a call for a republic, there has been to a "separation of the person of the monarch from the concept of the Crown".[41] This has however tended to diminish the dignity of the Queen's person, and may also ultimately diminish the practical role the Crown plays in Canadian government.[42]

After the return to power of the Liberal Party in 1963, the new government, influenced by the proponents of bilingualism, set out to reform the Crown in Canada as a specifically Canadian institution.[43]

There was a deliberate rejection of the historic Crown with its anthem, emblems, and symbolism, which made accessible a past the government of the day rejected. The new Crown was to be "rooted in the future, not in the past".[44] This did not mean rejection of the Crown, but moulding it to a new form, one symbolic of multiculturalism and modernity.

The full range of Canadian symbolism was reviewed. The national anthem, *O Canada*, replaced *God Save The Queen* as Canada's national anthem. The older piece was retained as a royal anthem for use at royal and vice-regal occasions.[45]

---

[38]See Heard, Andrew, *Canadian Constitutional Conventions*: *The Marriage of Law and Politics* (Oxford University Press, Toronto, 1991).

[39]See *Attorney-General of British Columbia v Attorney-General of Canada* (1889) 4 Cart 255, 263-264 per Jounier J.

[40]Who did, however, open Parliament in person, for the first time in Canada, in 1957.

[41]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 25.

[42]It has also led to the development of loyalty to an indigenous Crown; Lower, ARM, "Origins of Democracy in Canada" in Heick, Welf (ed), *History and Myth*: *Arthur Lower and the Making of Canadian Nationalism* (University of British Columbia Press, Vancouver, 1975) p 26.

[43]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 47.

[44]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 47.

[45]And includes an official French text, authorised for the Queen's coronation in 1953.

The Canadian flag, adopted in 1965,[46] replaced an earlier flag of traditional imperial design, of which the most distinctive feature was the Union Flag of the United Kingdom in the canton. A new flag for the Governor-General was adopted in 1981.[47]

The Order of Canada in 1967 finally replaced the British honours system, the awarding of which had been the subject of controversy since the first decades of the twentieth century.[48] All of these changes reflected a conscious effort to modernise, but at the same time to preserve some links with the past.[49]

It has been said that Canada has evolved "from constitutional monarchy with full parliamentary supremacy to democracy with sovereignty exercised by the people ... Canada is, de facto, now a republic; the people of Canada are sovereign".[50]

Whilst this claim appears rather far fetched (in that the Governor-General remains de facto head of State in the name of the de jure head of State), it is true that the paradigm can change. If the perception is that the Crown has no symbolic or practical role to play, then the next step, that of removing the Crown, is that much easier. Certainly, this approach has been more widely advocated in Australia.

---

[46]By royal proclamation 15 February 1965.

[47]Traditionally the flag used by a Governor-General was of royal blue, with the royal crest, a crowned lion, in the centre, and beneath this a gold scroll with the name of the country in black letters. The flags used in Australia and New Zealand are still of the traditional pattern. The flag used by the Governor-General of Canada, adopted 23 February 1981, has a blue field, and the crest of the Coat of Arms of Canada surrounded by a wreath of red and white. This design replaced the earlier banner of arms with her royal cypher in the centre on a disc within a chaplet of golden roses. The quarters represented England, Scotland, Ireland, and France, the countries from which Canada was settled. In the base was a red maple leaf for Canada itself.

[48]In 1919 the Canadian Parliament requested the imperial Parliament at Westminster to legislate to bring an end to the validity of hereditary titles granted to certain Canadian residents on the death of the original holders; Keith, AB, *The Dominions as Sovereign States* (Macmillan, London, 1938) p 86.

[49]The Royal Victorian Order, awarded on the personal initiative of the Sovereign, was revived from the early 1970s, and these awards have been published in Canada Gazette from 1983 (backdated to 1972); "The Royal Victorian Order" (1993) Fact Sheet H-5.

[50]Bercuson, David & Cooper, Barry, "From Constitutional Monarchy to Quasi Republic" in Ajzenstat, Janet (ed), *Canadian Constitutionalism, 1791-1991* (Canadian Study of Parliament Group, Ottawa, 1992) p 17. The same theme, less categorical in its conclusions, is in Russell, Peter, *Constitutional Odyssey* (1992). For a contrary view, see Smith, David, *The Republican Option in Canada, Past and Present* (University of Toronto Press, Toronto, 1999).

3.2 The alternative- Removal of the Crown: Australia

The perception that the Crown has no role to play is well illustrated by the example of Australia. Sharman argues that Australia, like Canada, is a compound republic, "in the sense that its institutional design relies predominantly on the dispersal of power to achieve individual liberty and governmental responsibility".[51] Yet, in Canada, it was the dispersal of the Crown itself which arguably led to greater provincial autonomy,[52] or at least allowed it to be achieved with less disruption than otherwise might have been.[53]

While some political leaders in Canada sought to solve the perceived dilemma of retaining the British Sovereign as head of State by a "separation of the person of the monarch from the concept of the Crown", the Labour Party in Australia sought to remove the Crown altogether. The wider Australian republican movement has however been motivated by concerns about political power rather than merely symbolism, to a much greater extent than in either Canada or New Zealand.[54]

The year 1975 was the first that many people took an interest in Australian constitutional theory. Before that republicanism was more a matter of arguments about egalitarianism, Pacific or Asian destiny, or cultural identity. After 1975 republicans discussed the role of the Senate and the extent of the reserve powers of the Governor-General. The focus became the Constitution itself,[55] at least until the republic referendum process began in earnest in the mid-1990s, when the focus again shifted to symbolism.

