

# THE EVOLUTION OF THE OFFICE OF GOVERNOR-GENERAL OF NEW ZEALAND

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## Abstract

This paper will concentrate upon one aspect of the Crown, and examine the process which turned the once imperial institution of Governor-General into a national office, representing a national Crown. In this will be shown one of the ways in which the Crown has acquired a national identity.

The purpose of this paper is to test the hypothesis that the Crown was a principal agency through which New Zealand independence was acquired or at least symbolised. The attributes of independence were largely seen in those political processes (such as the signing of treaties, and declarations of war) reserved to independent countries. The uncertainty of the process is shown by the inability of commentators to assign a date of independence to New Zealand (or Canada and Australia). This gradual process of conferring independence is illustrated in the office of Governor-General. The paper will also explore how the Crown has been used to symbolically reflect this independence.

This paper is in three sections. The first looks at the evolution of the office of Governor-General. Once the tool of imperial government, the Governor-General became one of the principal means through which national independence is symbolised. The process again is one primarily of the political executive, with legal changes having generally followed practical or political changes<sup>2</sup>.

The second section looks at the choice of people to fill the office of Governor-General, how this has reflected changing social and political cultures, and how it may have also served in some respects to direct the further evolution of the office.

The third section looks at the patriation, or nationalisation, of the office. This will consider the means by which the office acquired a patina of national identity, and effects of the nationalisation of the office of Governor-General upon the evolution of the Crown. In particular, this looks at the way in which the office has come to symbolise national identity, in the permanent absence of the Sovereign.

The evolution of the office of Governor-General in New Zealand has been both influenced by and an influence on the developing independence of New Zealand. It has both reflected political changes and been a determinant in such changes. An office at once symbolically important and yet lacking in political power was a means through which national identity was expressed and reinforced. This process was important for New Zealand. But it is also important as a pointer to possible parallel developments further afield, as in the United Kingdom and the wider European Union.

## 1 Introduction

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<sup>2</sup>As is shown by the slowness with which the Letters Patent of 1917 constituting the office of Governor-General were updated.

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## 2 Evolution

For most purposes the head of State of New Zealand is the Governor-General. But New Zealand is not a de facto republic, but rather a de facto “localised monarchy”<sup>4</sup>, albeit one which could be characterised as minimalist in nature. The Governor-General derives his or her status from both his or her constitutional position, and their role as representative of the Sovereign. For the concept of the Crown remains administratively and legally potent, even if the incumbent is no longer socially or politically important.

In the near-permanent absence of the Sovereign, the Governor-General has assumed more of the state and powers of the Sovereign, till he or she can be equated with the Sovereign in all but permanence. The Governor-General is de facto king or queen, a true viceroy in practice if not in law.

The Governor-General might be a transient appointee, but the Crown continues. But it remains at least in some aspects linked to the British Crown, sharing not only the person, but many of the symbolic trappings of the British monarchy. To deny the continuing twofold nature of the Crown would be pointless, but the perceived legal division has had the effect of

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<sup>3</sup>As is shown by the slowness with which the Letters Patent of 1917 constituting the office of Governor-General were updated.

<sup>4</sup>Ladley, Andrew, “The Head of State” in Miller, *New Zealand Politics in Transition* (1997) 55.

gradually altering the nature of the Crown in New Zealand. This can be seen in the evolution of the office of Governor-General.

The structure of imperial government in the nineteenth century relied on governors, men<sup>5</sup> who, appointed by the Crown on the advice of the Minister responsible at that time for colonial affairs, would administer the colonies. These men, and the Governors-General who succeeded them in the Dominions, had a dual role<sup>6</sup>. In matters of domestic concern they were to act on their own initiative (and after the advent of responsible government, on the advice of local Ministers). But in matters which affected imperial interests they were to act on the instructions of the imperial government<sup>7</sup>.

Following the granting of responsible government, colonial executive councils had come more and more to conduct their business without the governor being present<sup>8</sup>. The separation of the dignified from the efficient, to paraphrase Bagehot<sup>9</sup>, proceeded largely without interruption. But these changes were generally accomplished by changes in conventions rather than by formal legal change<sup>10</sup>.

From the 1890s colonial governors were more constitutional sovereigns than administrators, and this was reflected in the types of men then being appointed<sup>11</sup>.

The Imperial Conference of 1911 saw a limited concession of authority to the Dominions in the field of imperial defence and international affairs. This had a significant effect on the role of Governor-General, as the emerging mechanisms of imperial co-operation led to the office being increasingly bypassed<sup>12</sup>.

The governments of the Dominions generally disliked and mistrusted the duality implicit in the role of Governor-General<sup>13</sup>. For this reason they were reluctant to repose full confidence in them, and sought to divest them of their role as agent of the British government<sup>14</sup>.

The First World War, and the separate involvement of the Dominions in the peace conferences after the war, greatly speeded up the hitherto gradual evolution of Dominion independence. The Governor-General ceased to receive reports from the Foreign Office after

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<sup>5</sup>At the relevant times these Governors were all men. The first female Governor was Dame Hilda Louisa Bynoe (Grenada, 1968-74). The first female Governor-General was Dame Minita Gordon (Belize, 1981-83).

<sup>6</sup>Cunneen, Christopher, *King's Men* (1983) ix. The origins of this may be traced to the Durham Report, which advocated responsible government for the principal settled colonies; Durham, Lord, "Report on the Affairs of British North America" reprinted in Keith, AB, *Selected Speeches and Documents on British Colonial Policy* (1961) 139.

<sup>7</sup>See Cunneen, Christopher, *King's Men* (1983) 25-28 and CO 418/10/29263 for an account of the Governor-General's reaction to the Immigration Restriction Bill (Australia).

<sup>8</sup>In the usual arrangement, the Governor chaired the Executive Council. The advent of responsible government saw more decisions being taken in the absence of the Governor.

<sup>9</sup>Or in Lowell's terms, the governmental from the monarchical Crown; Lowell, Colin Rhys, *English Constitutional and Legal History* (1962).

<sup>10</sup>Smith, David, *The Invisible Crown* (1995) 38.

<sup>11</sup>Cunneen, Christopher, *King's Men* (1983) 2-6.

<sup>12</sup>Hancock, IR, "The 1911 Imperial Conference" (1966) 12 *Historical Studies* 306.

<sup>13</sup>In later years care was taken that representations on behalf of London were not made public, for fear of criticism of perceived interference in Dominion affairs.

<sup>14</sup>Mansergh, Nicholas, *The Commonwealth Experience* (1969) 213.

1920<sup>15</sup>. The opportunity came in 1926 to abandon the duality altogether, and to obtain Dominion monopoly on advice to the Crown, starting with advice to the Governors-General<sup>16</sup>.

The Imperial Conference of that year adopted the report of the Inter-Imperial Relations Committee that:

the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by HM the King in Great Britain<sup>17</sup>.

The adoption of this policy was to have far-reaching consequences. The Conference, and that of 1930, adopted the principal that a Governor-General would in future be appointed on the advice of the Dominion rather than the British government<sup>18</sup>. In 1930 it was agreed that Governors-General would be appointed on the advice of the appropriate Dominion Ministers<sup>19</sup>. This did not of course affect the position of Australian state governors, who continued to be formally appointed on the advice of British Ministers until the enactment of the Australia Act 1986<sup>20</sup>.

