

# **Is Constitutional Monarchy a Friend or Foe of Democracy? A Comparative Institutional Analysis of Canada and Japan**

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## Introduction

When political leaders assume positions such as president or prime minister, the process is institutionalized both ceremonially and politically. Unless their inauguration occurs amidst extraordinary circumstances such as a coup d'état, power transition proceeds smoothly without temporal vacuums, following precedents and rules. Similarly, resignations, voluntary or rule-based dismissals from these positions, as long as they are not prompted by emergencies like coups, typically undergo a process akin to inauguration, ensuring the orderly transfer of roles and powers to successors.

Even in cases where presidential or political leaders suddenly pass away, or become incapacitated due to severe illness or unforeseen accidents, constitutional codes, constitutional laws, or customary laws preemptively outline responses to such situations. Thus, meticulous measures are incorporated into the mechanisms of governance to prevent power vacuums from arising.

The aforementioned instances pertain to the transition of “power” held by political leaders, but similar principles apply to constitutional monarchies where the king, serving as the embodiment of “authority”, shoulders the responsibility of head of state. Their accession to the throne typically occurs upon the demise of the former king, with the transfer of authority and power following established precedents. Since the early 20th century, particularly in the latter half and into the

21st century, in countries like the Netherlands and Belgium, abdications due to advanced age, among other reasons, have become more prevalent, often termed “abdication during lifetime.” Consequently, in constitutional monarchies across Europe, including during abdications during lifetime, there seems to have been a de facto institutionalization of these practices in recent decades.<sup>1</sup> While there are exceptional cases like the sudden abdication of Edward VIII of the United Kingdom (reigning from January to December 1936), where his successor, George VI, promptly assumed the throne, ensuring no temporal vacuum. The adage in English law, “the King never dies.” signifies the seamless and automatic succession of the throne to the heir, even upon the demise of the monarch.

Considering the transitions of “power” among political leaders and the transfer of “authority” among kings, it is generally safe to assume that in mature democratic nations and constitutional monarchies, literal vacancies of these positions seldom occur. However, in countries like Canada and Australia, which are mature democracies and constitutional monarchies like the Netherlands and

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1 Following the issuance of a video message by His Majesty the Emperor on August 8, 2016, titled “Remarks by His Majesty the Emperor on His Role as Symbol,” discussions regarding the abdication of the Emperor (commonly referred to as “abdication during lifetime”) began in Japan. The government established the “Expert Panel on Reduction of the Emperor’s Official Duties,” and from October 2016 to April of the following year, discussions among experts were held fourteen times. During these discussions, reference was made to the abdication of kings in the Netherlands and Belgium. For further details, see the discussion by Naotaka Kimitzuka (Kanto Gakuin University) in the document “Proceedings of the 10th Expert Panel on Reduction of the Emperor’s Official Duties,” available on the Prime Minister’s Office website (accessed on November 18, 2021) at: [[https://www.kantei.go.jp/jp/singi/koumu\\_keigen/dai10/gijisidai.html](https://www.kantei.go.jp/jp/singi/koumu_keigen/dai10/gijisidai.html)]. Additionally, relevant studies include Naotaka Kimitzuka’s *“The Current State of Constitutional Monarchy: Can the Japanese Maintain the “Symbolic Emperor”* (Shinchosha, 2018) and Jiro Mizushima and Naotaka Kimitzuka (eds.), *“The Majesties of the Modern World: Democracy and Royal Families”* (Minerva Shobo, 2018).

Belgium, the situation appears somewhat different. For instance, in Canada during the first half of 2021, specifically from January to July, the Governor General, who serves as the representative of the king, abruptly resigned amid allegations of harassment, resulting in a vacancy in the position of the Governor General. This led to various political and constitutional issues, revealing the inadequacies in handling such situations. As mentioned earlier, smooth transitions of “power” or “authority” among political leaders or kings are anticipated regardless of circumstances, and vacancies in these positions are typically avoided. However, in the case of Canada discussed in this paper, the sudden resignation of the Governor General was unforeseen, and as a result, the proper transition of “authority” cannot be entirely guaranteed, contributing to political turmoil.

While the procedures for handling situations such as the absence of the Governor General due to illness or foreign visits were not unprepared in this paper, the utilization of these mechanisms in extended absences of the Governor General was not initially envisioned. Furthermore, as a unique aspect of recent Canadian politics, the absence of a majority party in the federal House of Commons, resulting in what is termed as a hung parliament situation, along with inherent political instability, may have exacerbated the confusion.

The purpose of this paper is to analyze the impact of the sudden resignation (“exit”) and absence of the Governor General on Canadian politics from political science and constitutional law perspectives. Additionally, it aims to examine the mechanisms for addressing such situations within the framework of Canadian constitutional monarchy and democracy. In doing so, it seeks to conduct a comparative analysis of the responses taken by the Canadian government, the criticisms and issues raised in the political process, and the arguments presented by scholars. Earlier, the adage “the King never dies” was mentioned, but how

should we interpret this in the context of the Governor General of Canada, rather than the king? As discussed below, if we were to adapt the previous adage, it would not be “the Governor General or the Lieutenant Governor never dies,” highlighting a crucial point of distinction between the Canadian constitutional monarchy and that of the United Kingdom.<sup>2</sup>

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2 For example, in the province of Saskatchewan, there have been two instances where the Lieutenant Governor passed away while in office, resulting in disruptions to the assent of provincial legislation and the conduct of administrative affairs.

In the early morning of February 6, 1978, Lieutenant Governor George Proteous suddenly passed away due to a heart attack. As a result, the Government of Saskatchewan was immediately unable to obtain the Lieutenant Governor’s assent for orders-in-council and other administrative decrees, leading to significant disruptions in administrative operations. This situation persisted for approximately two weeks until February 22, when the federal government appointed Irwin McIntosh as the new Lieutenant Governor. For more details on the disruptions, refer to the newspaper article below. (“Porteous Death Creates Problem in Saskatchewan.” *The Globe and Mail*, 8 Feb 1978, Page9)

At that time, Saskatchewan Premier Allan Blakeney believed that appointing an Administrator (who, in Saskatchewan, is the Chief Justice of the Court of Appeal) to act as the Lieutenant Governor until a new appointment could be made would suffice. However, it became clear that this interpretation was constitutionally incorrect, exacerbating the confusion. The fundamental issue was that, following the death of the Lieutenant Governor, there was no longer a physical officeholder, which meant that an Administrator could not assume the role. An Administrator is designated to perform the duties of the Lieutenant Governor during periods of illness or absence from the province, but constitutionally, in the absence of a sitting Lieutenant Governor, there is no one to deputize. (Adam Hunter, “Sask. Government Seeks ‘Expedited’ Appointment of new Lt.-Gov.” *CBC News Saskatchewan*. 16 July 2019. <https://www.cbc.ca/news/canada/saskatchewan/sask-seeks-appointment-new-lg-1.5212858> ) Regarding the position of “Administrator,” which temporarily substitutes for the Governor General and the Lieutenant Governor, this paper provides detailed coverage later.

On June 2, 2019, Lieutenant Governor W. Thomas Molloy passed away due to illness. Russell Mirasty was appointed as the new Lieutenant Governor on June 18, approximately two weeks after Molloy’s death. During this period, there were minor disruptions in administrative operations, similar to those experienced after the death of Lieutenant Governor Proteous.