The events of 1975- when the Governor-General dismissed the Prime Minister after the government had failed to secure the passage of the Budget in the face of the opposition of the upper house- have been discussed and analysed at great length elsewhere.[56] As a consequence of these events, the Crown became involved in what was at its heart a political controversy, which had highlighted the peculiar constitutional circumstances of Australia. Whilst republican agitation grew, especially within the Labour Party, efforts were made, particularly after 1977, to emphasise the Australian nature of the monarchy.

Although the Labour Party would have preferred to remove the institution altogether,[57] a compromise saw the Queen losing the last of her right to exercise any royal powers for Australia, unless actually present.[58] Amongst the symbolic changes of this time were the institution in 1975 of the Order of Australia, although the award of British honours on the advice of the Australian state and federal governments only finally ceased in 1990.

---

[51]Sharman, Campbell, "Australia as a Compound Republic" (1990) 25 *Politics* 1.

[52]Smith, David, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995).

[53]Doubtless comparisons with the history of United States federalism would be worthwhile in this regard.

[54]The dichotomy between symbolism and substance was highlighted by the 1999 constitutional referendum campaign, which faltered because many voters were unhappy with the model of republic proposed.

[55]Abbott, Tony, *How to win the constitutional war and give both sides what they want* (ACM/Wakefield Press, Adelaide, 1997) p 28-29.

[56]For the views of the principal participants, see Barwick, Sir Garfield, *Sir John Did His Duty* (Serendip Publishers, Wahroonga, 1983); Kerr, Sir John, *Matters for Judgment: An Autobiography* (Macmillan, London, 1978); Whitlam, EG, *The Truth of the Matter* (Penguin, Harmondsworth, 1979).

[57]A policy which they formally adopted in 1991.

[58]Under the provisions of the Australia Act 1986.

Unlike in Canada, in Australia the Crown was not generally seen as a source of authority for the states. The Crown was not generally seen as a source of state authority because the Constitution itself assumed much of this function. It was due to the relative weakness of state government, and in particular, the absence of separatist feeling such as that found in Quebec.[59] However, in the 1970s the Queensland government, in its disputes with the Commonwealth government, sought to rely upon a separate style of the Queen of Queensland,[60] though with little effect.

The symbolic and practical role of the Crown was less pronounced in Australia than in Canada.

3.3 The middle path: New Zealand

In neither Canada nor Australia were governmental agencies overly keen to acknowledge the continued presence of the British Sovereign as Queen. The solution in Canada, the "separation of the person of the monarch from the concept of the Crown" led to the Governor-General enjoying greater formal powers, which were now denied the Queen. But the position of the Crown also suffered from the low standing of the office of Governor-General, for long regarded as the puppet of the government of the day.[61] In Australia, the Labour Party sought to achieve the same result by removing the Crown altogether.

New Zealand has not yet had the same emotional or nationalist conflict. The Governor-General has for long enjoyed effective delegation of the royal powers. The office has not been consciously remodelled as a head of State, partly because New Zealand is less inclined to public display, and partly because most people appear to be content with the status quo, even if not greatly enthusiastic about it.[62] Nor was there traditionally the same prospects of political involvement by the Governor-General as was possible in Australia, where there were particular responsibilities apparently incumbent upon the office due to the entrenched constitution and bicameral parliament.

The Crown indeed has become more entrenched (though not necessarily in the legal sense), and the distinction between the Queen and her representative has become blurred. There has been no deliberate separation of the person of the monarch from the concept of the Crown, indeed, the opposite has occurred.[63] The existence of the Treaty of Waitangi and the special relationship between Crown and Maori is an important factor preserving a personal involvement for the Sovereign.[64]

---

[59]The separatist feelings of states such as Western Australia are comparatively weak, though not to be dismissed as non-existent.

[60]Introduced in an amendment to the Constitution by Sir Johannes Bjelke-Petersen; Constitution Act Amendment Act 1977 (Qld). This was removed from the Constitution Act 1867 (Qld) in 1987.

[61]Records of the Governor-General, Philip Moore to My dear Prime Minister, 20 June 1978 (1990-91/016, box 13, file 535.1, vol 1); Michael Adeane to Esmond Butler, 6 February 1970 (1990-91/016, box 14, file 535.2, vol 1) cited in Smith, *The Invisible Crown: The First Principle of Canadian Government* (University of Toronto Press, Toronto, 1995) p 52.

[62]Interview with Sir Douglas Graham, 24 November 1999.

[63]Section 13 of the Constitution Act 1986 makes it clear that Her Majesty part of New Zealand Parliament, not just when present in person.