As a logical corollary of the new policy, Governors-General could now be removed on the advice of Dominion Ministers. De Valera terminated McNeill's appointment as Governor-General of the Irish Free State in 1932 by going directly to the king, as was permitted under the 1930 Conference convention<sup>21</sup>.

But it was the control of the power of appointment which was seminal. Scullin's insistence that the responsibility for recommending an appointee to the office after 1930 lay with the Australian Ministers almost completed the process of ending the role of the Governor-General as agent of the British government in Australia<sup>22</sup>. For if the appointment

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<sup>15</sup>CO 418/216/1941.

<sup>16</sup>Cunneen, Christopher, *King's Men* (1983) 168.

<sup>17</sup>*Parliamentary Papers*, vol xi 1926 cmd 2768 p 560 para IV (b).

<sup>18</sup>Lord Stamfordham, the King's Private Secretary, believed that the 1926 Conference divested Governors-General of all political power and eliminated them from the administrative machinery of their respective Dominions; Letter to Lord Passfield, 29 March 1930, DO 121/42/30 quoted in Cunneen, Christopher, *King's Men* (1983) 175.

<sup>19</sup>*Parliamentary Papers*, vol 14 1930-1 cmd 3717 p 595.

<sup>20</sup>Section 7(5) of that Act states that:

The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

Prior to 1986 all state governors were formally appointed on the advice of the British Prime Minister, though informally the choice was made by the state Ministry. The appointment of locally-born governors mirrored the national development, though usually slightly delayed. Thus in Tasmania, for example, the former Governor of Western Australia, General Sir Charles Gairdner (1963-68) was replaced by a former Governor of South Australia, Briton Lieutenant-General Sir Eric Bastyan (1968-73). His successor was the locally-born former Chief Justice, the Hon Sir Stanley Burbury (1973-82). It is now settled practice that the governors will be Australian citizens.

<sup>21</sup>Evatt, Herbert, *The King and his Dominion governors* (1967) 192-197.

<sup>22</sup>Cunneen, Christopher, *King's Men* (1983) 188. In Australia the Governors-General were appointed after informal consultation with the Sovereign. Certainly, this was fully observed

and dismissal of a Governor-General lay with Australian Ministers, it was incongruous that they should have any independence relationship with the government of the United Kingdom.

New Zealand, and Newfoundland, did not immediately follow the policy change to accept local control of appointment. The Governor-General of New Zealand retained his dual role as representative of the king and as agent of the United Kingdom government, and the New Zealand government's channel of communications with it, until the appointment of Sir Cyril Newall in 1941<sup>23</sup>. Until then appointments to the office in New Zealand continued to be made on the formal advice of a British Minister, rather than of the New Zealand Prime Minister<sup>24</sup>.

The reasons for this delay in New Zealand are not entirely clear. While the Governor-General remained formally an appointee of the British government it was seen as appropriate for him to continue to also act in some respects as agent of that government. Whether the lack of a desire to control the appointment of Governors-General or a desire to continue his dual role was determinative in the delay is difficult to assess on the surviving evidence. But it would appear that the former is most likely, as New Zealand shared, though to a lesser extent, the Dominions mistrust of the dual role of a Governor-General<sup>25</sup>.

More likely, the failure to assume responsibility for the appointment of Governors-General in 1930 was due to political indecision, and a fear of cutting established links. Both reasons were based on historical factors rather than constitutional or theoretical considerations. The Ministers seem to have felt no particular need to have the right to formally advise the Sovereign on the appointment of Governors-General, so it was expected that British appointees would continue to be chosen. If this meant that the Governor-General continued to act as agent of the British government, this too had its advantages.

That the Governor-General did still enjoy a measure of independence prior to 1939 can be seen in the assessment of the office during the inter-war years by Ross<sup>26</sup>. In particular, through a ready access to the Prime Minister, a partial financial independence, and being agent of the British Government as well as personal representative of the king, the New

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under Menzies, in the selection of Slim, Dunrossil, De L'Isle and Casey; Hasluck, Sir Paul, *The Office of Governor-General* (1979) 43.

<sup>23</sup>Brookfield, FM, "A New Zealand Republic?" (1994) 8 *Legislative Studies* 5. The 1941 appointment of Newall, was countersigned by the Rt Hon Peter Frazer, and was the first opportunity for this to be done since Viscount Galway was appointed in 1935. The commission appointing Galway was apparently not countersigned, though the proclamation of the new Governor-General was countersigned by the Rt Hon JG Coates; *New Zealand Gazette* 20 February 1935 p 1080 (commission); *New Zealand Gazette* 12 April 1935 p 1079 (proclamation).

<sup>24</sup>Ross, Angus, "New Zealand Governors-General in the Inter-war Years" in Wood & O'Connor, *WP Morrell* (1973) 207; Stevens, Donald, "The Crown the Governor-General and the Constitution" (1974) Victoria University of Wellington LLM thesis 34fn.

<sup>25</sup>Mansergh, Nicholas, *The Commonwealth Experience* (1969) 213.

<sup>26</sup>Ross, Angus, "New Zealand Governors-General in the Inter-war Years" in Wood & O'Connor, *WP Morrell* (1973).

Zealand Governor-General could and did exercise some influence on both his Ministers and on public opinion<sup>27</sup>.

Sir Maurice Hankey, Secretary of the Committee of Imperial Defence, and a man well-placed to compare New Zealand's situation with that of other Commonwealth countries, reported that

The post of Governor-General of New Zealand is especially important because he is the channel of communication between the Government and the United Kingdom. That, I think, in some subtle way gives the Governor-General a position of authority as an interpreter of international affairs. I formed the impression that Lord Bledisloe was exercising greater influence on the Government than any other Governor, and for that reason I informed him very fully of all my own proceedings and hopes<sup>28</sup>.

The Labour Party, which entered government in 1935, sought a more independent foreign policy, and saw no reason why New Zealand should not take advantage of the rights and privileges available to other Dominions<sup>29</sup>. In 1939 the first appointment of a British High Commissioner in Wellington was made<sup>30</sup>, relieving the Governor-General of almost all of his remaining responsibilities as agent of the British government.

With one of the principal rationales for the continued control of the appointment by British Ministers now ended, it was now appropriate for the New Zealand Ministers to assume responsibility for the selection and appointment of the Governor-General.

By the early 1940s the Governor-General had assumed, in New Zealand, as in Canada and Australia, essentially the same function as the Sovereign had in the United Kingdom. They had ceased to represent the British government, or act as a channel of communications with London. Their role had become limited to that of representing the Crown in the Dominion, as had been achieved some ten years earlier in Australia.

Over the half-century following the Statute of Westminster 1931, the Governors-General experienced a process of transition, acquiring a distinct local flavour in each Dominion, depending on the political climate in each. In particular, this was achieved by the appointment of local people to the office, and the abandoning of most trappings of colonial gubernatorial office.

In general, however, it would be true to say that when they lost their role of representative of the British government they lost the greatest strength they had to resist pressure from local Ministries to become nothing more than a "rubber stamp". For Mackenzie

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<sup>27</sup>Ross, Angus, "New Zealand Governors-General in the Inter-war Years" in Wood & O'Connor, *WP Morrell* (1973) 221.

<sup>28</sup>Hankey to Sir Edward Harding (Permanent Under Secretary of the Dominions Office), 29 November 1934, CAB 63/78.

<sup>29</sup>McKinnon, Malcolm, *Independence and Foreign Policy* (1993) 14-36.