Also, this paper aims to compare the constitutional monarchies of Canada and Japan through the analysis of this case. From the perspective of political systems, it may come as a surprise, but Canada and Japan have a high degree of similarity. Commonalities such as the parliamentary cabinet system and advanced welfare states are evident, and comparative studies focusing on the welfare states of Japan and Canada have been conducted. The major difference lies in the federal system; however, there are discussions that highlight the importance of decentralization in Japan, referencing Canada's federal system.

Constitutional monarchy is a political system common to both Canada and Japan; however, comparative analysis of Japan and Canada as a topic in political science and history has been rare. While the constitutional monarchies in both countries feature a governor-general or lieutenant governors, and in Japan, the emperor, who perform purely ceremonial roles without political power, they have

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Lieutenant Governor Molloy was undergoing medical treatment until his death, during which time the Chief Justice of the Court of Appeal of Saskatchewan was appointed as the Administrator to act on his behalf. During this period, the Administrator provided assent to legislation. However, following Molloy's death, as mentioned earlier, the Administrator could no longer serve in this capacity, leading to disruptions in the assent to provincial legislation. Additionally, recognizing Molloy's prolonged illness, the federal government, which holds the authority to appoint the Lieutenant Governor, had already begun the search for his successor at an early stage. According to current Lieutenant Governor Russell Mirasty, he was astonished when he suddenly received a phone call at his home in La Ronge from the federal government's Privy Council, inquiring about his potential candidacy for the position of Lieutenant Governor (Remarks from Lieutenant Governor Russell Mirasty's Speeches at Solstice Speaker Series at Royal The Saskatchewan Museum, 5th December, 2023 and "*Serving the Crown: Reflections from Saskatchewan's First Indigenous Lieutenant Governor*," Heritage Regina, 15th, February, 2024). The role of the Lieutenant Governor in Saskatchewan is extensively discussed in Everyn Egaer's book, "*Saskatchewan Politics: Politics and Pragmatism*" (Saskatoon: Western Producers Prairies book, 1980), specifically in Chapter 8, "The Lieutenant Governor," pages 116–129.

seldom been subjects of comparative institutional analysis. This is because they have been perceived as static political structures without substantive political roles.

However, over the past 30 years, research on constitutional monarchy has become increasingly active in Canada. Various discussions have been initiated by officials involved in ceremonial duties, journalists, and political scientists studying Canadian politics, focusing on the historical framework and the role of the governance system. At the core of these discussions is the argument that positions constitutional monarchy as an indispensable part of the Canadian political system and views it as essential to democracy.

In Japan, over the past decade, there has been active debate among journalists, political scientists, constitutional scholars, and historians regarding the imperial system. The series of discussions that began with Emperor Heisei's abdication declaration emphasizes, similar to Canada, the positive significance of the contemporary Japanese imperial system for Japanese democracy. While there are many differences between Canada's governor-general system, where commoners are appointed for fixed terms, and Japan's imperial system, where the position is hereditary and lifelong, the argument that constitutional monarchy holds significant importance for democracy is common to both Canadian and Japanese discussions.

## **1 The Appointment of Mary Simon as Governor General on July 26, 2021**

On July 26, 2021, Mary Simon assumed office as the 30th Governor General of Canada. Born in 1947 in Kuujuaq, Quebec, within the Arctic Circle, Simon is of Indigenous descent, becoming the first Indigenous Governor General since the

founding of Canada. She is also the fifth woman to hold the position, following Jeanne Sauvé, who served from 1984 to 1990. Simon's father was of British Canadian descent and was a former employee of the Hudson's Bay Company, a British colonial enterprise, while her mother was Indigenous. Simon worked as a journalist and served as a radio broadcaster at CBC's Northern Quebec station. She later engaged in various activities within Indigenous organizations in the Arctic region of Quebec. Notably, during the 1982 Canadian Constitution amendment, Simon participated in discussions advocating for Indigenous rights. She also actively represented Indigenous peoples during the constitutional amendment process under Brian Mulroney's Progressive Conservative Party government in the 1990s, including the Charlottetown Accord in 1992. Additionally, Simon served as Canada's Ambassador for Circumpolar Affairs from 1994 to 2003 and concurrently held the position of Canadian Ambassador to Denmark from 1999 to 2001, where she led negotiations on Arctic issues with Denmark.

Simon's assumption of the Governor General's office in 2021 coincided with a significant period for Indigenous policies in Canada. This was due to the discovery of the remains of 215 Indigenous children at the site of a former residential school in Kamloops, British Columbia, which held historical significance. In the past, Indigenous children were forcibly removed from their families and subjected to education aimed at assimilating them into Canadian society, primarily conducted in residential schools operated by the Catholic Church. Many Indigenous children who were separated from their families at a young age experienced physical abuse and sexual exploitation, resulting in numerous deaths or lasting psychological trauma for survivors. The issue of residential schools, also referred to as a "cultural genocide," has long been a significant problem in Canadian society. In 2008, the Truth and Reconciliation



Commission on residential schools was established, and its final report was submitted in 2015. However, the discovery of the remains in Kamloops, and subsequently in Marieval, Saskatchewan, where a large number of children's remains were also found, significantly challenged the reconciliation and healing efforts fostered by the Truth and Reconciliation Commission. The Canadian government called for investigations and apologies from the Catholic Church, and the Pope visited Canada for apology.

In response to these events, the Canadian government designated September 30 as the "National Day for Truth and Reconciliation" to commemorate the children who were victims of residential schools. The first observance of this day took place in 2021, and a federally sponsored commemoration ceremony became Simon's first major duty as Governor General.

Now, turning to the process leading to Simon's appointment as Governor General, Prime Minister Justin Trudeau announced Simon's appointment during a press conference on July 6, 2021. Media speculation had hinted at the possibility of the next Governor General being Indigenous, and the announcement was met with widespread approval.<sup>3</sup> Trudeau stated in a press release that Simon's appointment was based on discussions and advice from an expert committee on the selection of the next Governor General. This committee was tasked with providing the Prime Minister with a list of suitable Canadians for the role of Governor General.<sup>4</sup> The establishment of this committee was announced in a

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3 "It's Time for a First Nations Person to be Governor General: Bellegarde." *CTV News*, 28 January 2021. <https://www.ctvnews.ca/politics/it-s-time-for-a-first-nations-person-to-be-governor-generalbellegarde-1.5286274>

4 "Prime Minister Announces The Queen's Approval of Canada's Next Governor General." Homepage of The Prime Minister of Canada. 6 July 2021. <https://pm.gc.ca/en/news/news-releases/2021/07/06/prime-minister-announces-queens-approvalcanadas-next-governor>

press release on March 12, under the direction of Dominic LeBlanc, the Minister of Intergovernmental Affairs. The committee deliberated on potential candidates for over three months.<sup>5</sup>

Simon officially assumed the role of Governor General twenty days after the press release. During her swearing-in ceremony in the Senate of the federal Parliament, Simon pledged to wholeheartedly fulfill her duties as Governor General, emphasizing the significance of Rideau Hall as a cherished place for Canadians and a reflection of their diverse values, aspirations, and diversity. She vowed to maintain ethics in all her obligations as Governor General.<sup>6</sup> Simon's references to Rideau Hall and ethics in her inaugural speech may have been deliberate, considering the circumstances surrounding her predecessor, Julie Payette.