[64]Assent to Bills is normally given in private, and it is no coincidence that the Queen assented to the Waikato Tainui Raupatu Claims Settlement Bill in a public ceremony in 1995. The last time assent was given by the Sovereign in person in the United Kingdom was in 1854.

The Crown has not been used as a source of governmental authority by separate agencies, as it was by the Canadian provinces. But the relationship between Crown and Maori in the Treaty of Waitangi has been critical to the development of New Zealand. The importance of the personal connection with the Sovereign remains strong for many Maori, who would prefer that the Crown not have an exclusively national identity.[65] It is equally important to them that the Crown remains in some respect distinct from the government of the day.

The Governor-General has not been encouraged to assume responsibility for the whole of the royal prerogative.[66] The question of whether the Sovereign herself could exercise the statutory powers conferred upon the Governor-General was settled by the Royal Powers Act 1953:

> s 2(1) It is hereby declared that every power conferred on the Governor-General by any enactment is a royal power which is exercisable by him on behalf of Her Majesty the Queen, and may accordingly be exercised either by Her Majesty in person or by the Governor-General.
>
> (2) It is hereby further declared that every reference in any Act to the Governor-General in Council or any other like expression includes a reference to Her Majesty the Queen acting by and with the advice and consent of the Executive Council of New Zealand.

Since the advent of the Royal Powers Act 1953 the powers bestowed upon the Sovereign may be exercised by the Governor-General or by the Sovereign, and powers bestowed upon the Governor-General may be exercised by the Sovereign. Unlike in Australia there was no formal requirement that the Sovereign be actually present.[67]

However, in the 1970s and 1980s a series of statutes affected a considerable alteration in the constitutional arrangements in New Zealand, principally to emphasise New Zealand aspects of the constitution. The first measure was the Seal of New Zealand Act 1977. This provided for the replacement of the Public Seal of New Zealand,[68] and any British seals which had formerly been used on documents issued by the Governor-General and by the Queen in relation to New Zealand.[69] Specifically, the Commissions appointing Governors-General had been sealed with the Signet, the principal seal in the custody of the British Secretaries of State, as was required by the 1917 Letters Patent.[70]

---

[65]Interview with Sir Douglas Graham, 24 November 1999; Interview with Georgina te Heuheu, 7 December 1999.

[66]Although the wording of the 1983 letters patent indicate that delegation was intended, in practice certain matters are regarded as being left in the hands of the Sovereign herself. These are limited, for the most part, to matters relating to honours.

[67]Australia Act 1986 (UK), Royal Powers Act 1953 (Australia).

[68]The earlier seal was, of course, the Public Seal of New Zealand, and a New Zealand Gazette notice dated 29 June 1959 (vol 2 p 1039), signed 28 February. The impression illustrated in the 1977 proclamation was a copy of that appearing in the 1959 New Zealand Gazette, presumably because the new seal was not yet available for photographing.

[69]s 2(1).

[70]In practice, the only documents sealed with seals other than the Public Seal were those executed outside New Zealand.

The Seal of New Zealand[71] is now used on any instrument that is made by the Queen or by the Governor-General, on the advice of a Minister of the Crown, or on the advice and with the consent of the Executive Council of New Zealand.[72] The practice now is to seal all royal warrants, letters patent and other prerogative instruments in New Zealand.[73] No longer are any British seals used for New Zealand documents signed by the Queen.

Next, and more significant, were the changes introduced in the Constitutional Provisions Bill. These were enacted as the Royal Powers Act 1983, Administrator's Powers Act 1983, and the Acts Interpretation Amendment Act 1983.[74] The opposition Labour Party was fully consulted, and agreed to the provisions, which were designed to remove the last vestiges of colonial status from the constitution. The specific purpose of the Bill was to ensure compatibility between the draft letters patent constituting the Office of Governor-General, and current statute law.[75]

The Royal Powers Act 1983, which bound the Crown,[76] stated that:

> s 3(1) It is hereby declared that every power conferred on the Governor-General by any enactment is a royal power which is exercisable by the Governor-General on behalf of Her Majesty the Queen, and may accordingly be exercised either by Her Majesty in person or by the Governor-General.
> (2) It is hereby further declared that every reference in any Act to the Governor-General in Council or any other like expression includes a reference to Her Majesty the Queen acting by and with the advice and consent of the Executive Council of New Zealand.

The only change between s 2(1) of 1953 and s 3(1) of 1983 is that "he" is replaced by "the Governor-General". Section 2(2) of 1953 is identical to s 3(2) of 1983.

The Constitution Act 1986 was more than a mere consolidation of constitutional legislation. There was no intention to introduce any significant changes. The officials charged with drafting a Bill were given the task of conducting a general review with the object of bringing together in one enactment the most important constitutional provisions in existing legislation. They were not called upon to propose a constitution, and deliberately refrained from attempting to restate constitutional conventions in statutory form.

But the Act was a deliberate attempt to "free our constitutional law from the shadow of our former colonial past".[77] The most significant was the attempt, perhaps not entirely successful, to end the residual law-making power of the United Kingdom Parliament. But the provisions relating to the Crown achieved a more significant object, towards reshaping the Crown as a purely New Zealand institution.