<sup>30</sup>The first appointee was Sir Harry Batterbee, Assistant Under Secretary of State in the Dominions Office. The first appointment of a High Commissioner to Canada was in 1928 (Sir William Clark), to Australia 1936 (Sir Geoffrey Whiskard), though a Representative held office 1931-36 (ET Crutchley).

King at least, Dominion autonomy was symbolised in the subservience of the monarchical Crown to the local political Crown, that is, the Cabinet<sup>31</sup>.

### **3 The appointment of nationals to the office**

The choice of candidates for the office of Governor-General both reflected the contemporary political culture, and indirectly, influenced the development of the office. Both the way in which a candidate was chosen, and the particular choice, have been important. While the former has tended to reflect the stage reached in New Zealand's formal political independence, the latter more commonly has reflected official perceptions of New Zealand's identity and its place in the world.

This process can also be seen in Australia, though more precociously. The first Australian Governor-General appointed after the acceptance of new rules in 1926 was Sir Isaac Isaacs, Governor-General 1931-36. His time in office was of seminal importance for the development of the office in that country. The first appointed solely as the representative of the king<sup>32</sup>, Isaacs was also the first Australian appointed to the position, and the first appointed on the advice of Australian Ministers.

Isaacs was the fore-runner of a series of appointees who significantly altered the nature of the institution. From being overtly linked with the protection of British and imperial interests, the Governor-General came to be the local personification of the Sovereign. As such, many commentators expected him to be equally circumspect and willing to do whatever the Ministers might wish of him. Their discretion and freedom of action became increasingly limited as the office became more institutionalised. The office increasingly came to fulfil a similar representational role as it does in the United Kingdom.

The appointment of His Royal Highness the Duke of Gloucester almost completed the process of turning the Australian Governor-General from colonial official to viceroy. Although not the first member of the royal family to be a Governor-General<sup>33</sup>, the Duke's arrival early in 1945 reinforced the growing perception of the office as equivalent to that of the Sovereign in the United Kingdom<sup>34</sup>.

As a member of the royal family, particularly with war-time austerity in force, the new Governor-General consciously limited his role to a social one, one of acknowledging

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<sup>31</sup>Smith, David, "Bagehot, the Crown, and the Canadian Constitution" (1995) 28 CJPS 619, 624.

<sup>32</sup>Lord Stonehaven, appointed 1925, ceased to be the channel of communications with the British government in 1927. He had, in fact, delayed the appointment of the first British High Commissioner in Canberra because he feared such a position would cause Australian public opinion to press that the office of Governor-General should be filled by an Australian; DO 117/66/D763; DO 35/124/4378.

<sup>33</sup>Canada had already had two (Queen Victoria's son-in-law, the Duke of Argyll, 1878-83, and her son, the Duke of Connaught, 1911-16), as had South Africa (Prince Arthur of Connaught, 1920-23, the son of the Duke of Connaught, and the Earl of Athlone, 1924-30, brother-in law of King George V).

<sup>34</sup>The Earl of Athlone was actually the first royal Governor-General appointed after 1926, appointed to South Africa in 1940.

community spirit and public endeavours, but not commenting on, or becoming involved with, anything remotely controversial<sup>35</sup>.

Subsequent Governors-General of Australia have tended to follow this lead, and encouraged a deliberately low profile for the office. They have also largely abandoned the representational role of the office. Together these have tended to add weight to the minimalist view of the office of Governor-General.

The move to appointing local candidates as Governor-General was more abrupt in Canada than it was in Australia. Vincent Massey (1952-59) was the first native-born Canadian to hold office, and all his successors have been Canadians<sup>36</sup>. A politician and diplomat, he was also the first Governor-General appointed since the 1947 letters patent delegated almost all the royal prerogative to the office.

Subsequent Governors-General have all been relatively junior politicians or diplomats<sup>37</sup>, reinforcing the impression that the office was of little importance. At the same time the office has undergone a significant change. The Governor-General has assumed not merely the delegated authority of the Crown, but many of its trappings as well.

New Zealand Ministers may have first formally advised the Sovereign on the appointment of a new Governor-General in 1941, but the government had been involved in the selection process for much longer. From 1910 New Zealand Ministers made a selection of Governor from a list of three drawn up by the British government<sup>38</sup>.

Although as a general principal after 1926 Governors-General were to represent the Sovereign alone, no longer be the agent of the British government, and were to be appointed on the advice of local Ministers after 1930, several decades were to pass before non-British candidates were appointed as Governors-General of New Zealand.

In part this delay in appointing New Zealanders was because Governors-General retained a residual function as imperial agent until 1941. The symbolic role of the representative of the Crown as the visible link with the United Kingdom remained important. While representing the Crown, a British Governor-General also expressed, in his person, the British nature of the institution of the Crown.

Sir Cyril Newall, Governor-General 1941-46, the first appointed on the advice of New Zealand Ministers, was something of a transitional figure, at least symbolically, for he was a Governor-General of the traditional, British, type.

Each successive Governor-General emphasised different aspects of the office, but each placed less emphasis upon the British connection. Yet this was influenced as much by the external evolution of the empire into the Commonwealth, as by any domestic considerations.

Lord Freyberg, the first post-war Governor-General (1946-52), although born in London and for many years an officer of the British army, was generally regarded as a New Zealander. As a war hero, and therefore well-known to the ordinary New Zealander prior to his appointment, he was the first of the new type of Governor-General. The focus of the office

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<sup>35</sup>Frankland, Noble, *Prince Henry, Duke of Gloucester* (1980); Gloucester, Alice Duchess of, *The Memoirs of Princess Alice Duchess of Gloucester* (1983).

<sup>36</sup>Customarily of French, and non-French background in turns.

<sup>37</sup>The sort of person who might, in New Zealand, if a politician, be chosen to be Speaker of the House of Representatives.

<sup>38</sup>Stevens, Donald, "The Crown, the Governor-General and the Constitution" (1974) Victoria University of Wellington LLM thesis 28.

was becoming more clearly that of a resident head of State, rather than as representative of the Sovereign, or imperial agent.

Although New Zealand Ministers had been formally responsible since 1941 for the selection of a suitable candidate for Governor-General (and informally for somewhat longer), New Zealand Ministers were generally unfamiliar with many of the men thought suitable for office, so reliance was placed upon the advice of the Sovereign, and the New Zealand High Commissioner in London, whereas once it had relied upon the British government.

When advising on a successor to Viscount Cobham, Sir Keith Holyoake found Her Majesty had compiled her own list of three candidates<sup>39</sup>. Holyoake believed that the selection process was like any other one for a public appointment<sup>40</sup>. Whatever the source of the names, it was his responsibility to advise the Queen which to appoint, though the selection of candidates might be made by the Queen, the incumbent Governor-General, or by the Prime Minister himself.

After seeking suggestions from various sources including the High Commission in London, and Viscount Cobham, Sir Bernard Fergusson was chosen<sup>41</sup>. As a man of relatively slight public profile, Fergusson's own appointment owed much to his family connection with this country<sup>42</sup>.

Sir Arthur (later Lord) Porritt (1967-72) was the first New Zealand-born Governor-General<sup>43</sup>, though, like Freyberg, he had spent much of his adult life in the United Kingdom. The appointment of Lord Porritt, did not mark a significant change in the function of the office. But it did emphasise a change in the type of person being appointed<sup>44</sup>, and this, in turn, affected the office. Each had a different way of interpreting their role and function.