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5 “Minister LeBlanc Announces Advisory Group to Assist with the Selection of the Next Governor General.” Government of Canada. 12 March 2021. [《https://www.canada.ca/en/democratic-institutions/news/2021/03/minister-leblanc-announces-advisory-group-to-assist-with-the-selection-of-the-next-governor-general.html》](https://www.canada.ca/en/democratic-institutions/news/2021/03/minister-leblanc-announces-advisory-group-to-assist-with-the-selection-of-the-next-governor-general.html) According to the press release, the expert committee consisted of four members, including leaders of indigenous groups.

6 In recent years, a tacit requirement for individuals assuming the role of Governor General in Canada has been bilingualism in English and French, the official languages of Canada. However, Simon, while “bilingual” in an Indigenous language and English, is considered less fluent in French compared to English. As for reporting on this matter, Nancy Wood, “Next Governor General’s Inability to Speak French Leaves Francophone Communities Conflicted.” *CBC News*, 14 July 2021. [《https://www.cbc.ca/news/canada/montreal/mary-simongovernor-general-french-1.6101190?cmp=rss》](https://www.cbc.ca/news/canada/montreal/mary-simongovernor-general-french-1.6101190?cmp=rss) In her inaugural speech as Governor General, Simon stated her intention to learn French, Canada’s other official language, seeking the understanding of the citizens.

## 2 The Resignation of Governor General Julie Payette: A Chronological Overview

Julie Payette resigned from the position of Governor General on January 21, 2021, following revelations of excessive scolding of staff and other harassment incidents at Rideau Hall. Born in Montreal in 1963, Payette studied engineering at McGill University and the University of Toronto before being selected as a Canadian Space Agency astronaut candidate in 1992. She became the first Canadian to stay on the International Space Station and was awarded the Order of Canada in 2010 for her achievements. Fluent in both English and French, Payette assumed the role of Governor General in October 2017, succeeding David Johnston. Despite her illustrious career, allegations of harassment had plagued Payette, leading to the establishment of an investigative committee by the federal government. The subsequent report acknowledged that Payette had created a “toxic environment” for those working at Rideau Hall.<sup>7</sup> In her resignation press release, Payette apologized, stating that all workers had the right to a healthy work environment, which had not always been the case.<sup>8</sup>

Just before the investigative committee released its report, Payette informed Prime Minister Trudeau of her intention to resign during a meeting on the previous

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7 “Report into Julie Payette’s Conduct at Rideau Hall Finds Toxic Environment, Public Humiliations.” *CBC News*, 7 January 2021. <https://www.cbc.ca/news/politics/julie-payette-workplace-report-1.5890757>

8 “Read Julie Payette’s Full Statement on Her Decision to Resign as Governor General.” *CBC News*, 21 January 2021. <https://www.cbc.ca/news/politics/juliepayette-full-statement-governor-general-resignation-rideau-hall-1.5882916>

day.<sup>9</sup> Trudeau reportedly briefed Payette on the summary of the report and encouraged her to voluntarily resign from her position as Governor General. This could be interpreted as an effective dismissal notice from Trudeau. The following day, Trudeau phoned Queen Elizabeth II, the Queen of Canada, to explain the situation and informed her that Richard Wagner, Chief Justice of the Supreme Court of Canada, would assume the role of Administrator to perform the duties of the Governor General until a new appointment was made.<sup>10</sup> Wagner was sworn in as Administrator on January 23.<sup>11</sup> While resignations of Governors General were

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9 In another instance of a Governor General being forced to resign before the end of their term, which also occurred in a former British colony, Australia, in 2003. Peter Hollingworth, who was the Anglican Archbishop of Brisbane before assuming the role of Governor General, faced allegations of sexual harassment of children during his tenure and was pressured to resign. Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Melbourne: Cambridge University Press, 2018), 811–813.

10 “Trudeau Speaks to the Queen after Payette’s Resignation as Governor General.” *Bloomberg Canada*, 22 January 2021. (<https://www.bnnbloomberg.ca/trudeauspeaks-to-the-queen-after-payette-s-resignation-as-governor-general-1.1552596>) According to this article, Queen Elizabeth II has been in close contact with the Canadian government regarding this matter, and she has delegated the response to the Canadian government. Prime Minister Trudeau also met with the Queen during the G7 Summit held in the United Kingdom, where he discussed the selection process for the next Governor General. “Trudeau Consults Queen on Process for Picking a New Governor General. PM Had a Virtual Audience with the Queen on Friday during the G7 Summit in the U.K.” *CBC News*, 11 June 2021. (<https://www.cbc.ca/news/politics/justin-trudeau-virtual-audience-queen-governor-general-1.6062338>)

11 According to reports from the National Post, it is stated that in the event of the death or incapacity of the Governor General, the duties automatically transfer to the Chief Justice of the Canadian Federal Court. However, according to information compiled by the Library of Parliament of Canada, this is not the case. Specifically, it is asserted that swearing-in (oath) is required for assuming the role of Administrator. Therefore, there may be a logical gap in time between the absence of the Governor General and the assumption of duties by the Administrator until the swearing-in process is completed. For details, Library of Parliament, “Hill Notes: Quick Reads on Canadian Topics: The Role of the Administrator as the Crown’s

not unprecedented, they were typically due to reasons such as illness. However, the sudden resignation, especially amid a scandal, as in the cases discussed in this paper, was unprecedented.

### 3 The Governor General, and the “Deputy” of the Governor General?: On the “Administrator”

In essence, the Governor General serves as the representative of the Canadian monarch, Queen Elizabeth II, overseeing governmental affairs in Canada during the monarch’s absence. The position as Administrator of the Chief Justice of the Federal Supreme Court, in this context, assumes a somewhat confusing role as the “deputy” of the Governor General, who is, in turn, the “deputy” of the monarch, engendering a layered hierarchy.

Now, how is the Administrator, serving as the Governor General’s “deputy” in duties, legally positioned? Furthermore, are the roles and rights of the Administrator exactly identical to those of the Governor General? Before delving into these considerations, it is imperative to provide an overview of the legal and political positioning of the Governor General within Canadian politics.

#### 3.1. The Legal and Political Role of the Governor General of Canada as the “Representative” of the Monarch

The 1867 Constitutional Act, which constitutes part of the current Canadian

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Representative.” [《https://hillnotes.ca/2021/02/10/the-role-of-the-administrator-as-the-crowns-representative/》](https://hillnotes.ca/2021/02/10/the-role-of-the-administrator-as-the-crowns-representative/) & “Canada is Approaching Four Months without a Governor General. Can We Do That?” *National Post*, 10 May 2021. [《https://nationalpost.com/news/canada/canada-isapproaching-four-months-without-a-governor-general-can-we-do-that》](https://nationalpost.com/news/canada/canada-isapproaching-four-months-without-a-governor-general-can-we-do-that)

Constitution, confirms the authority of the King in Section 9, followed by the provisions regarding the Governor General in Section 10. The Governor General of Canada is appointed by the King, acting upon the advice of the Prime Minister.<sup>12</sup> While the standard term for a Governor General is five years, it can be extended to seven years.<sup>13</sup> Established constitutional conventions dictate that the Governor General acts on the advice of the Prime Minister and the Cabinet, who hold the majority in the House of Commons of the Federal Parliament.<sup>14</sup> Furthermore, all powers vested in the King are exercised by the Governor General, with the sole remaining authority of the King being the appointment and dismissal of the Governor General.<sup>15</sup>

Previously, the British King appointed Governors General based on the advice of British government officials and representatives sent to the colonies. This changed with the Balfour Report of 1926 during the Imperial Conference, which eliminated the designation of the Governor General as a representative or official of the British government dispatched to the colonies.<sup>16</sup> Subsequently, the Imperial Conference of 1930 confirmed that Governors General would be appointed based on the advice of the respective governments of the colonies. As a result, all Governors General have since been appointed based on the advice of the Canadian Prime Minister, with the King merely confirming the appointment.<sup>17</sup> In 1952, Vincent Massey became the first Canadian to serve as Governor General, marking

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12 Peter W. Hogg, *Constitutional law of Canada* (Scarborough: Thomson Carswell, 2006) 268.