---

[71]The specific form of the Seal is prescribed by royal proclamation under the authority of the Seal of New Zealand Act 1977, the Seal of New Zealand Proclamation 1977 (SR 1977/29) cl 4.

[72]s 3(1).

[73]Generally, see Brookfield, FM, "The Reconstituted office of Governor-General" [1985] *New Zealand Law Journal* 256, 257.

[74]Updating statutory references to the Governor-General.

[75]The Act was introduced as part of the Constitutional Provisions Bill. As with most other significant constitutional measures, there were no public submissions on the Bill; Hon DMJ Jones, New Zealand Parliamentary Debates 1983 vol 451 p 1276.

[76]s 2. A canon of construction holds that the Crown is not bound by statute in the absence of express words or necessary intention; *Gorton Local Board v Prison Commissioners* (Note) [1904] 2 KB 165, 168.

[77]Justice, Department of, *Constitutional Reform- Reports of an Officials Committee* (Government Printing Office, Wellington, 1986) p 27.

As part of the consolidation- the term codification would be misleading- the Royal Powers Act 1983 was repealed.[78] Section 3 of the 1986 Act stated that:

> s 3(1) Every power conferred on the Governor-General by or under any Act is a royal power which is exercisable by the Governor-General on behalf of the Sovereign, and may accordingly be exercised either by the Sovereign in person or by the Governor-General.
>
> (2) every reference in any Act to the Governor-General in Council or any other like expression includes a reference to the Sovereign acting by and with the advice and consent of the Executive Council.

The only significant alteration is that the section, by removing "It is hereby declared",[79] is less declaratory. It is unlikely however that any further powers are conferred upon the Sovereign as a consequence.

Section 13 of the Constitution Act 1986 makes it clear that the Queen is part of New Zealand Parliament, not just when present in person. It is provided that Parliament comprises "the Sovereign in right of New Zealand and the House of Representatives".[80] While the Governor-General has always assented to legislation in the name of the Queen, legislation was, before 1986, not formally enacted by the Sovereign but by the Governor-General and House of Representatives, together called the General Assembly. The Queen could however always assent to legislation personally, under the Royal Powers Acts 1953 and 1983.[81]

Assent and enactment are now brought into line, with legislation being enacted and assented to by the Queen, or her representative in her name.[82] The wording of the enacting clause of course has been changed to reflect this. "Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same" was replaced by "Be it enacted by the Parliament of New Zealand".[83]

While intended largely as a legislative tidying-up exercise, the 1983 and 1986 Acts did strengthen the emphasis on the Crown as a New Zealand institution. This was also shown in contemporaneous symbolic changes. The first visit to New Zealand by the Queen after the Acts were passed, in 1990, was used as an opportunity to stress the New Zealand nature of the monarchy.[84] The British royal yacht was not sent to New Zealand,[85] and the Queen was said to be "in residence", rather than merely visiting the country.[86]

---

[78] s 28(1).
[79] s 3(1).
[80] s 14(1).
[81] As well as under the New Zealand Constitution Act 1852 (in relation to reserved bills). The Sovereign first personally assented to legislation when the Queen Elizabeth II signed the Judicature Amendment Act 1954.
[82] The two official copies of the Bill as assented to by the Governor-General state that "In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this [xxx] day of [xxx] 2 [xxx]").
[83] The original enactment clause dates from the introduction of responsible government in 1854. From 2000 enactment clauses state: "The Parliament of New Zealand enacts as follows".
[84] This was due in part to Sir Paul Reeves. On her first visit during his tenure of the office the Queen shared Government House, on the second, he vacated Government House for a hotel. Reeves wished to make the point that she was in residence as Queen of New Zealand; Interview with Sir Paul Reeves, 11 November 1998.

The Queen bears personal standards in several of her other realms, each being distinctive, and usually a representation of the territorial arms of the country concerned. She uses the Royal Standard normally only in the United Kingdom and in non-Commonwealth countries. This is because the banner is of her arms as Queen of the United Kingdom, it being what is technically called a flag of dominion.[87] In Australia[88] and New Zealand[89] the same basic pattern is followed, the national coat of arms, with an emblem for the Queen herself. In 1960 the Queen's Personal Flag was adopted for non-monarchical countries, and now also given wider use in all overseas realms as well.[90]

The Crown was now symbolically the New Zealand Crown, the Sovereign, Queen of New Zealand, even if at times this evolution may have tended to follow substantive political evolution. But symbolic and practical connection with the British monarchy survives, even if the legal links with the United Kingdom have gone. This must be seen as inappropriate for an independent country, so the tendency to emphasise the New Zealand aspects of the monarchy accelerated during the 1970s and 1980s.