The appointment of Sir Denis Blundell, the first New Zealand-born and domiciled Governor-General in 1972, was publicly and officially seen as "a symbol of nationhood"<sup>45</sup>. Shortly after taking office in 1975, the government led by Sir Robert Muldoon decided that future Governors-General would be selected from New Zealanders living in New Zealand, or (possibly) from members of the royal family<sup>46</sup>. No more British noblemen would be

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<sup>39</sup>In Australia in 1952 Sir Robert Menzies suggested to Her Majesty that she should propose three names, and he would do likewise. This procedure was followed for the next three appointments; Menzies, *Afternoon Light* (1967) 253.

<sup>40</sup>Interview with Sir Keith cited in Stevens, Donald, "The Crown, the Governor-General and the Constitution" (1974) Victoria University of Wellington LLM thesis p 34 fn 16.

<sup>41</sup>His army career had brought him into contact with many New Zealanders, particularly in the Middle East and Burma during the Second World War.

<sup>42</sup>Brigadier Lord Ballantrae (as he became in 1972) was the younger son of General Sir Charles Fergusson (Governor-General 1924-30), and grandson of Sir James (Governor 1873-74).

<sup>43</sup>Freyberg was born in London, and although brought up in New Zealand, had spent the greater part of his adult life abroad.

<sup>44</sup>In Porritt's case, his links with the Queen were the most significant aspects of his background. He had been a member of the medical household of King George VI and then the present Queen since 1936. But he was much better known publicly as an Olympic athlete.

<sup>45</sup>Norman Kirk (Prime Minister), quoted in NZPD 1973 vol 382 p 116.

<sup>46</sup>Auckland Star, 12 March 1977. The appointment of a royal Governor-General is at best a remote possibility, either for New Zealand, or elsewhere. While he was in British Columbia in

appointed. This had the effect of reducing the involvement of the Sovereign, for it was now unlikely that the Queen would be better informed than the New Zealand Ministers with respect to suitable candidates.

Between 1972 and 1983 the convention that the Governor-General would be a New Zealander became well established<sup>47</sup>, though the possibility of a royal appointment was considered in 1979<sup>48</sup>. In response to a parliamentary question addressed to the Prime Minister by Bruce Beetham, the Hon David Thomson told the House that:

When a Government is considering the appointment of a Governor-General, the availability of a member of the royal family is always explored. Naturally the Government would be delighted for a member of the royal family to be appointed, but my consultation with Her Majesty indicate that, on this occasion, such an appointment would not be possible<sup>49</sup>.

Sir Denis Blundell, appointed in 1972, was educated in England, and described himself in *Who's Who* as British<sup>50</sup>. President of the New Zealand Law Society before being sent to London as High Commissioner, he was without strong party political ties.

Both Porritt and Blundell were finding their feet as Governors-General of a new type. They were not British aristocrats, and were not expected to conduct themselves as if they were<sup>51</sup>. But both would have been known personally by the Queen, which served to highlight their representational role.

The appointment of Sir Keith Holyoake, Prime Minister 1957 and 1960-72, was controversial, illustrating the disadvantages of appointing local politicians to the office<sup>52</sup>. It was felt by some in New Zealand that it would be inappropriate to entrust the office to a former party leader or anyone who is closely allied with a political party<sup>53</sup>. This rationale appears to have influenced the choices of several of the post-1939 Governors-General, notably the British-based appointees.

Holyoake, perhaps as a result of being a somewhat controversial appointee, took a rather more passive role than his predecessors, and only remained in office for three years (1977-80).

The giving of confidential advice to the Leader of the Opposition of the government's proposed nominee was introduced in the late 1970s, as a result of the controversy surrounding

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1990 there was considerable editorial comment that Prince Edward be appointed Lieutenant-Governor of that province; Interview with Sir David Beattie, 15 April 1998.

<sup>47</sup>Wood, Antony, "New Zealand's Patriated Governor-General" (1986) 38(2) Political Science 113.

<sup>48</sup>Rumours have circulated that a royal appointment was also considered in 1990; Interview with Neil Walker, 11 May 1999.

<sup>49</sup>6 September 1979, NZPD 1979 vol 425 p 2787.

<sup>50</sup>*Who's Who* (1979) 241.

<sup>51</sup>Though, after his retirement, Porritt was to become a de jure British aristocrat, being created in 1973 Baron Porritt, of Wanganui in New Zealand, and of Hampstead, in the United Kingdom.

<sup>52</sup>Auckland District Law Society Public Issues Committee, *The Holyoake Appointment* (1977).

<sup>53</sup>Auckland District Law Society Public Issues Committee, *The Holyoake Appointment* (1977) 1.

Holyoake's selection. Now the opposition leader is advised before the Queen's informal approval is sought, as well as again after the formal offer has been accepted<sup>54</sup>.

Procedural guidelines were adopted for the appointment, in 1980, of Holyoake's successor. This required the preparation of a short list for the Prime Minister<sup>55</sup>, a Cabinet decision, and advice to Buckingham Palace. A confirmation of the probable availability of the nominee, the obtaining of the Queen's informal approval, and the acceptance of the candidate followed. A formal offer was then made by the Prime Minister, after which formal acceptance was given. The new appointment was simultaneously announced by Buckingham Palace and the government.

This more formal procedure has apparently had the effect of further reducing the prospects of royal discretion such as was exercised in the appointment of Sir Bernard Fergusson.

Retired Supreme Court puisne judge Sir David Beattie began a more active period for the office (1980-85). But it was Sir Paul Reeves<sup>56</sup> and Dame Catherine Tizard who were to make the most of the opportunity for a more pro-active role<sup>57</sup>.

There was little difficulty over Reeves' personal suitability, though there were some difficulties over his clerical status<sup>58</sup>, and the Queen did express concern at some undiplomatic jokes which the archbishop had reportedly made about Australia<sup>59</sup>.

Reeves, as the first Governor-General of Maori ancestry, attracted a great deal of attention, and he used this to advantage. He also attempted to maintain a fairly active constitutional role, and made the most of the limited opportunities which he had to question Ministers about government policy<sup>60</sup>.

Tizard, naturally effusive, was also able to increase the public profile of the office, though the day-to-day functions have changed little over the decades since Porritt was appointed.

Rather than representing the Queen, Sir Paul Reeves and his successors were first and foremost *pro tempore* head of State of New Zealand, in the absence of the Queen. This symbolic change was became apparent when New Zealanders began to be appointed

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<sup>54</sup>Wood, Antony, "New Zealand" ch 5 in Butler & Low, *Sovereigns and Surrogates* (1991) 110-111.

<sup>55</sup>It is believed that this shortlist is communicated to The Queen, so that she may make her views known prior to receiving formal advice; Interview with Neil Walker, 11 May 1999.

<sup>56</sup>As a bishop, Sir Paul was an unusual choice. No prelate had held high secular office in the United Kingdom since the early eighteenth century, though there had been several examples of lesser clergy. Most recently, the Revd Dr Davis McCaughey was Governor of Victoria 1985-92.

<sup>57</sup>Interview with David Lange, 20 May 1998.

<sup>58</sup>Reeves himself thought hard before accepting the appointment. As he saw the position, the role of the Governor-General was similar to the role of a bishop, to work on the edges of disunity, encouraging the move to unity. Thus he would be able to fulfil his clerical vocation in the new position; Interview with Sir Paul Reeves, 11 November 1998.

<sup>59</sup>Interview with David Lange, 20 May 1998.

