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Resilient

CROWN

CANADA'S MONARCHY AT THE PLATINUM JUBILEE

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Contents

Preface	1
<i>D. Michael Jackson and Christopher McCreery</i>	
Introduction	5
<i>D. Michael Jackson and Christopher McCreery</i>	

A CONSTITUTIONAL MONARCHY

1 The Crown, the Queen, and the Structure of the Constitution	13
<i>Warren J. Newman</i>	
2 The Crown's Contemporary Constitutional Legitimacy	31
<i>Jonathan Shanks</i>	
3 Canada's Entrenched Monarchy: The "Offices" of the Queen and Her Representatives	43
<i>Andrew Heard</i>	

THE CANADIAN CROWN AND INDIGENOUS PEOPLES

4 The Promise of the Crown in Indigenous-Settler Relations	65
<i>Keith Thor Carlson</i>	
5 Overturning Royal Monuments: Confronting History, Reconciliation, and the Honour of the Crown	81
<i>Serge Joyal</i>	
6 Treaty Spaces: The Chapels Royal in Canada	95
<i>John Fraser, Carolyn King, and Nathan Tidridge</i>	

REPRESENTING THE SOVEREIGN

7 The Enduring Crown in Canada: Reflections on the Office of Governor General at the Platinum Jubilee	109
<i>Barbara J. Messamore</i>	

- 8 The Lieutenant Governors — Second Fiddles or
Coordinate Viceregals? 127
D. Michael Jackson
- 9 The Spare Fire Extinguisher: The Administrator of
the Government of Canada 149
Christopher McCreery

PERSPECTIVES ON THE CROWN IN CANADA

- 10 A Right Honourable Journey:
The Queen and Her Canadian Prime Ministers 177
Arthur Milnes
- 11 The Rise and Fall of French Canadian Loyalism 197
Damien-Claude Bélanger
- 12 Royal Tours of Canada in the Reign of Queen Elizabeth II 211
Carolyn Harris
- 13 Queen Elizabeth II: A Personal Tribute 227
David Johnston
- Notes 243
- About the Contributors 277
- Image Credits 283
- Index 285
- About the Editors 295

My ambivalence stems from my belief that the evidence suggests that, despite its shortcomings, the institution of our hereditary constitutional monarchy continues to hold more potential for progressive action on behalf of Indigenous people vis-à-vis a motivated settler majority than an elected head of state who derives authority from the electorate, such as exists within the system adopted by our American neighbours to the south. My personal feelings are, perhaps, not dissimilar to the conflict that necessarily exists in the relationship between Indigenous title and rights in Canada and Crown sovereignty in Canada. The Canadian Supreme Court, for example, has concluded that the "duty of the [Crown's] honour derives from the Crown's assertion of sovereignty in the face of prior Aboriginal occupation."¹ The assertion, therefore, holds within it the contradiction that the Crown's own sovereign position recognizes the *sui generis* nature of Indigenous sovereignty as something derived from Indigenous Peoples' prior occupation of Canadian territory.² The Supreme Court has recently clarified what an examination of our history reveals, viz., that *sui generis* Indigenous rights create a special fiduciary obligation on the part of the Crown to "to treat [A] boriginal peoples fairly and honourably, and to protect them from exploitation."³ It is in light of these legal and political realities, informed by the historical discussion below, that I regard myself as a reluctant monarchist.

Indigenous Peoples' relationship with the Crown is inevitably shaped by settler colonialism. Scholars such as Patrick Wolfe and Lorenzo Veracini have shown that settler colonialism is a distinct form of colonialism characterized by settlers who displace Indigenous people with the goal of opening lands to exploitation and ownership. Colonialism in places like India under Britain, for example, was different. There, a small number of colonists used military force to control Indian labour while they reshaped the diversified Indian economy toward the production of cotton. The cotton was then sent to Britain where it was transformed into wealth via the British textile mills. In settler colonial states like Canada, the United States, Australia, and New Zealand, by way of contrast, settlers arrived in ever-growing numbers and quickly came to regard themselves as distinct and separate from the residents of their countries of origin. Indeed, within a few generations settlers came to think of themselves not as colonizers occupying Indigenous Peoples' lands,

but rather as inheritors of land that their forefathers and foremothers had passed to them. Thus, while American and Canadian societies regard 1776 and 1867, respectively, as the dates that marked their transition from British colonists to citizens of independent nations, Indigenous people see and experience these histories differently.⁴

In settler colonial societies Indigenous people are socially, politically, and geographically marginalized. Settlers in settler societies want land and they regard Indigenous people as impediments, as problems that have to be removed. In Canada, Indigenous people were forcibly restricted to relatively small Indian reserves on lands that were typically marginal in terms of their ability to generate wealth for their residents.