13 Patrick J. Monahan & Byron Shaw, *Constitutional Law: 4th Edition* (Toronto: Irwin Law, 2013) 57.

14 *Ibid.*, 66.

15 *Ibid.*, 60.

16 Hogg, 268.

17 *Ibid.*

a “Canadianization” of the Governor General institution.

Today, the Governor General is largely devoid of substantive powers and serves primarily as a symbolic figure for the unity of the Canadian nation.<sup>18</sup> Consequently, individuals who symbolize Canada’s national ethos of multiculturalism, particularly ethnic minorities and women, often assume the position of Governor General.

However, as mentioned earlier, since the beginning of the 21st century, situations have arisen where no party in the House of Commons can secure a majority, leading to minority governments. In such situations, it is worth noting that the Governor General may occasionally find themselves compelled to exercise substantive political authority in certain political contexts.<sup>19</sup>

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18 In Canada, there was an event known as the King-Byng Affair in 1926, where Governor General Lord Byng refused Prime Minister Mackenzie King’s request to dissolve the House of Commons and call a general election, forcing Prime Minister King and his cabinet to resign.

19 In Canada, each province adopts a parliamentary system of government, wherein each province has a Lieutenant Governor as the representative of the Canadian monarch. Similar to the federal level, the constitutional monarchy mechanism operates in each province, making the political systems of Canadian provinces almost identical to the federal political system. The issue that arose in British Columbia in 2017 occurred when no party secured a majority in the provincial parliamentary elections, and the first and second parties were deadlocked in their pursuit of forming the government. Ultimately, the Lieutenant Governor was compelled to effectively appoint the provincial premier. Such confusion over the appointment of the premier could logically occur at the federal political level as well, given the adoption of the parliamentary system. It is worth noting that, like the UK, Canada does not have a formal prime ministerial election in parliament. Instead, as a constitutional convention, the outgoing prime minister recommends the successor to the Governor General, who then appoints the new prime minister. This convention is based on the assumption of a stable two-party system, but its continued operation in Canada, which experiences ongoing trends towards multiparty politics due to the diversification of voter values, is not guaranteed indefinitely.

### 3.2. The Legal and Political Role of the Administrator as the “Acting Representative” of the Governor General

Research on the constitutional position and role of the Governor General, while not mainstream in constitutional law or political science, has nonetheless been a topic of discussion. While the Governor General remains a symbolic figure in Canadian politics, it can be argued that they are central to the Canadian constitutional monarchy, and as such, textbooks on constitutional law dedicate considerable pages to discussing the King, Governor General, and Lieutenant Governors. Conversely, there are very few discussions or explanations in constitutional law textbooks regarding the Administrator, who serves as the Governor General’s “deputy,” and if mentioned, the coverage is limited to a few lines.<sup>20</sup>

The appointment of an Administrator by Chief Justice Wagner of the Federal Supreme Court is constitutionally based on the Letters Patent 1947 issued by King George VI.<sup>21</sup> Section 13 of these Letters Patent provides that in the event of the death, incapacity, removal, or absence of the Governor General, the Chief Justice of the Federal Supreme Court assumes the Governor General’s powers. It also outlines procedures for situations such as the death or incapacity of the Chief Justice, in which case the longest-serving Supreme Court Justice would assume

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20 Hogg, 267. Monahan & Shaw, 57. J.R. Mallory’s book *“The Structure of Canadian Government, Revised Edition”* (Toronto: Gage, 1984) devotes several pages to explaining the Administrator, which is an exception. This may be attributed to the fact that around the time of the first edition of this book in the mid-1970s, there were instances of the Governor General being incapacitated due to illness, leading to the actual appointment of an Administrator.

21 The Letters Patent Constituting the Office of Governor General and Commander-in-Chief of Canada No31 (1947), R.S.C.



the powers, referred to as “Our Administrator.”<sup>22</sup>

The position of Administrator was not newly institutionalized with the issuance of the 1947 Letters Patent but rather ratified existing mechanisms. Before the issuance of the Letters Patent, the King would appoint an Administrator based on individual circumstances. Historically, Administrator appointments were not uncommon, often arising from the Governor General’s incapacity, although many appointments lack clear reasons. At the provincial level, a similar system, known as the Provincial Administrator, exists. In Ontario, for example, the Chief Justice of the provincial court or the longest-serving provincial court judge would be appointed in the event of the Lieutenant Governor’s incapacity. There are differences among former British colonies as well; in New Zealand, for instance, the Chief Justice or the longest-serving Supreme Court Justice assumes the Administrator’s position, similar to Canada, whereas in Australia, the longest-serving State Governor assumes the position.

According to information on the Governor General of Canada’s website, an Administrator is appointed in cases of the Governor General’s official visits abroad or incapacity due to illness. For example, from July 8 to July 22, 2005, Chief Justice Beverly McLachlin served as Administrator while Governor General Adrienne Clarkson was hospitalized. Additionally, on September 27, 2005, when Clarkson’s term ended before Michaëlle Jean’s inauguration, a Supreme Court Justice was appointed as Administrator for the interim period.

On the other hand, as an example of prolonged delegation of the Governor General’s duties by an Administrator, apart from the recent resignation of Governor General Payette, there is the case of Bora Laskin, Chief Justice of the Supreme Court, in 1974. At that time, the Administrator, Laskin, served from July

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22 Ibid., 3.

2nd to December 6th, almost six months, due to the illness of Governor General Jules Léger, who suffered a stroke on June 8th and was deemed unlikely to recover promptly. In Canada, shortly after the Governor General fell ill, a federal House of Commons election was held, and Laskin, serving as Administrator, delivered the Speech From the Throne in the Senate on behalf of the Governor General. Additionally, considering the prolonged nature of his duties, Laskin appointed Wishart F. Spence, also a Supreme Court Justice, as his Deputy to assist him.

Moreover, during Georges Philias Vanier's term as Governor General from 1959 to 1967, he faced frequent illness and ultimately passed away in office. On May 16, 1963, when he was too unwell to deliver the Speech from the Throne in the Senate, the Chief Justice was appointed as Administrator for only six hours to deliver the speech instead. Additionally, following Vanier's death on March 6, 1967, the Chief Justice served as Administrator until April 17, 1967.

Considering these cases, it can be inferred that the assumption of the Governor General's duties by an Administrator is generally intended as short-term relief rather than a prolonged substitute. It appears that temporary duties with a defined period during the Governor General's illness or overseas visits are envisaged, rather than roles in situations with no foreseeable end.<sup>23</sup>

#### 4 The Consequences of the Absence of the Governor General

Even in the absence of the Governor General, the continuity of the exercise of fundamental powers derived from the Governor General in the Canadian political

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23 John Ibbitson, "Canada Needs a New Governor-General Now." *The Globe and Mail*, 28 June 2021, A4.

system is ensured by the immediate appointment of an Administrator following the oath, as mentioned earlier. Indeed, the authority of the Administrator is considered entirely identical to that of the Governor General, encompassing powers such as signing bills into law, dissolving the House of Commons, appointing the Prime Minister, issuing proclamations for the opening of Parliament, and appointing Lieutenant Governors, all of which are vested in the Administrator as they are in the Governor General. Thus, at first glance, the absence of the Governor General seems to have virtually no impact on the actual political processes. However, it is also a fact that several issues have been pointed out from constitutional or political science perspectives. Here, we would like to consider these points of contention.