But there has been in New Zealand no "separation of the person of the monarch from the concept of the Crown". This would have required a conscious policy choice for which there is little if any evidence. Nor has there been a deliberate government policy of diminishing the symbolic presence of the monarchy.[91]

Indeed, in a possible indication of the way in which the Crown may evolve, Helen Clark, Prime Minister, when announcing that The Queen would be visiting New Zealand in 2001, called for the visit and the celebrations of the Queen's Golden Jubilee to be used as a means of promoting New Zealand to the world.[92]

4 The Royal Style and Title

One of the most visible aspects of the Crown is the style and title by which the Sovereign is known. While many rulers enjoyed a multiplicity of titles, reflecting the number of separate territories that constituted their domains, the king of England traditionally enjoyed

---

[85]Though economic and operational considerations may have influenced this, and it is quite possible that the New Zealand ban on nuclear armed warships may have had an effect; Cox, Noel, "Royal Yachts in New Zealand" (1997) 11(2) *Raggie* 6.

[86]This was also emphasised by the issuing, for the first time in New Zealand, of a Court Circular, detailing the programme undertaken by the Queen.

[87]Fox-Davies, AC, *A Complete Guide to Heraldry* revised by JP Brooke-Little (Bloomsbury Books, London, 1985) p 471-472.

[88]A banner with the same device as on her personal standard in the centre, superimposed on a large golden version of the Commonwealth Star. The banner comprises the arms of the six states of Australia marshalled, or grouped together.

[89]The design bears the shield of the coat of arms with the addition in the centre of a golden crowned Roman "E" on a blue circle within a wealth of golden roses.

[90]The flag consists of the initial E ensigned with the royal crown, surrounded by a chaplet of roses. The design is in gold (or yellow) on a blue field and the flag is fringed with gold (or yellow).

[91]As has become quite pronounced in Australia since the republic referendum of 1999; Philip Benwell to author, 7 November 2000.

[92]Rt Hon Helen Clark, interview on Radio New Zealand, 24 October 2000.

a simple style. The addition of Ireland,[93] and the personal union of the English and Scottish Crowns, added new elements to the royal style, but the one essential element remained the single word king.[94]

The development of political and legal independence of the Dominions in the latter nineteenth century led to a call for a royal style which included these newly emerging countries.

The first step in this direction was when Queen Victoria was proclaimed Empress of India on 28 April 1876.[95] Gladstone opposed the move, which was advocated by Disraeli, and a vote of no-confidence was promoted in the House of Commons 11 May 1876. Nor was the criticism solely partisan.[96] Joseph Cowen pointed out in the House that letters to newspapers were overwhelmingly against the Royal Title Bill.[97]

Bagehot believed that the adoption of the title might "diminish the magic of the throne by putting a new strain on a reverence which had never failed to answer to the appeal of ancient associations".[98] The term "imperialism" at this time referred not to Britain's foreign dominions but to a style of imperial government in which the masses were enlisted on the side of autocratic rule, as in France.[99] No further steps were taken to alter the royal style for a generation, by which time imperialism had a newer, more popular, meaning.

In 1901 a series of telegrams passed between the Colonial Secretary, Joseph Chamberlain, and the Governor-General and Ministers of Canada.[100] The subject was the new royal style to be borne by the new King Edward VII. Chamberlain suggested that to reflect the greater independence and importance of these territories, the phrase "and of Greater Britain beyond the seas" be added.

This was not favourably received in Canada, as the wording was an innovation, and in turn suggested

> King of Canada, Australia, South Africa and all the British Dominions beyond the seas.[101]

This introduced the problem of whether the smaller Dominions should be enumerated. There was also reluctance on the part of the Colonial Secretary to approve the use of the style king of Canada. He proposed the addition to the existing style of "and of Greater Britain

---

[93]The Union with Ireland Act 1800 empowered the king to establish, by royal proclamation, his royal style and titles, which was accordingly done, see the London Gazette 3 January 1801.

[94]*Anon* (1555) Jenk 209; 145.

[95]Under the Royal Titles Act 1876 (39 & 40 Vict c 10) (UK). The style was abandoned in New Zealand by the Royal Titles Act 1947, which provided for the omission of the words "Emperor of India" and "*Indiae Imperator*".

[96]Williams, Richard, *The Contentious Crown*: *Public Discussion of the British Monarchy in the Reign of Queen Victoria* (Ashgate Publishing, Aldershot, 1997) p 123-126.

[97]House of Commons Debates vol 228 col 501.

[98]Bagehot, "The English Constitution" in *The Collected Works of Walter Bagehot*, ed Norman St John-Stevas (*The Economist*, London, 1974) vol 5 p 447-449.

[99]Williams, Richard, *The Contentious Crown*: *Public Discussion of the British Monarchy in the Reign of Queen Victoria* (Ashgate Publishing, Aldershot, 1997) p 125.

[100]Governor-General the Earl of Minto, Prime Minister Sir Wilfrid Laurier.

[101]The style "Kingdom of Canada", proposed first at the time of federation, was again proposed in the Canadian Parliament in 1932; Fawcett, JES, *The British Commonwealth in International Law* (Stevens, London, 1963) p 79 fn 13.

beyond the seas". The Canadians responded with "king of all the British Dominions beyond the Seas", or "Sovereign", to avoid repetition.