Restricted to reserves, Indigenous people in Canada were additionally marginalized by being prevented from purchasing fee simple lands and in other ways from being fully able to engage in the economy as owners and operators of business. What was left as long as there were insufficient settlers to fill settler needs were positions as wage labourers — and typically these were seasonal and therefore unable to provide families with economic security and left them vulnerable to fluctuating commodity prices.

Indigenous people were also denied the franchise until 1962 — by which time they had long since become a minority in their homelands. In all meaningful ways, settler colonialism worked to exclude Indigenous people from the decision-making processes related to both themselves and to their ancestral lands and resources.

As a result, settler colonialism is not simply something that happened to Indigenous people in the past. That is to say, it is not merely an event that Indigenous people should be encouraged to “get over.” Rather, settler colonialism is a structure of ongoing oppression. It works to ensure that for as long as Indigenous people resist being assimilated into Canada and becoming just another ethnic and racial minority they will remain socially marginal and economically impoverished and without meaningful control of their ancestral lands and resources. Indigenous people may retain legally protected rights, but these rights have not been meaningfully protected or operationalized. Accordingly, Indigenous people living under Canadian settler colonialism have been left with few economic opportunities, stigmatized

by high levels of drug and alcohol addiction, relegated to low educational achievement rates, and over-represented in prisons.

Put another way, as settler Canadians have been building equity in their homes, Indigenous people have been fighting for recognition of their land rights. As settler Canadians have derived benefits from Crown lands and resources, Indigenous people have been confronted by clearcuts and open-pit mines where they used to conduct ceremonies, hunt game, fish, and gather. As settler Canadians have set aside park lands for their aesthetic enjoyment, Indigenous people have been criminalized for hunting, fishing, and gathering on these portions of their ancestral lands. As settler Canadians developed publicly funded local schools to inculcate the skills needed to succeed in Western society, Indigenous people were sent to residential schools where the pedagogical objective was to strip children of their culture while providing them a second-rate academic education that relegated them to the lowest rungs on Canada's economic ladder. And as settler Canadians have built democratic traditions and institutions, Indigenous people have struggled just to be heard.

Settler colonial societies, in other words, elect governments that represent settler colonial interests. Even though Canadian common law (and more recently the *Constitution Act, 1982*, Section 35) guarantees Aboriginal and treaty rights, settler colonial society has systematically worked to undermine and erode those rights. Indeed, in the face of Indigenous political activism in the early twentieth century the federal government even passed legislation that made it a criminal offence for Indigenous people to raise funds toward pursuing claims against the Canadian government.⁵

Given all this, it is perhaps less ironic than it might otherwise first appear that over the past two centuries it has been the Crown, and not Canada's elected governments, that has served as the more effective check on the excesses of settler colonialism. It has been the Crown that has served as a source of power to which Indigenous people have been able on occasion to appeal successfully to have their rights recognized and operationalized vis-à-vis settler interests.

Consider, for example, how in 1763, over strenuous opposition from settler colonists in Britain's thirteen American colonies, it was the monarch

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King George III who proclaimed that because of "great Frauds and Abuses" having been committed by settlers against Indigenous people, all remaining unceded Indigenous lands were protected from further occupation by settlers until after nation-to-nation treaties had been negotiated and concluded. Additionally, he proclaimed that the Crown did

further strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.⁶

While receiving less attention in American popular memory than the supposed insult of taxation without representation in the British parliament, resentment toward the Royal Proclamation of 1763 was among the justifications American settler colonists cited in their decision to rebel in 1776:

He [King George] has [through the Royal Proclamation of 1776] excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.⁷

After U.S. independence, Indigenous military allyship with the British was therefore not a simple client-patron relationship, but rather a rational decision on the part of Indigenous people, like Tecumseh, to work with the British Crown against a settler colonial foe.