<sup>60</sup>Reportedly, somewhat to the annoyance at times of the Prime Minister of that time, though this cannot yet be confirmed. Interview with David Lange, 20 May 1998; Interview with Sir David Beattie, 15 April 1998.

Governor-General, but was reinforced with the appointment of Sir David Beattie in 1980, a man the Queen was unlikely to have had any prior personal contact<sup>61</sup>.

The choice of both Dame Catherine Tizard and Sir Michael Hardie Boys confirmed this change of focus. Tizard was the type of public figure who could be relied upon to present a forthright face. Hardie Boys was chosen for what Lange called his “transparent inertia and level-headedness”<sup>62</sup>, though as the principal role of the Governor-General is symbolic, choosing a judge, someone who traditionally had cut themselves off from most social ties, may appear somewhat unusual<sup>63</sup>.

Lange believed that the appointment of retired judges such as Sir Michael Hardie Boys threatened to downgrade the social significance of the office of Governors-General, as such individuals have a natural inclination to take a more passive public profile<sup>64</sup>. This may be so, and although Sir Michael has done much to educate the public about the constitutional functions of his office one suspects that a more populist figure- one better known before becoming Governor-General, would raise the profile of the office more effectively.

The appointment of Dame Silvia Cartwright<sup>65</sup>, although reinforcing the tendency for judicial appointees, may raise the popular profile of the office, as Dame Silvia enjoyed a somewhat higher pre-appointment profile than either Sir David Beattie or Sir Michael Hardie Boys<sup>66</sup>.

In summary, when New Zealand Ministers assumed formal responsibility for the appointment of Governors-General, they relied upon external advice, particularly from London. But as it became customary for someone with strong New Zealand connections to be appointed, so the role of the Sovereign (and the High Commissioner) was reduced.

With no link with the British government, and a weaker connection with the Sovereign than hitherto, the Governor-General became more obviously a head of State for New Zealand. In the choice of candidates for office, changing perceptions of the national identity of New Zealand were reflected.

In the pre-war era the choice of British noblemen, soldiers and statesmen reflected New Zealand's place within the Empire, independent yet loyal to Britain<sup>67</sup>. In the post-war years the increasing emotional divide between New Zealand and the United Kingdom, and the reduced importance of maintaining strong relations with that country led to the appointment of New Zealanders to the office, and a diminution of the British connection.

#### **4 Patriation**

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<sup>61</sup>Interview with Sir David Beattie, 15 April 1998.

<sup>62</sup>Interestingly, Lange believes that the choice of Hardie Boys must have been due to someone with a link to the Palace, rather than to Bolger himself; interview with David Lange, 20 May 1998.

<sup>63</sup>Interview with Dame Catherine Tizard, 19 May 1998.

<sup>64</sup>Interview with David Lange, 20 May 1998.

<sup>65</sup>She succeeded Hardie Boys April 2001.

<sup>66</sup>Dame Silvia was the first woman High Court judge when she was appointed to the Bench in 1993. Prior to that she was Chief District Court Judge 1989-93, and a District Court judge 1981-89. She rose to prominence in the late 1980s heading an inquiry into National Women's Hospital in Auckland; Press Release, Buckingham Palace, 24 August 2000.

<sup>67</sup>McKinnon, Malcolm, *Independence and Foreign Policy* (1993) 14-36.

Far from being, as Bagehot presupposed, an easy concept to appreciate, the monarchy (or at least that abroad) required a sophisticated and expansive appreciation of constitutional relationships<sup>68</sup>.

While the imperial function of Governors-General withered after 1926, uncertainty continued regarding the proper future role for the office. This was complicated by the basic constitutional relationship between the Crown and Ministers not being expressed in law, but resting on convention<sup>69</sup>. These conventions can and do change over time, sometimes radically.

The Balfour formula, enunciated in the 1926 and 1930 Imperial Conferences<sup>70</sup>, was an attempt to assimilate the position of the Sovereign and the Governor-General. It actually had the effect of making the offices more distinct than they had been before.

The distinction between the Sovereign and her representatives was further complicated in some instances by federalism, as in Canada and Australia. While the Sovereign was Queen of Canada, she was also Queen in right of Nova Scotia, Quebec, and each of the other Canadian provinces. From the date of federation this distinction grew in importance<sup>71</sup>.

From the beginning of his work on the royal prerogative, Evatt assumed that the powers of the Governor-General are analogous to those of the Sovereign<sup>72</sup>. But the position of Governor-General is not exactly analogous to that of the monarch, as the vice-regal office is provided with a combination of delegated prerogative powers and specific statutory authority.

In a colony, the Governor was essentially an imperial official<sup>73</sup>. In a Dominion, in contrast, the Governor-General was invested with vice-regal status. A true viceroy is an officer endowed with a complete delegation of the royal prerogative, as Canada has in effect had since 1947<sup>74</sup>. Certain powers exercised by the Governor-General of Canada are exercised as the Queen's representative rather than as a distinct officer. However, as regards those powers given the Governor-General by the Constitution, it is a statutory office, and the powers are statutory.

In New Zealand, the 1983 Letters Patent Constituting the Office of Governor-General affected an almost complete delegation of the royal prerogative, although both under the letters patent (in respect of prerogative powers) and the Royal Powers Act 1983<sup>75</sup> (in respect of statutory powers) the Queen is entitled to exercise these powers herself. The Queen

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<sup>68</sup>Smith, David, *The Invisible Crown* (1995) 4.

<sup>69</sup>Wood, Antony, "New Zealand" ch 5 in Butler & Low, *Sovereigns and Surrogates* (1991) 113.

<sup>70</sup>*Parliamentary Papers*, vol 11 1926 cmd 2768; *Imperial Conference* (1930) *Parliamentary Papers*, vol 14 1930-1 cmd 3717.

<sup>71</sup>See Smith, David, *The Invisible Crown* (1995).

<sup>72</sup>*The Royal Prerogative* commentary by Zines (1987).

<sup>73</sup>For a general discussion of the position, see Carter, BPC, "The Powers of the Australian and New Zealand Governors-General" (1977) University of Auckland LLB(Hons) dissertation; and Northey, JF, "The Office of Governor-General" (1950) University of Toronto DJur thesis.

<sup>74</sup>1947 Letters Patent constituting the Office of Governor-General of Canada, effective 1 October 1947 (Canada Gazette, Part I, vol 81, p 3104).

<sup>75</sup>Now embodied in the Constitution Act 1986.

occasionally does so, although normally only in respect to the approval of royal honours and similar matters<sup>76</sup>.

In Australia, a similar general delegation took place in 1984<sup>77</sup>. However, under s2 of the Royal Powers Act 1953 (Australia), and the Australia Act 1986, Her Majesty may exercise all the powers bestowed upon the Governor-General, but only when personally present in Australia.

Though these powers were delegated to the Governors-General, this did not mean that their independence was increased. As Cunneen has shown, the history of the office of Governor-General in Australia has been one of sure and steady erosion of the small initial deposit of personal initiative and discretion. He felt that in the period 1901-36 the chief function of the office was imperial rather than constitutional<sup>78</sup>. After the decline of the second of the dual functions of the office, with the establishment of separate channels of communication between London and Australia, the Governor-General was left with the role of representative of the Sovereign.

However, as power actually lay in the hands of Ministers, the real function of the office was symbolic. As events in Australia showed, this had an uncertain place in Australian public life, and early Governors-General soon learnt that they were expected to live without expensive pomp or ostentation<sup>79</sup>. Similar influences were at work in New Zealand also.