The new style finally emerged as

> Edward VII by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith,[102] Emperor of India.[103]

Something of a compromise, it nevertheless recognised for the first time the constitutional position of the Dominions.[104]

A generation later, the 1926 Imperial Conference,[105] strongly influenced by the growing political independence of the Dominions, decided on a change to the royal style and titles. "United Kingdom" was removed and the equality of the Dominions stressed:

> George V by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

This was embodied in the Royal and Parliamentary Titles Act 1927.[106]

At the 1930 Conference, General James Hertzog and his supporters argued for a divisible Crown.[107] The preamble to the Statute of Westminster 1931 said that

> any alteration in the law touching the ... Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

Perceptions of unity of title, and unity of person, had come to be important aspects of imperial evolution. The Statute of Westminster made it clear that the United Kingdom and Dominions recognised the same Sovereign. The Statute stressed allegiance, and the conference stressed equality.

---

[102]The title of Defender of the Faith dates from 1521, when Pope Leo X conferred upon King Henry VIII the title of *Fidei Defensor*. In spite of its papal origin, the title was settled on the king and his successors in perpetuity by the King's Style Act 1543. The Sovereign's office of Supreme Governor of the Church of England is quite distinct.

[103]London Gazette 4 November 1901.

[104]The very fact that it resulted from consultations between London and the overseas territories- not yet called Dominions- ought not to be overlooked.

[105]*Imperial Conference* (1926) Parliamentary Papers, vol 11 1926 cmd 2768.

[106]Proclaimed and published in the London Gazette 13 May 1927. The official Latin form, which was used, inter alia, on the Great Seal of Canada, was given in the proclamation as:

G Dei Gratia, Magnae Britanniae, Hiberniae, et terrarum transmarinarum quae in ditione sunt, Britannica Rex, fidei Defensor, Indiae Imperator.

This was a surprising derivation from the agreed form. *In ditione* conveys an idea of subordination totally out of keeping with the accepted principle of equality of status; Kennedy, WPM, "Royal Style and Titles" (1953-54) 10 *University of Toronto Law Journal* 83, 84.

[107]Keith, AB, *Speeches and Documents on the British Dominions, 1918-1931* (Oxford University Press, London, 1932) p xx, xxiv, 210-212, 245, 246.

Indeed, it was the requirement of uniformity of succession laws which distinguished the relationship between the Queen's realms in the Commonwealth from a mere personal union such as existed between the United Kingdom and Hanover between 1714 and 1837- two realms with different rules of succession, Hanover not allowing the succession of a female.[108]

The relationship between the Queen's realms was not of this latter kind. As the Prime Minister of Canada declared in 1953:

> Her Majesty is now Queen of Canada, but she is the Queen of Canada because she is Queen of the United Kingdom and because the people of Canada are happy to recognise as their Sovereign the person who is Sovereign of the United Kingdom. It is not a separate office ... it is the Sovereign who is recognised as the Sovereign of the United Kingdom who is our Sovereign.[109]

The relationship between the various realms of the Sovereign, therefore, was not merely a contingent one, but inherent in the institution of monarchy as it has developed in the United Kingdom and in the realms of the Commonwealth.

However, changing emphasis had led to the (non-legal) equality stressed by the 1930 Imperial Conference having greater long-term effect than the (legal) allegiance stressed by the Statute of Westminster.

By 1952 Ireland was a republic, as was India.[110] Changing citizenship laws emphasised individual nationality rather than allegiance to a common Crown.[111] On the accession of Queen Elizabeth II, the Sovereign was for the first time proclaimed by different titles in the independent realms of the Commonwealth. In New Zealand the style was

> by the Grace of God, Queen of this realm and of all her other realms and territories, Head of the Commonwealth, Defender of the Faith.[112]

The Crown had apparently become divisible, although in matters of common concern, such as the succession to the throne, it was claimed uniformity to be still required.

The Commonwealth Conference held in London in December 1952 decided that each member of the Commonwealth would adopt its own form of royal style and titles, but that all the forms would contain a substantial common element.[113] These common elements included one designating the particular territory, a statement that Her Majesty was also Queen of Her other Realms and Territories, and that she was Head of the Commonwealth.

---

[108]Keith, AB, *The Dominions as Sovereign States* (Macmillan, London, 1938) p 104-105; *Re Stepney Election Petition* (1886) 17 QBD 54.

[109]House of Commons (Canada) 3 February 1953, p 1566.

[110]Following the 1930 Imperial Conference a new style was adopted:

George V, by the Grace of God, of the United Kingdom of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

[111]British Nationality and Status of Aliens Act 1914 (4 & 5 Geo V c 17) (UK); British Nationality Act 1948 (11 & 12 Geo VI c 56) (UK).

[112]Royal Titles Act 1947. The accession of the Queen was proclaimed by the Governor-General on 11 February 1952; New Zealand Gazette Extraordinary 8 February 1952 p 195 (proclamation approved); New Zealand Gazette Extraordinary 11 February 1952 p 197 (proclamation published).

[113]*Title of the Sovereign* (1953) cmd 8748.