On the other side of the continent, and nearly a century later, in 1858 (twenty years after the Durham Report had recommended responsible government for the Canadian colonies, and a decade after responsible government was implemented in the Canadas), British Columbia was deliberately established as a Crown colony with no elected legislative body. This was done principally because the large number of American gold miners

who had entered the region could not be trusted to be loyal to Britain. Importantly, however, it was also because even the loyal British miners and settlers who had arrived in the region could not be relied upon to respect Indigenous people and their rights. Accordingly, Colonial Secretary E. Bulwer-Lytton explained to the incoming governor, James Douglas, that the apparatus of responsible government would be "temporarily" withheld in British Columbia until "by the growth of a fixed population the materials for those Institutions shall be known to exist."⁸

With specific regard to the issue of Indigenous people, Bulwer-Lytton explained the following to Governor Douglas:

I have to enjoin upon you to consider the best and most humane means of dealing with the Native Indians. The feelings of this Country would be strongly opposed to the adoption of any arbitrary or oppressive measures towards them.

At this distance and with the imperfect means of knowledge I possess, I am reluctant to offer as yet any suggestion as to the prevention of affrays between the Indians and the Immigrants. This question is of so local a character that it must be solved by your knowledge and experience, and I commit it to you in the full persuasion that you will pay every regard to the interests of the Natives which an enlightened humanity can suggest ... Above all it is the earnest desire of Her Majesty's Government that your early attention should be given to the best means of diffusing the blessings of the Christian Religion and of civilization among the Natives.⁹

Speaking before Parliament, Lytton clarified that "the immediate object" in providing Douglas with his exceptional executive powers was "to establish temporary law and order amidst a motley inundation of immigrant diggers ... of whom perhaps few if any, have any intention to become resident colonists and British subjects."¹⁰

Similarly, in what became the Canadian prairie provinces, between 1871 and 1921 the Canadian Crown concluded eleven treaties with the

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Indigenous people. In signing these agreements Indigenous people understood the Crown (and not the elected Canadian government) to be entering into a covenant that committed the state to intercede to defend Aboriginal rights and interests in the event of conflicts with settlers.¹¹

The conviction that the Crown represented a voice distinct from that of the elected provincial and federal governments, and that that voice had genuine agency, was expressed in the aspirations of British Columbia's Indigenous leaders, who empowered a delegation of three regional leaders to represent their interests directly to King Edward VII in Buckingham Palace in 1906.¹²

Led by Chief Joe Capilano, this delegation intentionally chose to bypass the provincial and federal governments and lay their grievances over the lack of recognition of their rights and title directly before the monarch. Their goal was to secure a promise from King Edward VII that he would task someone disconnected and independent from the settler government with looking into their concerns and protecting their rights: "We are sure that a good man, or some good men, will be sent to our country who will see, and hear, and bring back a report to your majesty."¹³

Remembering his participation in the 1906 delegation and his audience with King Edward VII, in 1913 Charlie Isipaymilt of Cowichan told the government agents who visited his community the following:

I went to the King a few years ago to try to get some settlement from the King, and when I got there, the King gave me this photograph. His Majesty promised to do something for us, and said he would send somebody out to look into the matter. The King told me that I need not feel very sorry about these things, as if there was anything he could do[,] anything for me, he would do it.¹⁴

Settler hostility to Indigenous aspirations manifested itself both formally (the federal government instructed the high commissioner in London to distract the delegates while delaying the audience with the King and working to ensure that Indigenous politics would not be discussed in the King's

presence¹⁵) and informally in the form of genuine threats of physical violence from local settlers. With regard to the latter, Capilano explained to British reporters in London the message that his white neighbours had provided him prior to his leaving for Britain: "They told me, the white men told me, not to come to the great King ... because he did not like his dusky children. We would never go back to our people alive, they said."¹⁶

More recently, in 1982, Indigenous people invoked their relationship with the Crown to wrestle from the Canadian settler government formal constitutional recognition of their rights. And in 1995, Indigenous people in Quebec reminded settler Canadians that their relationship with the Crown stood outside the theatre of French-English settler colonial politics. They asserted that their relationship with the Crown prohibited the francophone majority from having the authority to withdraw the lands of the province of Quebec from Canada without their consent.¹⁷

Perhaps a useful way to frame the Crown in Indigenous-settler relations is to consider how, unlike the United States, where the president is both the head of the government and the head of state, in Canada our prime minister is never more than the head of the settler government. Canada's governors general (who, unlike our elected prime ministers, have in recent years included women of colour from racialized ethnic communities and, indeed, today Mary Simon of Kangiqtualujjuaq) are non-elected officials appointed on the advice of the prime minister by Her Majesty the Queen to protect the honour of the Crown.