Beginning as agents of empire, only gradually did Governors-General acquire the status as representatives of the Sovereign rather than of the imperial government. But as this was recognised, so the office changed its outward form. Indeed, it gradually became important as a symbol of national identity, both in the actions of the Governors-General, their symbolism, and the symbolism inherent in their very choice.

The role of the Governor-General became not so much to represent the Sovereign, but to represent “the nation to the people”<sup>80</sup>. This has been particularly marked in Australia. While Hasluck openly expressed his appreciation of his role as being to represent the Queen, and exercise on her behalf her powers and functions of Queen in a constitutional monarchy<sup>81</sup>, Cowen’s speeches were essentially those of an Australian head of State<sup>82</sup>. Indeed, in the last several decades of the twentieth century, only when presiding over functions attended by monarchist groups did Sir Ninian Stephen purport to represent the Queen in Australia<sup>83</sup>. At other times, his role was as de facto head of State<sup>84</sup>.

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<sup>76</sup>The occasional State Opening of Parliament, and giving assent to Bills in person are, of course, limited to visits to New Zealand.

<sup>77</sup>Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 21 August 1984.

<sup>78</sup>Cunneen, Christopher, *King’s Men* (1983) ix.

<sup>79</sup>Cunneen, Christopher, *King’s Men* (1983) 28-36.

<sup>80</sup>Bogdanor, Vernon, *The Monarchy and the Constitution* (1995) 281. Or, as Sir Paul Reeves sees it, to represent the Queen in her constitutional rather than her personal capacity; Interview with Sir Paul Reeves, 11 November 1998.

<sup>81</sup>Hasluck, Sir Paul, *The Office of Governor-General* (1979) 10.

<sup>82</sup>Cowen, Sir Zelman, *A Touch of Healing* (1986).

<sup>83</sup>Stephen, Sir Ninian, “Depicting a Nation to its people” Weekend Australia 7-8 January 1989, cited in Galligan, Brian, “Regularising the Australian Republic” (1993) 28 AJPS 56, 59.

<sup>84</sup>This role, performed almost to the exclusion of the Queen, was to form a major element in the campaign by monarchist groups in the 1998 plebiscite in Australia on a republic. They

No longer is it true that the Governor-General of New Zealand is principally the representative of the Sovereign, though, unlike his Australian counterpart, Sir Michael Hardie Boys continues, from time to time, to emphasise his role as representative of the Queen as well as of his fellow New Zealanders<sup>85</sup>. But he or she is principally seen as representative, or embodiment, of the Crown, a quite distinct role. There has been an on-going process whereby the office of Governor-General, and the position of Sovereign, have increasingly come to reflect a distinctive New Zealand identity<sup>86</sup>. Official ceremony began to include more Maori participation, such as a Maori challenge at presentation of credential ceremonies<sup>87</sup>.

The role of the Governor-General now more clearly equates to that of a head of State, though not without lingering ambiguities. One of these may be seen in the role of the Governor-General on overseas visits.

Precedents in Canada and Australia established beyond doubt that the Governor-General could travel outside his or her country and be recognised overseas as fully representative of the head of State<sup>88</sup>. Official visits originated in Canada, whose Governor-General first paid an official visit to the United States of America in 1928<sup>89</sup>. New Zealand's first was to Australia in 1970, and the Australian Governor-General's first official visit abroad was to New Zealand in 1971<sup>90</sup>.

Overseas visits by Governors-General have been relatively few, and, in the case of New Zealand, largely confined to those countries with which the country is most closely associated, such as the Cook Islands. But they are becoming more frequent<sup>91</sup>.

Some countries have avoided receiving the Governor-General as head of State, a matter which is in the hands of the host country, although the Governor-General of New Zealand always receives visitors as the de facto head of State<sup>92</sup>. These problems arise where the host

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argued that, as the Governor-General was de facto head of State already, there was no need for a president to assume this role.

<sup>85</sup>Speech by Sir Michael at the opening of Wharenui Tupai, Martinborough, 25 October 1997. Significantly, this often occurs when meeting Maori people; Interview with Sir Paul Reeves, 11 November 1998.

<sup>86</sup>Indeed, to understand the role of the Governor-General one needs to consider the history of the monarchy, the development of the role of Governor-General, and the current role of the monarch; Lipa, JS, "Role of the Governor-General in the Commonwealth" (1993) University of Auckland MJur thesis 1-2.

<sup>87</sup>Foreign Affairs and Trade, Ministry of, *Presentation of Credentials in New Zealand* (1997) 12-13.

<sup>88</sup>Hasluck, Sir Paul, *The Office of Governor-General* (1979) 24-25; Abbott, Tony, *How to win the constitutional war* (1997) 63-64. The Canadian Governor-General's first official trip outside North America was to the Caribbean in 1969; Smith, David, *The Invisible Crown* (1995) 47.

<sup>89</sup>Massey, Vincent, *What's past is prologue* (1963) 144-145.

<sup>90</sup>Stevens, Donald, "The Crown, the Governor-General and the Constitution" (1974) Victoria University of Wellington LLM thesis 225; Australian Hansard (House of Representatives) 22 February 1972 vol 76 p 75.

<sup>91</sup>Indeed, State visits by foreign rulers to New Zealand have also become more frequent, with an average of two to three annually in recent years; Private information.

<sup>92</sup>Interview with Hugo Judd, 14 April 1998.

country has little knowledge and experience of the peculiar constitutional status of a Governor-General<sup>93</sup>.

To accord a Governor-General full recognition as a head of State elevated him or her to the status of a viceroy, a status that Commonwealth constitutional law has not yet unequivocally accorded them. But in this field of law practice has always been followed by the recognition of legal status<sup>94</sup>, and it must be anticipated that the Governor-General may eventually be accorded the status of a viceroy, leaving the Sovereign truly *functus officio*<sup>95</sup> except in respect of the appointment of Governors-General<sup>96</sup>.

The change in the role and status of the Governor-General of New Zealand has come about as a consequence of the loss of much of the reason for the existence of the office, the imperial role.

As a consequence of the loss of the imperial role, holders of the office have felt the need to assume new roles and responsibilities, not always to the liking of political leaders<sup>97</sup>. These have included making more provocative speeches than had been customary for a Governor-General to make<sup>98</sup>, and generally attempting to strengthen the social contacts which the office makes possible<sup>99</sup>.

#### **4.1 An instance of deliberate policy: Canada**

The elevation of the Governor-General over the Sovereign he or she represented was a deliberate policy on the part of successive Canadian governments, and has become more methodical and comprehensive since 1970<sup>100</sup>.

The 1947 letters patent made a complete delegation of the Sovereign's powers to the Governor-General<sup>101</sup>. This was thought desirable to avoid the exercise in Canada of any authority by Counsellors of State appointed under the Regency Acts of 1937 onwards.

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<sup>93</sup>Taafahi, Tauassa, *Governance in the Pacific* (1996) 12.

<sup>94</sup>O'Connell, Daniel & Riordan, Ann, *Opinions on Imperial Constitutional Law* (1971) vi.

<sup>95</sup>A person who has discharged his or her duty, or whose office or authority has come to an end.

<sup>96</sup>Whitlam, Gough, "The Labor Government and the Constitution" in Evans (ed), *Labor and the Constitution 1972-1975* (1977) 328.

<sup>97</sup>Sometimes even the attempt to maintain good relations can be misconstrued. Dame Catherine Tizard has reported that one political leader had difficulty conceiving any reason for his having received an invitation to lunch at Government House. The politician wanted to know what the Governor-General was hoping to get out of the meeting; Interview with Dame Catherine Tizard, 19 May 1998.