The Acts passed by each of the then members of the Commonwealth after the 1952 conference had to reflect the fact that the other members of the Commonwealth were full and equal members with the United Kingdom, so that the Queen was equally Queen of each of her various realms, acting on the advice of her Ministers in each realm. The Acts also had to reflect the fact that, since 1949, the Sovereign had a special position as Head of the Commonwealth, symbolising the unity and free association of its members.

The aim of the conference, in the words of the preamble to the Royal Titles Act 1953 (UK) was:

> To reflect more clearly the existing constitutional relations of the members of the Commonwealth to one another and their recognition of the Crown as the symbol of their free association and of the Sovereign as Head of the Commonwealth.

The Act provided, therefore, that the diversity of the Commonwealth realms should be recognised by allowing the Queen to adopt a title suitable to the particular circumstances of the country concerned, but also that there should be a common element, symbolising the role of the Sovereign as a unifying factor in the Commonwealth.[114]

New royal titles legislation was no longer to be enacted, as it had been after the Statute of Westminster 1931, by the United Kingdom Parliament with the assent of the other countries. Moreover, the convention of 1931 that the adoption of a separate royal title for any of the Queen's realms requires the assent of the Parliaments of the other realms, seems now to have lapsed. It has been said however that any change in the Queen's title as Head of the Commonwealth could be made only with the assent of the Parliaments of all of its members.[115]

The local element reflected the divisibility of the Crown, but the commonality was not ignored. Without the common elements, the link between the various monarchies would have appeared a merely accidental one. These has been a fairly consistency preserved, though, as in New Zealand, the legal form has not always been the style used in the Oath of Allegiance.[116]

The New Zealand Parliament passed the Royal Titles Act 1953.[117] The obsolete expression "British Dominions beyond the Seas" was replaced by "other Realms and Territories", and the new style of "Head of the Commonwealth".[118] The royal style was now

> Elizabeth the Second, by the Grace of God of the United Kingdom, New Zealand and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

In the 1970s further alterations were made to the royal style and title across the Commonwealth.[119] In 1974

---

[114] *Title of the Sovereign* (1953) cmd 8748.

[115] The position of Head of the Commonwealth was discussed at the 1997 Edinburgh Commonwealth Heads of Government Meeting. The consensus was that the title remained annexed to the Sovereign of the United Kingdom.

[116] The Citizenship Act 1977 introduced New Zealand citizenship defined with reference to nationality, rather than as a sub-category of British subjects. The Citizenship Act 1979 simplified the royal style in the oath of allegiance to just "Queen of New Zealand".

[117] Royal Titles Act 1953; Royal Titles Proclamation 1953 (SR 1953/79).

[118] It was agreed that it should be placed on record that the designation of the Sovereign as Head of the Commonwealth did not denote any change in the constitutional relations between members, and, in particular did not imply that the Head discharged any constitutional functions.

[119] As in the Royal Style and Titles Act 1973 (Australia).

> Elizabeth the Second, by the Grace of God, Queen of New Zealand and Her other Realms and Territories, Head of the Commonwealth, Defender of the Faith

replaced the 1953 formula.[120] The contingent nature of the Crown was de-emphasised, and the Queen's royal style recast to reflect more clearly Her Majesty's constitutional status in New Zealand. This move was said to have been positively welcomed by the Queen.[121]

Before the Bill was introduced the British Prime Minister was informed of the intentions of the New Zealand government. He was said to have confirmed that the change would in no way affect the close relationship between New Zealand and the United Kingdom. In accordance with the agreement reached among the Prime Ministers and other representatives of the Commonwealth in 1952, all other members were informed of the change in the royal style.[122]

The 1974 Act still reflects a belief in a wider imperial Crown. The preamble to the Act states that:

> whereas it is desirable that the form of the royal style and titles to be used in relation to New Zealand and to those other territories [for whose foreign relations Her Government in New Zealand is responsible] be altered so as to reflect more clearly Her Majesty's position in relation to New Zealand and all those other territories.

Section 2 of the Act stated that:

> The royal style and titles of Her Majesty, for use in relation to New Zealand and all other territories for whose foreign relations Her Government in New Zealand is responsible, shall be ...

Yet, according to Matiu Rata, then Minister of Maori Affairs:

> [t]he 1974 Act was a critical precursor to the 1975 legislation[123] because it established the identity of the Crown in New Zealand by shifting the emphasis away from the Queen in England in the Royal Titles while at the same time emphasising the role of the Queen as Queen of New Zealand.[124]

Stevens, however, thought that the implications were less far reaching:

> The Royal Titles Act 1974 has emphasised the position of the Crown in the sovereignty of New Zealand as being distinct from the UK ... The Crown in New Zealand should not be seen as autochthonous. This new status necessitates an examination of the position of

[120]Royal Titles Act 1974. The Bill was introduced at the State Opening of Parliament by the Queen in person on 4 February, passed through all its stages the same day, and signed by Her Majesty. See New Zealand Parliamentary Debates 1974 vol 389 pp 1-3.

[121]Rt Hon JR Kirk, New Zealand Parliamentary Debates 1974 vol 389 pp 1-3. It is in fact constitutionally improper for a Member of Parliament, even a Minister, to claim royal support for a Bill, on the basis that such support would prejudice the fair consideration of the measure; Erskine May, Sir Thomas, *Parliamentary Practice* ed CJ Boulton (21st ed Butterworths, London, 1989).