Of course the governors general always leave the running of the government to the prime minister, the elected government, and Parliament. But, as the unelected representatives of the Crown, governors general do not answer to, nor are they accountable to, a settler colonial constituency. As the embodiment of a set of principles and ideals, the Crown has been understood by many Indigenous people over time as holding the power to not only transcend, but to challenge settler colonial agendas that are inconsistent with the rights of Indigenous people and the honour of the Crown.

To illustrate my meaning, let us look more closely at the historical relationship between the Crown and the Indigenous people of one particular territory — the Stó:lō of the lower Fraser River watershed.

In 1858, James Douglas, the governor of the new colony of mainland British Columbia, engaged in a lengthy correspondence with senior officials in the Colonial Office, seeking to determine the role Indigenous people would play within a territory that had almost overnight transitioned from an economy anchored in the fur trade into one characterized by industrial mining. Indeed, whereas there had been less than a hundred non-Indigenous people residing along the lower Fraser River in January of 1857, by August of that same year there were over thirty thousand (mostly American) miners scouring the riverbanks for gold.

As governor, Douglas thought deeply about what might, and might not, work to promote positive Indigenous-settler relations. Not only did he speak directly with Indigenous people, he also drew on his lived experience. Moreover, he reflected on lessons that could be learned by looking elsewhere. In the adjacent Washington Territory, for example, a bloody war had just ended that had resulted in Indigenous people being restricted to small collective Indian reservations where they were marginalized from settler society and excluded from settler governance and the settler economy.¹⁸ Indeed, in Washington, as in other American jurisdictions along the Pacific Coast, laws had been passed that made it impossible for a white man to be convicted in court on the testimony of an Indian. And in California, literally thousands of Indigenous people had been systematically exterminated by miners and ranchers who regarded them as impediments to their success.¹⁹

In British Columbia, Indigenous people petitioned Douglas, imploring him to ensure that they be spared a similar fate. The governor explained to officials in Britain that he had assured the colony's Indigenous population of the Crown's integrity:

They evidently looked forward with dread to their own future condition, fearing lest the same wretched fate awaited the natives of British Columbia [as occurred in Washington and California]. I succeeded in dis-abusing their minds of those false impressions by fully explaining the views of Her Majesty's Government.²⁰

Then, over intense opposition from British Columbian settlers, as well as from senior officials within his own administration, Douglas, in the name of the Crown, launched a policy aimed at developing the colonial economy while simultaneously protecting Indigenous rights and securing for Indigenous people a respected, and respectful, position within the new, emerging colony society.

Central to the governor's policy was the protection of large tracts of lands he defined with the term "anticipatory Indian reserves." He called these "anticipatory" because he intended them to protect Indigenous Peoples' anticipated long-term economic interests within the rapidly developing settler economy. Douglas expected that commercial agriculture would become central to British Columbia's future prosperity and so he instructed his agents to work with Indigenous people to collaboratively identify as reserve lands those spaces that consisted of existing villages, as well as burials and cultivated fields. But beyond these, he directed that the reserves include sufficient lands that would facilitate Indigenous people's anticipated future success in commercial farming and commercial ranching.²¹

In the Fraser Valley, giant reserves, such as the 9,600 acre Máthxwi (Matsqui) anticipatory reserve, were mapped and demarcated under Douglas's authority with the active participation of Indigenous people. In the Okanagan and Thompson Rivers regions anticipatory reserves were similarly created. Due to the anticipated differences in land use between the coast and the interior (cattle ranching as opposed to farming), the anticipatory reserves set aside for Secwepmc, Nlakalamux, and Okanagan people were an order of magnitude larger than those in Stó:lō territory (i.e., what is now the Abbotsford and Chilliwack regions). The Kamloops reserve, for instance, was roughly the shape of a triangle, running six miles east-west and twelve miles north-south. Similarly, the reserve at the foot of Okanagan Lake measured twenty square miles.

In addition to anticipatory reserve lands, Governor Douglas also confirmed that Indigenous people would continue to have the right to access and use open and unclaimed Crown lands beyond the boundaries of their Indian reserves:

I made them clearly understand that Her Majesty's Government felt deeply interested in their welfare, and had sent instructions that they should be treated in all respects as her Majesty's other subjects.... I also explained to them ... that they might freely exercise and enjoy the rights of fishing the Lakes and Rivers, and of hunting over all unoccupied Crown Lands in the Colony.