#### 4.1. Official Foreign Visits by the Governor General as a Diplomatic Tool

One of the Governor General's significant roles is to undertake official foreign visits as a state representative.<sup>24</sup> Shortly after assuming office, Simon, for instance, promptly visited Germany in October. Moreover, in 2019, Payette conducted a total of 12 foreign visits, indicating that foreign trips are a considerable part of the Governor General's duties. These official visits abroad are, of course, not initiated by the Governor General but are entirely determined by the government's political decisions, which hold significant meaning. That is, when political figures such as the Prime Minister are unable to allocate time for

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24 "Canada is Approaching Four Months without a Governor General. Can We Do That?" *National Post*, 10 May 2021. (<https://nationalpost.com/news/canada/canadais-approaching-four-months-without-a-governor-general-can-we-do-that>)

foreign visits or when such visits may potentially raise politically sensitive issues, the Governor General's diplomatic visits, undertaken with the highly prestigious rank as the Queen's representative, serve as important strategic diplomatic tools for Canada, being politically neutral yet symbolizing a high-ranking position. In essence, while substantive diplomatic matters requiring discussions and negotiations are dealt with by the Prime Minister or the Foreign Minister during their actual visits, ceremonial aspects are handled by the Governor General as per government decisions, representing a kind of division of roles.

Indeed, precisely because they lack actual political authority, the Governor General's foreign visits, embodying Canada's multiculturalism and its commitment to peacekeeping efforts, among other peaceful images, may hold considerable significance for Canada's diplomacy.<sup>25</sup> However, in the absence of the Governor General, this important diplomatic tool remains unused.

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25 The significance of foreign visits by the Governor General has been discussed in the Canadian media, but as of now, there seems to be no research specifically addressing this aspect. In Japan, research has been conducted in recent years from the perspective of imperial diplomacy, which offers highly suggestive insights even when considering the Canadian case (referred to as "Governor General Diplomacy?"). For example, Masamichi Funabashi's *Imperial Diplomacy and the Symbolic Emperor System 1960-1975: From the Imperial Visit to Europe to the Visit to the United States* (Yoshida Shoten, 2019), and essays in Sei-ichi Chadani's edited volume *The Future of the Symbolic Emperor System* (published by Shigakukan University Press in 2020), such as Seiichi Chadani's "Chapter 1: Examination - 'Imperial Diplomacy' under the Symbolic Emperor System: The Involvement of Prime Minister Hatoyama and Secretary of State Dulles in the Hatoyama-Dulles Talks of 1951" and Masamichi Funabashi's "Chapter 2: 'Imperial Diplomacy' under the Symbolic Emperor System - Politics as seen in the Intentions of the Symbolic Emperor." Additionally, Naotaka Kimitzuka argues that while "hard diplomacy" by prime ministers, presidents, and foreign ministers is contrasted, imperial diplomacy holds enduring significance as "soft power diplomacy" over the long term. See Naotaka Kimitzuka's aforementioned work, pages 252-255, for more on this point.

#### 4.2. Potential Conflicts of Interest between the Administrator and the Chief Justice of the Supreme Court of Canada

As reiterated thus far, the Governor General of Canada is devoid of substantive political authority, maintaining a symbolic position. Conversely, the Chief Justice of Canada, who becomes the Administrator when needed, is, without question, the head of the judiciary, possessing substantial authority as the final arbiter of legal interpretation. Given this disparity in authority between the Administrator (symbolic position) and the Chief Justice of the Supreme Court (holder of substantive authority), concerns have been raised regarding potential conflicts of interest.

Bills passed by the federal parliament gain legal effect upon being signed by the Governor General (or Administrator), a power shared equally between the Governor General and their proxy, the Administrator, in a process known as Royal Assent. Since this process is based solely on formal authority, it appears to present no issues.

However, constitutional scholar Mark Walters of Queen's University has expressed concerns about potential conflicts of interest that may arise if the Chief Justice's tenure as Administrator were to extend for an extended period. The theoretical problem arises when laws signed and promulgated by the Administrator (the Chief Justice) later become the subject of legal disputes brought before the courts, potentially reaching the Supreme Court.<sup>26</sup> In such a scenario, a theoretical conundrum emerges as to how the Chief Justice, the ultimate arbiter tasked with interpreting the law, should handle the laws that they themselves promulgated. Essentially, a problem akin to a tautology arises, where

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26 John Ibbitson, "Canada Needs a New Governor-General Now." *The Globe and Mail*, 28 June 2021, A4.

the Chief Justice, as the final interpreter of laws, and the Administrator, who promulgated the laws, become one and the same. In such a situation, the Chief Justice may likely need to consider recusing himself from the case. Walters suggests that juggling the roles of Administrator and Supreme Court Justice is challenging. Even if recusal is not chosen, one cannot provide interpretations or legal opinions on laws they have ratified.

On this matter, Philippe Lagassé, a political scientist specializing in the Governor General and the Canadian constitutional monarchy at Carleton University, has made similar observations. Specifically, he notes that when the Letters Patent were issued in 1947, designating the Chief Justice as the Administrator, the Canadian Supreme Court was not the final court of appeal; instead, it was the Judicial Committee of the Privy Council in the UK. Lagassé argues that since the Canadian Supreme Court became the literal final court of appeal, particularly after the Canadian Constitution was amended in 1982, continuing to designate the Chief Justice as the Administrator based on the 1947 Letters Patent does not align with the current reality of Canadian politics.<sup>27</sup>

As a means to mitigate such conflicting situations, constitutional lawyer Sujit Choudhry proposes appointing provincial governors rather than the Chief Justice as the Administrator or creating a new post for a deputy governor general, as is the case in Australia.<sup>28</sup> This suggestion, considering the need for political neutrality in the Governor General and their proxies, serves as one potential solution.

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27 Shannon Proudfoot, “What Happens When There’s no Governor General?” *Macleans’s Magazine*, 21 January 2021. (<https://www.macleans.ca/politics/ottawa/whathappens-when-theres-no-governor-general/>)

28 Ibid.

#### 4.3. The “Institutionalization” of Candidate Background Checks

Payette’s resignation also raised various issues in the realm of practical politics. Erin O’Toole, leader of the opposition Conservative Party, criticized the process of Payette’s appointment as Governor General and questioned why Prime Minister Trudeau appointed her in the first place.<sup>29</sup> Furthermore, O’Toole argued that considering the current minority government situation, Prime Minister Trudeau should consult with the opposition regarding the appointment of a new Governor General and ensure transparency in appointments to honorary positions such as the Governor General by reinstating the Advisory Committee on Vice-Regal Appointments. This committee was established during the Stephen Harper Conservative government but has been effectively dormant since the Trudeau government took office. While Prime Minister Trudeau and Dominic LeBlanc set up a selection committee before appointing Payette’s successor as Governor General, this move was in response to criticisms from O’Toole and others. LeBlanc also mentioned the need for vetting high-level public appointees in light of Payette’s resignation debacle. It was noted that Payette’s vetting process was deemed inadequate, as, for example, there was no interview with Marc Garneau, who was also an astronaut and the Minister of Transport in Trudeau’s cabinet at the time of Payette’s appointment.<sup>30</sup>

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29 Ashley Burke & Kristen Everson, “Payette Stepping Down as Governor General after Blistering Report on Rideau Hall Work Environment.” *CBC News*, 21 January 2021. (<https://www.cbc.ca/news/politics/governor-general-payette-stepdown-1.5882675>)

30 “Why did Julie Payette Quit as Governor-General? A Primer” *The Globe and Mail*, 16 June 2021.