<sup>98</sup>One example is the speech given by Sir Michael Hardie Boys at the opening of the Te Arawa Economic Development Conference, Rotorua, 6 October 1998, which addressed potentially controversial issues of the educational and business failings of the Maori people.

<sup>99</sup>Interview with Dame Catherine Tizard, 19 May 1998; Interview with Hugo Judd, 14 April 1998.

<sup>100</sup>Although this was never publicly stated until the legislation of the Trudeau Government, Bill C-60 of 1978, which would have named the Governor-General "the First Canadian". It should perhaps be best described as a state of mind.

<sup>101</sup>1947 Letters Patent constituting the Office of Governor-General of Canada, effective 1 October 1947 (Canada Gazette, Part I, vol 81, p 3104).

However, despite this delegation, it was not until the mid-1970s that the Governor-General actually exercised the royal prerogative in all areas of Canada's international relations<sup>102</sup>. And the prerogative relating to the law of arms, admittedly of minor importance, was not delegated until 1988<sup>103</sup>.

The idea of strengthening the Crown by broadening the responsibilities of the Governor-General and Canadianising the office was shared both by the Office of the Governor-General (in particular, the Secretary to the Governor-General, Esmond Butler) and the Privy Council Office<sup>104</sup>.

In 1978 a white paper, *A Time for Action*, proposed that the authority of the Governor-General of Canada would no longer derive from prerogative instruments, but would emanate from the Constitution itself. As well, he or she would possess all the prerogatives, functions and authority belonging to the Queen in respect of Canada, and laws would be passed in his or her name, and not that of the Sovereign.

These proposals were incorporated in the Constitutional Amendment Bill (Bill C-60), introduced into the House of Commons in June 1978<sup>105</sup>. From the point of view of constitutional theory, the problem with Bill C-60 was that it attempted to codify government, to make explicit in statutory form what had hitherto rested on convention and custom<sup>106</sup>.

The Bill failed to pass, not through opposition to its principles, or the way in which it was drafted (though there was opposition on both grounds), but because of opposition from the provinces. They successfully challenged the federal government's assumption that it could implement institutional change of such magnitude through resort to s 91(1) of the Constitution Act 1867. This section, in place since 1949, was intended to allow the federal Parliament to deal with matters of concern to the federal government only, rather than of federal-provincial concern<sup>107</sup>.

The 1978 proposals and, more particularly, their failure, testify to the significance of the Crown in Canada. For many there remained an emotional attachment to the Sovereign. But more importantly, the provinces regarded the Crown as an important source of independent authority. There is an appreciation of the advantages of not going too far in Canadianising the Crown, and thereby giving too much power to the federal government<sup>108</sup>.

In Canada the perceived British nature of the Crown has been partially excised by concentrating attention on the Governor-General as far as possible, reducing the Sovereign's personal involvement in Canadian affairs<sup>109</sup>. Thus the Sovereign, although still appointing the

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<sup>102</sup>Smith, David, *The Invisible Crown* (1995) 45-46.

<sup>103</sup>Letters Patent authorising the granting of armorial bearings in Canada, 4 June 1988.

<sup>104</sup>Smith, David, *The Invisible Crown* (1995) 47.

<sup>105</sup>For a non-Canadian view of the Bill see also O'Connell, Daniel, "Canada, Australia, Constitutional Reform and the Crown" (1979) 60 *Parliamentarian* 5.

<sup>106</sup>Forsey and Mallory dissected the bill's clauses and discovered both contradictions and ambiguities therein: Forsey, Eugene, "Role of the Crown in Canada since Confederation" (1979) 60 *Parliamentarian* 14; Mallory, JR, "Some Constitutional Implications of Bill C-60". The difficulties of codification of convention have perhaps been exaggerated. In Australia, Turnbull dismissed as "ludicrous" Gareth Evans' suggestion that there would never be agreement on codifying the powers.

<sup>107</sup>Smith, David, *The Invisible Crown* (1995) 49-50.

<sup>108</sup>Smith, David, *The Invisible Crown* (1995) 51.

<sup>109</sup>"In the past half-century, at least, newcomers [to Canada] were not being asked to accept the *British* monarchy, but a symbol of what made Canada Canadian, or at least, not American"; Martin, Ged, "Freedom Wears a Crown" (1994) 21.

Governor-General, does not give personal approval for the award of honours, as is done in all the other realms. Only the Sovereign can create an order of chivalry, decoration or medal, but he or she does so on the recommendation of the Canadian government. Once an honour is created, the Governor-General exercises all powers of the Sovereign in respect of it<sup>110</sup>.

For example, the Constitution of the Order of Canada provides that:

9. Appointments ... shall be made, with the approval of the Sovereign, by Instrument signed by the Governor-General ...<sup>111</sup>

However, the letters patent of 1947 allow the full delegation of the prerogative to the Governor-General<sup>112</sup>, and the Constitution of the Order of Canada continued to say that:

10. Nothing in this Constitution limits the right of the Governor-General to exercise all powers and authorities of the Sovereign in respect of the Order<sup>113</sup>.

The Governor-General in actual practice gives the Sovereign's approval.

The provinces have themselves created honours independent of the federal royal honours system<sup>114</sup>. Each was created by provincial Act or regulation, but awarded in the name of the Queen by the Lieutenant-Governors, further emphasising the growth of the Crown in Canada.

The personal appointment of diplomatic representatives having ended<sup>115</sup>, there remains very little in which the Sovereign is personally involved unless actually present in Canada. But this has not necessarily reduced the role of the Crown.

#### **4.2 Inadvertent movement: New Zealand**

It was established after 1930 that the New Zealand Governor-General would be appointed on the advice of local Ministers, and both the Sovereign and Governor-General would act on advice of New Zealand rather than British Ministers. But the full consequences were not immediately perceived. Governors-General, although no longer agents of the British empire, were still regarded as representing the imperial tradition.

This lingering attitude was reflected in the speeches of Viscount Cobham, Governor-General 1957-62, and in an article which he wrote on the role of Governor-General<sup>116</sup>.

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<sup>110</sup>Excepting, of course, the Royal Victorian Order; Fact Sheets H-H20, Information Services, Government House, various dates.

<sup>111</sup>Constitution of the Order of Canada, November 1983 (1983).

<sup>112</sup>1947 Letters Patent constituting the Office of Governor-General of Canada, effective 1 October 1947 (Canada Gazette, Part I, vol 81, p 3104).

<sup>113</sup>Constitution of the Order of Canada, November 1983 (1983).

<sup>114</sup>These include l'Ordre national du Quebec, the Saskatchewan Order of Merit, the Order of Ontario, the Order of British Columbia, and the Alberta Order of Excellence.

<sup>115</sup>Smith, David, *The Invisible Crown* (1995) 61.

<sup>116</sup>Cobham, Charles, Viscount, "The Governor-General's Constitutional Role" (1963) 15(2) Political Science 4.

Representing the Queen and the common British heritage shared by New Zealand were frequent themes of his speeches<sup>117</sup>.

Cobham's successor, Brigadier Sir Bernard Fergusson, the son of Sir Charles Fergusson, Governor-General 1924-30, was less inclined to stress this aspect of his role. But, as a Briton, the perception remained that he represented more than the just the Queen of New Zealand<sup>118</sup>.