Douglas went on to note that

they were delighted with the idea, and expressed their gratitude in the warmest terms, assuring me of their boundless devotion and attachment to Her Majesty's person and Crown, and their readiness to take up arms at any moment in defence of Her Majesty's dominion and right.²²

Under Douglas's system, fishing and hunting rights on Crown lands would ensure that Indigenous people remained self-sufficient and could continue to practise their cultural traditions despite the pressures associated with the growth of settler communities. Indigenous people who spoke directly with Douglas later remembered him as having said,

For which land I have surveyed it belongs to the Indians only, that no white men shall intrude on your land. And for all the outside lands Her Majesty Queen Victoria will take and sell to the white people and that which is taken away from the Indians will be like a fruit tree and from this fruit Her Majesty Queen Victoria will give it to the Indians for their lasting support.²³

Oral histories recorded after Douglas's retirement and still circulating within the Stó:lō community assert that Douglas and his successor, Governor Frederick Seymour, both committed to the future payment of compensation for lands alienated from its use and governance. Significantly, Governor Douglas also ensured that Indigenous people would be able to participate equally with settlers in all other aspects of the emerging society. During

his administration he established policies that entitled Indigenous people to pre-empt and own fee simple lands; they were entitled to commercially extract timber and mineral resources, they were entitled to vote (though they were never systematically informed of this right), and they were appointed to government positions, such as magistrates, where they held genuine authority within the structures of the emerging settler society.²⁴ And, importantly, they were empowered to do all of these things without the accompanying loss of Indigenous status (and rights), as was subsequently incorporated into legislation by the Canadian government in the 1876 *Indian Act*.

It did not take long, however, for the settler government to begin undoing the provisions the Crown's representative had established to protect Indigenous people's rights and secure Indigenous people's future. Mere weeks following his retirement from office in April 1864, voices within the newly created legislative council were denouncing Douglas as having betrayed settler interests, of having "potlatched away" the best lands in the colony by consenting to having them locked up as Indian reserves. And within a few short years all that Douglas had done in cooperation and consultation with Indigenous people to create a relatively respectful and respected place for them within the emerging colonial society had been undone. Indeed, in most cases it had been disavowed.

Consider, for example, that the large anticipatory Indian reserves created to protect Indigenous economic interests were unilaterally reduced by Douglas's successor, without Indigenous consent, by over 90 percent; the right to pre-empt land outside their reserve was repealed; the right to catch and sell fish from the Fraser River was restricted to white men with government-issued licences — and then only to those who fished in nontidal waters downriver of present-day Abbotsford; the ability to hunt was restricted to subsistence hunting and regulated by game laws designed in the interest of non-Indigenous sportsmen; forests were managed under a regime that valued the fibre content of trees and was regulated principally in the interests of large corporations; existing Indigenous magistrates were no longer recognized and no new ones were appointed; legislation was passed explicitly denying Indigenous people the franchise; Indigenous spirituality and ceremony (the "tamanawas" winter dance) were outlawed; Indigenous

governance (the potlatch) was made illegal; and for the next century an informal system similar to the “Jim Crow” laws in the United States ensured that Indigenous people remained socially marginalized. Indeed, as contemporary Elders today explain, up until the 1960s Indigenous people found that they were not welcome in most restaurants, they were formally relegated to certain sections of movie theatres, and of course their community’s children were sent to distant residential schools.²⁵

Despite the settler colonial juggernaut, the Stó:lō and other Indigenous groups (like their upriver Nlakapamux relatives and neighbours) continued to make formal efforts to carve out specific physical, governmental, social, legal, and economic spaces for themselves *within* Canada. Importantly, for the purposes of this essay, these proposed spaces explicitly included roles for the Crown and governor general as buffers between Indigenous governments and settler provincial and federal governments. In each instance, however, elected federal or provincial government officials intervened to discredit the Indigenous spokespersons and to place settler interests above those of the territory’s original inhabitants, thwarting Indigenous aspirations and efforts at building reconciliation.²⁶

More recently (after the 1927 prohibition on raising funds to hire lawyers to pursue Aboriginal rights litigation was repealed in 1951), Indigenous people have made some progress in operationalizing their rights and in receiving compensation for past harms. This success has largely been tied to court and tribunal challenges where they have been able to argue that the honour of the Crown had been breached by settler governments.