#### 4.4. The Potential Destabilization of Canadian Politics: Minority Government in the Absence of the Governor General

So, what impact does the absence of the Governor General-almost like a “vacuum” of authority in Canada-have on the country’s political landscape? This question continues to spark debates, and here, I’ll summarize the points that scholars have presented.

There are broadly two key points of discussion. First, it is crucial to consider the role and position of the Governor General under a minority government, where no party holds a majority in the House of Commons. At the time of Payette’s resignation, the Trudeau government was operating as a minority government, vulnerable to potential votes of no confidence due to its lack of a parliamentary majority. Daniel Béland of McGill University noted the significant constitutional role of the Governor General in Canadian politics, particularly emphasizing its importance during minority government situations.<sup>31</sup> For example, in the aforementioned “constitutional crisis”, Prime Minister Harper, in an attempt to avoid the passage of a motion of no confidence by the three opposition parties, requested Parliament prorogation from Governor General Michaëlle Jean. The fact that the Governor General ultimately accepted this request is still fresh in memory. In the precarious political situation of a minority government, Governor General Jean was faced with a significant decision that could greatly influence the future of Canadian politics: whether to accept the Prime Minister’s request for prorogation or reject it, thereby potentially paving the

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31 Christopher Nardi, “Absence of a Governor General in a Minority Government Situation ‘Completely Untenable,’ Scholar Says.” *National Post*, 21 January 2021. <https://nationalpost.com/news/politics/absence-of-a-governor-general-in-a-minoritygovernment-situation-completely-untenable-scholar-says>》



way for the passage of a motion of no confidence by the opposition coalition.

As previously mentioned, the Chief Justice in the role of Administrator holds substantive powers as the head of the judiciary, raising concerns about the potential for political turmoil if they were to dissolve the House of Commons based on the Prime Minister's advice, especially under a minority government. Béland strongly suggests that, given the current political situation, the appointment of the next Governor General should be expedited, and the Chief Justice, serving as Administrator, should not be allowed to dissolve Parliament.<sup>32</sup>

The second point of discussion revolves around the ultimate choice of dismissing the Governor General. While it's purely hypothetical, what if Payette had refused to resign? As mentioned earlier, the powers of the Canadian monarch are almost entirely exercised by the Governor General, with the sole remaining authority of the monarch being the appointment and dismissal of the Governor General. Therefore, if Payette had refused to resign, it could have led to a scenario where Queen Elizabeth II would have had to intervene directly in Canadian politics. Such a situation is not entirely far-fetched, as during the previous "constitutional crisis," Prime Minister Harper reportedly considered the dismissal of Governor General Jean had she refused his request to prorogue Parliament.<sup>33</sup>

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32 Ibid.

33 Lawrence Martin, *Harperland: The Politics of Control* (Toronto: Viking Canada, 2010), 188–189. According to the same book, the possibility of Prime Minister Harper dismissing Governor General Jean was reportedly simulated among the leadership of the Conservative Party as one of the options. However, there is no primary source indicating this. Furthermore, the book suggests that, due to the historical customs associated with her position, Governor General Jean was not required to clarify the facts of her actions in detail. Unless Jean voluntarily explains herself in autobiographies or interviews, the facts are unlikely to be revealed.

Until now, while it's been possible for a Governor General to dismiss a Prime Minister, instances of a Governor General being dismissed are almost unheard of in former British Commonwealth countries. Even in the rare event of such a dismissal, it's typically at the discretion of the Prime Minister, advised to the monarch, yet such occurrences have been absent not only in modern Canadian politics but also in other former British Commonwealth countries like Australia and New Zealand.

Can the monarch refuse the Prime Minister's request to dismiss a Governor General? D. Michael Jackson, a specialist in Canadian constitutional monarchy who has long been involved in the ceremonial affairs of Governors General and Lieutenant Governors, suggests the following: in general, even if the Prime Minister makes a request to the monarch to dismiss a Governor General, it may be prudent for the monarch to pause and consider the situation as a constitutional emergency. This is because, given the Governor General's authority to dismiss the Prime Minister, if the Prime Minister requests the dismissal of the Governor General, they may be seen as rejecting being dismissed by the Governor General and attempting to prolong their political life. Jackson points to the 1975 Australian constitutional crisis as an example, where Governor General Sir John Kerr dismissed Prime Minister Gough Whitlam, amid speculation that Whitlam had already sought the dismissal of Kerr from Queen Elizabeth II.

Such examples highlight the inherent tension between the Governor General and the Prime Minister, often stemming from political turmoil. However, in cases like the recent incident in Canada, where a Governor General embroiled in ethical issues refuses to resign, the appropriate course of action remains unclear.

In the scenario where a Governor General refuses to resign, Lagassé suggests a possibility: the establishment of a regency system within Canada's constitutional monarchy to address a situation where the Governor General becomes

incapacitated. Similar to Chowdhry's argument mentioned earlier, this discussion proves valuable in considering responses to emergencies.

Regardless, this recent turmoil has brought forth unexpected questions and challenges.

Following the appointment of Governor General Simon, the Trudeau administration immediately called for a federal election after his inauguration. Under a minority government, criticisms arose against the decision to dissolve parliament and hold an election while the position of Governor General remained vacant. There were arguments suggesting that if an election were to be conducted, it should be after the appointment of a new Governor General. Despite Prime Minister Trudeau's aim for a majority in the September 2021 election, criticisms emerged due to the election being held amidst the COVID-19 pandemic. Ultimately, the Liberal Party continued to govern as a minority government, unchanged from before the election. Nowadays, with minority governments becoming less exceptional in Canada, discussions surrounding the Governor General are increasingly recognized as needing reevaluation under these new circumstances.

## **Conclusion: Canada's Experience with Monarchy and Implications for Japan: Commonalities and Differences**

Moreover, the sudden resignation of the Governor General in this instance was a jolt for those who have studied Canadian constitutional monarchy. In contemporary Canadian politics, the framework of constitutional monarchy, originating from the British system and occupied by figures like the Governor General or Lieutenant Governors, has been seen not as contradictory but rather complementary to Canada's democratic values. It has been believed that

individuals in these positions embody Canada's multiculturalism and political values, thereby strengthening the democratic nature of Canada as a nation. However, this sudden resignation revealed a return to classical issues inherent in monarchies, where individuals occupying positions such as Governor General may be deemed unfit for their role and even considered "toxic" to Canada's political system. For researchers who have tended to evaluate Canada's constitutional monarchy positively, this event and its associated issues were both surprising and revealing blind spots. Moving forward, it is deemed necessary to conduct further research on Canada's constitutional monarchy from a multifaceted perspective, while also analyzing and comparing it with similar systems and cases in former British Commonwealth countries.