[122]Rt Hon JR Kirk, New Zealand Parliamentary Debates 1974 vol 389 p 2.

[123]Treaty of Waitangi Act 1975.

[124]Hayward, "In search of a treaty partner" (1995) Victoria University of Wellington PhD thesis 147, citing personal comments by Matiu Rata, 28 July 1995.

> the Crown in the United Kingdom and New Zealand and of the role of the Queen and Her Governor-General in the contemporary government of the country.[125]

The changes in 1974 were significant, in that "Queen of New Zealand and Her other Realms and Territories" replaced "of the United Kingdom, New Zealand and Her other Realms and Territories Queen". The emphasis is not on equality, but on the Queen's position as Queen of New Zealand being of primary importance.

The changes in the royal style over time not merely reflected the changing nature of the Crown, but also encouraged the acceptance of this change. Thus the changes in royal style both followed wider political developments and also influenced the direction of these developments. The continued existence of a shared Sovereign encouraged the nationalisation of the Crown in the various realms. The continued presence of "and Her other Realms and Territories" makes it clear that some form of supra-national or imperial Crown was still (at least partly) envisaged, though it was probably anomalous for the British Prime Minister to be consulted.

With the adoption of the Constitution Act 1986, with its emphasis on the Sovereign as Queen of New Zealand, the process of the evolution of an autochthonous constitution could be said to be all but complete. These changes of symbolism followed, rather than led, the evolving independence of New Zealand, but they helped to emphasise that independence.

5 Conclusion

As the ramifications of the development of Dominion status became clearer, so the separate Dominions developed their own concepts of the Crown. The imperial Crown gave way before a multiplicity of national Crowns. This was driven generally by influences beyond the control of New Zealand, such as the abdication of King Edward VIII, and the Statute of Westminster. But New Zealand also took advantage, though often belatedly, of the mechanism which had become available to enhance and symbolise its independence.

While the Queen came to be regarded more and more as Queen of New Zealand, and only incidentally Sovereign of other countries, so a distinct New Zealand Crown evolved.[126] This is reinforced by changes in royal symbolism. The changing royal style and title made this separation even clearer. From the middle of the twentieth century the Sovereign of each realm has enjoyed a separate style and title. Yet common elements remain, and while these remain it remains uncertain just to what extent the divisible Crown is divided.

There remains uncertainty regarding the law of succession to the Crown, which seems to be a result of a reluctance to carry the concept of the divisibility of the Crown to its logical conclusion.

The practical role of the Crown in Canada lay as much in its provincial aspects as in any other. The usefulness of the Crown to the federal government also disinclined many politicians from seriously questioning it continuation. But the Crown has been recast in a more overtly Canadian form, through symbolic changes and through a greater emphasis upon the person of the Governor-General.

---

[125]Stevens, Donald, "The Crown, the Governor-General and the Constitution" (1974) Victoria University of Wellington LLM thesis xix.

[126]And, whereas in Canada and Australia the respective entrenched Constitutions could, to some extent, substitute for the Crown, the New Zealand equivalent, the Treaty of Waitangi, would seem to presuppose the continued existence of the Crown, or at least of an analogous symbolic institution.

In Australia, although the Crown has also been at least partially repackaged symbolically as a national Crown, there has been a more pronounced tendency to remove the symbolism- and the Crown. In part this is a product of the republican spirit of the country. But it also a result of the lesser role of the Crown in the federation.

New Zealand has not seen either of these approaches. There is no question of federal powers, nor does our constitution confer upon the Crown powers which might bring them into conflict with Parliament- at least no more than the Westminster parent. Thus the evolution of the Crown in New Zealand has been determined more by ad hoc decisions reflecting changing perceptions of national identity than by deliberate policy.

Changing the royal style and title do not of themselves change the constitutional position of the Crown, but they help to define it. These changes can reflect a changed view of the Crown, as did the 1953 and 1974 Royal Titles Acts. But they can also lead to a change in the way in which it is perceived. This occurred after the adoption of the Royal Titles Act 1974.

But it would be a mistake to read too much into a mere style and title, as can be seen in an example from Australia in the 1970s, when the Queensland government, in its disputes with the Commonwealth government, sought to rely upon a separate style of the Queen of Queensland.[127] Even more anonymously, in Canada the royal style is still

> Elizabeth the Second, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

Some of these symbolic changes occurred belatedly, only after substantive change had occurred. Thus, the Sovereign continued to be styled "of the United Kingdom, New Zealand and Her other Realms and Territories Queen" until 1974.

But other developments were more advanced, particularly those in the 1930s and 1940. For New Zealand's political independence came through her freedom to exercise the royal prerogative without recourse to Ministers in the United Kingdom. In particular, the development of a uniquely New Zealand conception of the Crown was to occur especially in the 1970s and 1980s, through the Maori-Crown dialogue.

[127]Introduced in an amendment to the Constitution by Sir Johannes Bjelke-Petersen; Constitution Act Amendment Act 1977 (Qld). Now repealed.