Settler society as a whole, and Canadian elected officials in particular, have not freely and compassionately moved to build reconciliation — to dismantle settler colonialism. Rather, they have been dragged to the table by court challenges and Indigenous political activism that appealed to the honour of the Crown and argued breach of fiduciary obligations. In jurisdictions like British Columbia, governments initiated modern treaty negotiation processes and began working to restore alienated rights and help rebuild injured cultures in meaningful and significant ways only after a string of court decisions made it increasingly expensive and embarrassing not to do so. And even then, governments typically only made such moves after

corporate interests pushed them to act in order to establish "predictability" in future resource sector developments.²⁷

The above discussion should not be taken, however, to imply that Indigenous people have always had, or necessarily still hold, an unshakable faith in the Crown and its honour. Certainly Indigenous people are not, and have not been, naive about what the Crown is and its role in Canadian parliamentary democracy. Indeed, it is the examples of incidents when Indigenous people were upset with, or disappointed in, the Crown that truly reveal the extent to which Indigenous people regarded the Crown as an active agent and potential ally in their relations with settler society and government.

As early as 1874 Stó:lō and neighbouring Indigenous Peoples boycotted Queen Victoria's birthday celebrations in New Westminster. The reason was outlined in a petition: "We are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have always been quiet, obedient, kind and friendly to the whites." Failure to give them "satisfaction," the petitioners warned, would "create ill feelings, irritation among our people, and we cannot say what will be the consequence." And when a year later there had still been no corrective action from the government, Chief Alexis of Cheam penned another letter, this time asserting that Queen Victoria had "not been a good mother and Queen to us." When asked by the provincial secretary to comment on their situation, local Indian commissioner, James Lenihan stated that he was shocked to find within Alexis's letter "language disrespectful of Her Majesty" and "threats of violence towards any white settler who may try to pre-empt lands" that the Indigenous community felt should be included within their reserves.²⁸

Consider too, for example, the account from Chief Alexis in 1876 when he told the local Indian agent the following:

You told us that our great mother the Queen was good and powerful, and we believed you. We know that she has only to speak to this government and our lands must be fixed; we wonder why our great mother does not speak, we want you to tell her that we have said, we were promised 80 acres of land to each

family and now we are treated like children and we are put off with 20 acres, which is not enough if we are to do like the white-man, shall we be obliged to turn to our old ways?²⁹

More recently, the scandal surrounding Governor General Julie Payette's alleged abusive behaviour toward her staff and neglect of her viceregal duties tarnished the Crown in many people's eyes, as did her earlier public dismissal of spirituality, even as she made pious statements about the value of listening to Indigenous Elders. It is too early to say whether the recent appointment of Inuit politician and traditional knowledge keeper Mary Simon of Kangihsualujjuaq will help to restore people's respect for the office.

Indigenous people have been remarkably successful in convincing Canadian courts of the existence of their rights, and of the ways in which settler governments have violated those rights, and by extension, the honour of the Crown. But Canada's democratic majority has consistently pushed back against these victories, and our elected governments have often failed to implement new policies and laws that would breathe life into Indigenous people's constitutionally protected Aboriginal and Treaty Rights.

In a way that speaks to contemporary issues as if it had only been spoken yesterday, I close this essay with an invitation to reflect upon the words of Chief Charlie of Máthxwi when he stood before British Columbia's Royal Commission on Indian Affairs more than a century ago and asserted:

In the time of Sir James Douglas he made a lasting promise to us Indians, as all the Indians Reserves lasting support and benefit by the name of Queen Victoria.³⁰ Also Governor Seymour the second Governor. He also made a lasting promise to us Indians in New Westminster that we will receive or deserving one-fourth from all taxes this money for our support and to improve our land. The promises were never kept. If those good promises was kept up by the British Columbia government the Indians would be all rich, and they would be all living comfortably; be as happy as our white brothers today.³¹

Chief Charlie's statement reminds us that as Canadians we are generally free to oppose, criticize, and even hate our heads of government without fear of being perceived as, or accused of, opposing the Canadian state. Unlike our neighbours to the south, we have never had a parliamentary equivalent to the infamous U.S. House Committee on Un-American Activities.³² Indeed, as Indigenous people have so ably demonstrated throughout history, opposing and challenging our government's commitment to advancing the interests of settler colonialism has on occasion been a means of bolstering the honour of the Crown, and thereby decolonizing key features of settler colonialism. The monarchy is not the only way to achieve this, but, for all its shortcomings and flaws, I would argue that it has done more in this regard over the years than Canadian democracy.