## Addendum

### 1 Insights from Canada's Experience with Monarchy and Implications for Japan: Commonalities and Differences

The case discussed in this paper stems from a crisis caused by the personal qualities of a governor-general, differing in nature from crises such as the King-Byng Affair or the 2008 parliamentary prorogation controversy, which involved the exercise of reserved powers institutionally held by Governor General. Nevertheless, it is also true that this case presents various points and implications concerning the relationship between democracy and constitutional monarchy. The personal qualities and character of a governor-general or monarch can, in certain situations, cause trouble or confusion within the political system. However, as

long as a governance system that includes a governor-general or a constitutional monarchy is maintained, such issues are unavoidable. Thus, the behavior of a governor-general or monarch can sometimes abruptly create trouble and lead to a crisis in a constitutional monarchy that otherwise appears to coexist harmoniously with democracy.

Is it possible for such a crisis to occur in Japan's constitutional monarchy? In conclusion, troubles arising from personal qualities, such as the recent resignation of Canada's governor-general, are unlikely to occur under Japan's constitutional framework due to its meticulous institutional design aimed at preventing such issues. However, unforeseen events can always happen. As previously mentioned, problems stemming from the personal qualities of a governor-general or monarch are unavoidable. For instance, what would happen if the Emperor of Japan physically refused to sign a law? Cases like King Baudouin I of Belgium's refusal to sign an abortion bill (1990) can occur in constitutional monarchies. However, it seems that Japanese governance practices, constitutional law, and political science do not consider the possibility of such occurrences.

In this addendum, I examine the constitutional monarchy in contemporary Japan with reference to the nature of the constitutional monarchy in Canada, focusing on its relationship with democracy. In summary, under the postwar Japanese Constitution, the imperial system during the era of Emperor Heisei (1989–2019) managed to establish a harmonious coexistence with democracy for thirty years. This relationship seemed to have become well-established. However, this was largely due to Emperor Heisei's notably liberal stance and his personal qualities, which openly supported the principles of democracy enshrined in the Japanese Constitution. With the new era of Emperor Reiwa (2019–), it is uncertain whether the Heisei-style constitutional monarchy, built by Emperor Heisei, will be maintained. In essence, both in Canada and Japan, the favorable

relationship between democracy and constitutional monarchy can change at any time, depending on the personal qualities and character of the monarch or governor-general. In some cases, this relationship could potentially revert to the previously antagonistic one, akin to oil and water.

## 2 The Powers of the Emperor under the Japanese Constitution and the Deliberate “Deviation” from the Constitution by Emperor Heisei (Reigned 1989–2019)

The Constitution of Japan, which was established in 1946, restricts the Emperor’s powers to acts of state only (Article 4 of the Constitution). All other acts, including religious acts, are considered private, and the Emperor holds no powers related to government affairs whatsoever. The Constitution of Japan, which proclaims popular sovereignty, stands in stark contrast to the previous constitution, the Meiji Constitution, under which the Emperor held all powers (an autocratic constitution with imperial sovereignty). The establishment of the Constitution of Japan is considered revolutionary, and in the field of constitutional law, its enactment is sometimes regarded as a *de facto* revolution.

According to D. Michael Jackson, the monarch and governors general of Canada possess both Statutory Power and Reserved Power.<sup>34</sup> Statutory Power refers to legal actions such as signing or stamping laws to give them royal assent, analogous to acts of state as defined by the Constitution of Japan. Reserved

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34 D. Michael Jackson, “The Crown in Saskatchewan: An Institution Renewed.” In Howard Leeson, ed., *Saskatchewan Politics: Crowding the Centre* (Regina: Canadian Plains Research Centre, 2008).11–13. & D. Michael Jackson, “Political Paradox: The Lieutenant Governor in Saskatchewan”, Howard Leeson, ed., *Saskatchewan Politics: Into the Twenty-First Century* (Regina: Canadian Plains Research Centre, 2001). 47–51.

Power, on the other hand, has historically been a latent authority held by the monarch and governors general, allowing them to make considered judgments on various matters, though it has rarely been exercised. However, this situation has significantly changed in recent years. For example, during instances of hung parliaments, which have become more common in Canada, the exercise of Reserved Power becomes necessary for the appointment of the prime minister.

Under the Constitution of Japan, it is notable that the Emperor possesses only what Jackson refers to as Statutory Power, and not Reserved Power. In Japan, even in the event of a hung parliament, issues such as the appointment of a minority cabinet and prime minister can arise. However, as discussed earlier in this paper, because there is a prime ministerial election within the parliament, the situation where the Emperor would exercise Reserved Power does not occur, even in a hung parliament. Thus, the Japanese monarchy post-1946 is significantly different from Canada's constitutional monarchy in this regard. In Japan, the Emperor appoints the prime minister candidate nominated by the parliament based solely on Statutory Power, without any reflection of the Emperor's personal views. This appointment of the prime minister is a typical example, but all other actions also require the advice of the cabinet, ensuring that the Emperor's personal will does not intervene in any actions. Similarly, there is no room for the Emperor to use Reserved Power in the convening and dissolution of parliament. The Emperor merely convenes and dissolves the parliament based on the advice of the cabinet.

The Constitution of Japan, established in 1946, emphasizes democracy and individualism, strictly limiting the Emperor's authority to only Statutory Power (acts of state), thereby rendering the Emperor politically powerless. However, Emperor Showa, who ascended the throne during the Meiji Constitution era (reigning from 1925 to 1989), reportedly did not understand or attempt to

understand the democratic principles of the Japanese Constitution. He often behaved like an absolute monarch, as he had before, and was frequently admonished by his aides.<sup>35</sup> Private meetings with the Prime Minister and other officials, known as “NAISO 内奏,” were confidential, similar to Canada, but some details have emerged through aides’ diaries and the recollections of the Prime Ministers and ministers who attended. These accounts suggest that Emperor Showa was extremely wary of the Soviet Union and communism, and he frequently urged the Prime Ministers to strengthen the Japan-U.S. military alliance.

After the death of Emperor Showa, this situation underwent significant transformation. The newly enthroned Emperor Heisei (reigning from 1989 to 2019) sought to shape a form of monarchy that emphasized the democratic principles of the Japanese Constitution. While faithfully adhering to and practicing the role of the Emperor as defined by the Constitution of Japan, he also sought to redefine the image of the Emperor in ways that extended beyond these constitutional limits. As will be discussed later, this resulted in actions that exceeded the constitutional norms restricting the Emperor’s activities to acts of state. This can even be seen as stemming from Emperor Heisei’s intentional or arbitrary considerations.

What, then, was the image of the Emperor that Emperor Heisei created? Upon his abdication in 2019, Emperor Heisei had intentionally expanded the role of the Emperor, which the Japanese Constitution restricts to Statutory Power (acts of state), by introducing a new realm referred to by constitutional scholars as “public acts”. This category of the Emperor’s authority, “public acts.” is not stipulated in

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35 As documented in sources such as Iwanami Shoten’s “*Records of Audiences with Emperor Showa* 7 volumes” (2021–2023).



the Japanese Constitution. It was coined by scholars to describe actions undertaken by Emperor Heisei that could not be classified as either acts of state or private acts. Over his thirty-year reign, these “public acts,” became the most significant aspect of Emperor Heisei’s conduct.

What, then, constitutes these “public acts”? They include visits to disaster-stricken areas, televised messages, and visits to Okinawa and islands in the South Pacific that suffered during World War II. Additionally, references to World War II during press conferences and the open expression of empathy for the pacifist principles and democratic ideals of the Japanese Constitution, can be considered the foundation of Emperor Heisei’s “public acts.” Under the Japanese Constitution, the Emperor is supposed to be entirely prohibited from making political statements. The Emperor’s role is limited to acts of state, such as declaring the opening of the Diet ceremonially, signing laws, and making state visits, all performed strictly under the advice of the Cabinet (similar to the practice in Canada), with no reflection of the Emperor’s personal intentions or considerations and has to be.