Indeed, in formal law, as late as 1972 the Governor-General arguably appeared to be essentially a glorified colonial governor. But those powers, responsibilities, and functions which related to the United Kingdom had in fact long been obsolete.

Once appointed, the ceremonial and community roles of the Governor-General have for a long time been of greater importance than the political or constitutional. The social roles too have changed over time. From the mid- nineteenth century the Governor had a role as leader of the small social elite of the colony, but, because of the limited salary and allowance which he received, he was not expected to do much entertaining.

In the office of Governor-General, as elsewhere in the constitution, reforms appropriate to the country's political independence had come about in two ways, first, the exercise by the New Zealand legislature of the general power of constitutional amendment conferred by the United Kingdom Parliament in 1947<sup>119</sup>; and second, the Queen's exercise of the royal prerogative. In the context of the office of Governor-General, it was the latter which was most important. Specifically, this was manifested in the choice of candidates for the office of Governor-General. Changes in the social and political perceptions of the office were also shown in the symbolism associated with it.

A change in the style of the office of Governor-General can be seen in the changing costumes worn by the Governors-General. They wear, or once wore, special uniforms<sup>120</sup>. Lord Porritt was the last Governor-General to wear the traditional dark-blue full-dress uniform of a Governor-General. His successor, Sir Denis Blundell wore the white tropical dress uniform, both on military visits, and at the State Opening of Parliament.

Sir Keith Holyoake avoided wearing uniform. However Sir David Beattie wore the white tropical dress uniform of Governor-General's, and also introduced a series of service dress uniforms for use when visiting military units<sup>121</sup>. Sir Paul Reeves and Dame Catherine Tizard however both avoided uniforms, for special reasons of their own. Sir Michael Hardie

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<sup>117</sup>Hintz, OS, *Lord Cobham's Speeches* (1962).

<sup>118</sup>Governors-General before Blundell normally brought with them British officers as aides de camp. For names see *Whitaker's Almanack* (various dates, especially 1945-77 editions).

<sup>119</sup>Statute of Westminster Adoption Act 1947.

<sup>120</sup>The full dress uniform is still worn in a few of the smaller realms, including Antigua and Barbuda, and St Vincent. Its use is prescribed in the still current, though obsolescent, official guide to Court dress; Titman, Sir George, *Dress worn at His Majesty's Court* (1937).

<sup>121</sup>Interview with Sir David Beattie, 15 April 1998. Hardie Boys would perhaps also have worn the white uniform, except that Government House appears to have adopted the mistaken belief that this was last worn by Porritt; letter from Richard Sweetzer to author, 5 November 1998.

Boys wears a service dress uniform when visiting military units<sup>122</sup>. Although not specifically colonial, the traditional uniforms were abandoned as overt reminders of a colonial past<sup>123</sup>.

Arguably, the patriation of the office of Governor-General has resulted in a weakening of the office. The Governor-General is the equivalent of the Sovereign, but lacks the status, and the permanence of the Sovereign. The contrast is less that of absent/present, and more of royal/non-royal, each having roles to play in New Zealand<sup>124</sup>. Politicians, to increase their own status and power, encourage a modesty both of power and of style in a Governor-General<sup>125</sup>. Nor have Governors-General been inclined to expand their responsibilities. Not enough has been done to follow the Canadian model, which would see an augmentation of the social and symbolic role of the Governor-General.

While the agent of the British government the Governor-General enjoyed the prestige and influence that came from this. As representative of the Sovereign, particularly while it was fashionable to speak of the British connection, the Governor-General represented New Zealand's links with the wider world, the international monarchy.

As effective head of State, yet not given the status of a true head of State, the Governor-General remains somewhat less than they were. Nor has the relative personal prominence of some of the recent appointees overcome the loss of status which came to them as emissaries of the British (rather than New Zealand) Sovereign<sup>126</sup>. But the tendency has clearly for the Governor-General to assume more of the attributes of a de facto head of State.

## 5 Conclusion

The evolution of a distinct New Zealand Crown went hand in hand with the patriation of the office of Governor-General. Once an office filled by a British appointee, it now is always held by a New Zealander, appointed by the Queen on the advice of the Prime Minister of New Zealand. No longer are British seals used to authenticate legal documents, nor British honours awarded.

But not only does the Governor-General no longer represent the British government, he or she has downplayed the extent to which they represent the Queen. The social function of a Governor-General, on a daily basis so much more important than the constitutional, has

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<sup>122</sup>Interview with Dame Catherine Tizard, 19 May 1998; Interview with Hugo Judd, 14 April 1998.

<sup>123</sup>In a similar symbolic move, the official Government House webpage (<http://www.govt.nz/>) which, from its establishment in the late 1990s until 2000, displayed the royal arms rather than the arms of New Zealand.

<sup>124</sup>Wood, Antony, "New Zealand" ch 5 in Butler & Low, *Sovereigns and Surrogates* (1991) 114-115.

<sup>125</sup>Such as the attempt to deny the Governor-General a customary Guard of Honour at the State Opening of Parliament after the 1984 election. However, the annual State Opening of Parliament was ended solely for reasons of political efficiency- ending the address and reply debates- rather than as a deliberate attempt to reduce the public role of the Governor-General; Interview with David Lange, 20 May 1998.

<sup>126</sup>Wood also believes that a more bold assertion of the Governor-General's status would have made the office more effective; Wood, Antony, "New Zealand's Patriated Governor-General" (1986) 38(2) *Political Science* 113, 130.

allowed great scope for this. Fear, perhaps largely subconscious, of republican criticism of the Governor-General as agent of a “foreign” Queen has accelerated this tendency<sup>127</sup>.

Whereas once Lord Cobham extolled the virtues of loyalty to a common Crown, his successors have preferred to speak of civic virtues, or the need for racial understanding. In part this is because each Governor-General has felt able to make their own personal contribution to the office, but also because, being no longer “sent out” to New Zealand, it requires a large step in the imagination to see them as representing an absentee monarch. In part to solve this dilemma, emphasis came increasingly to be on the Crown rather than the monarch.

As the Governor-General came to represent the king or queen directly, so he or she came to assume patronages and other roles in emulation of the Sovereign<sup>128</sup>. Practically, they were free from formal or informal constraint by the Sovereign, though symbolically representing both her and the wider concept of the Crown. To a great extent, however, it was a case of making whatever one wished of the job, since there were few formal guidelines<sup>129</sup>.

Canadian governments sought to emphasise national independence by emphasising the position of the Governor-General at the expense of that of the Sovereign. New Zealand, treading a path less determined by conscious choice, found itself almost as it were by accident, with a Governor-General empowered to exercise all the powers and responsibilities of a head of State.

The office of Governor-General has not been the means by which New Zealand has achieved independence. But the increasing division of the Crown meant that the Governor-General assumed more of the identity of a head of State. With the delegation of the royal prerogative, the Governor-General became *de facto* viceroy. But they were not a *de facto* president, for they continued to represent, not simply the Sovereign, but the concept of the Crown.

But, unlike in Canada, not enough has been done to clearly establish the Governor-General as a symbol of national identity. The clearer this identification the lesser the prospects for rejection of the system which the Crown represents.

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<sup>127</sup> Abbott, Tony, *How to win the constitutional war* (1997).

<sup>128</sup> The Governor-General of New Zealand is patron of some 400 organisations; Interview with Hugo Judd, 14 April 1998.

<sup>129</sup> Interview with Dame Catherine Tizard, 19 May 1998.