However, Emperor Heisei frequently expressed strong empathy for the pacifist principles of the Japanese Constitution and the democratic ideals upon which it is based, often during birthday press conferences. He also made critical remarks about the Meiji Constitution, which centered on the Emperor before the Japanese Constitution. These statements arguably constituted a deliberate deviation from the Emperor’s constitutional role, which should have been limited to acts of state. Examples of Emperor Heisei’s statements include the following:

A. Press Conference on the occasion of His Majesty’s Birthday (2013)

After the war, **Japan was occupied by the allied forces, and based on peace and democracy as values to be upheld, established the Constitution of Japan,**

**undertook various reforms and built the foundation of Japan that we know today.** I have profound gratitude for the efforts made by the Japanese people at the time who helped reconstruct and improve the country devastated by the war. I also feel that we must not forget the help extended to us in those days by Americans with an understanding of Japan and Japanese culture.<sup>36</sup>

B. Press Conference by Their Majesties The Emperor and Empress of Japan in Commemoration of the 20th Anniversary of His Majesty's Accession to the Throne (2009)

What I am rather more concerned about is that history might gradually be forgotten. **The Showa Era began under extremely harsh conditions. Just before the Enthronement Ceremony of Emperor Showa in 1928, Zhang Zuolin was assassinated. Three years later, the Manchurian Incident ignited the trail that led to World War II. Emperor Showa had visited the tragic site of the World War I battlefield of Verdun and had taken to heart the importance of maintaining peace,** so it is my perception that the events that led to war must have been contrary to what he would have wished.<sup>37</sup>

C. Responses by Their Majesties The Emperor and Empress of Japan on the Occasion of Their Majesties' 50th Wedding Anniversary (2009)

Looking back, the time when we were married was the time when Japan was rising as a nation **that values freedom and peace under the Constitution of Japan after the devastations of a war which claimed the lives of 3.1 millions**

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36 <https://www.kunaicho.go.jp/e-okotoba/01/press/kaiken-h25e.html> Note that all of these English texts are the official ones listed in English on the Imperial Household Agency of Japan website.

37 <https://www.kunaicho.go.jp/e-okotoba/01/press/kaiken-h21-gosokui20.html>

**of our people.** Our country had joined the United Nations, our industry was developing, and our people were just beginning to enjoy a better standard of living. In fact, **when seen from our long history of Emperors, and one compares the way the Emperor was stipulated in the Constitution of the Empire of Japan with the way the Emperor is stipulated in the current Constitution of Japan, I consider that the latter (the current constitution) is more in line with the traditional pattern of the Emperors.**<sup>38</sup>

### 3 The Japanese Constitution as an “Ideal” and as an “Institution” for Emperor Heisei

It can be argued that Emperor Heisei (Emperor Akihito) sought to remain faithful to the democratic “ideals” of the Japanese Constitution. As a result, he may have overstepped the authority of the Emperor, which is supposed to be limited to acts in matters of state, or the constitutional functions (acts in matters of state) prescribed to the Emperor as an “institution.” The Japanese Constitution mandates that the Emperor is only to perform acts in matters of state and does not require anything beyond that. However, Emperor Heisei repeatedly expressed his empathy towards the ideals of pacifism and democracy enshrined in the Japanese Constitution, and by acting in accordance with these ideals, he transcended his role as a political institution that should have been confined to performing constitutionally required acts in matters of state.

Such behavior by the Emperor bewildered the conservative Liberal Democratic Party (LDP) administration, which regards the Japanese Constitution as an imposition by the occupying forces (the United States and GHQ) and aims to

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38 <https://www.kunaicho.go.jp/e-okotoba/01/press/kaiken-h21-gokekkon50.html#N03>

create a new constitution based on the “tradition” of the Japanese imperial system. The conservative faction tends to strongly dislike the democratic and individualistic ideals of the Japanese Constitution, viewing them as Western imports. The fact that the Emperor, who embodies the very origin of Japanese tradition, expressed support for the ideals of the Japanese Constitution left the conservatives visibly perplexed.

Conversely, the liberal left, which respects the democratic values of the Japanese Constitution, has come to welcome the Emperor’s behavior and view him as a guardian of Japanese democracy. Previously, the liberal left criticized the imperial system as a remnant of feudalism, with some even calling for its abolition. However, such criticism has become a minority view within the liberal left. In other words, in the actual political process, Emperor Heisei, who strives to be faithful to the democratic ideals of the Japanese Constitution, has come to be celebrated by the liberal left as an embodiment of liberal values. Consequently, a paradox or contradiction has emerged: conservatives, who emphasize Japanese traditions and seek to create a new constitution centered around the Emperor, criticize the liberal Emperor Heisei, while the left, which values liberal and democratic principles, defends his behavior.

#### 4 The Differences in the Conduct of Emperor Heisei (abdicated in 2019) and Emperor Reiwa (since 2019)

In 2019, Emperor Heisei’s eldest son ascended the throne as Emperor Reiwa. The practices intentionally developed by Emperor Heisei, such as visiting disaster-stricken areas, delivering televised messages, and expressing anti-war and pacifist sentiments, have, thus far, been scarcely observed in the actions and statements of Emperor Reiwa. While the global emergency of the COVID-19 pandemic since

2020 has significantly restricted interactions with the public, Emperor Reiwa has not issued any messages to the nation during this crisis. Furthermore, during recent catastrophic events, such as the major earthquake in Ishikawa Prefecture on New Year's Day in January 2024 and the plane crash that occurred the following day, Emperor Reiwa did not release any messages, and his visits to disaster-stricken areas were substantially delayed. This stands in stark contrast to Emperor Heisei's behavior, who sought to visit affected areas and offer comfort as promptly as possible after major natural disasters.

Should the behavior of Emperor Reiwa, which appears to be markedly different from that of Emperor Heisei, be subject to criticism? In other words, should Emperor Reiwa, who does not exhibit empathy towards the democratic principles of the Japanese Constitution or demonstrate a commitment to anti-war and pacifist ideals, act in the same manner as Emperor Heisei?

## 5 Will the Reiwa Emperor Return to the Powers of the Emperor as Originally Stipulated in the Japanese Constitution?

How should we interpret the behavior of Emperor Reiwa, who is rarely seen except during official state functions? It could be argued that Emperor Reiwa has returned to the image of the Emperor envisioned by the Japanese Constitution, adhering strictly to the constitutional provisions concerning the Emperor's powers. Unlike Emperor Heisei, who was a "Visible Crown"-emphasizing anti-war and pacifist principles and openly expressing sympathy towards the democratic ideals that the Japanese Constitution is based on-Emperor Reiwa might be seen as an "Invisible Crown." This term, while different in meaning from David Smith's original usage, signifies a return to a less visible role for the Emperor in the public eye.

Where, then, do the differences between Emperor Heisei and Emperor Reiwa stem from? It must be acknowledged that the primary factor lies in their personal qualities and characteristics. In exploring the differences between the two, irrespective of which might be preferable, one ultimately encounters the fundamental issue and potential weakness inherent to any monarchy: the character and qualities of the monarch. This is an issue that constitutional and governance mechanisms cannot fully control.

To reiterate, the Japanese Constitution of 1946 strictly limits the Emperor's powers to statutory acts of state to thoroughly prevent the personal qualities of the monarch from influencing the public domain, adopting a strict dichotomy that designates all other actions as private. As previously mentioned, Emperor Heisei deliberately deviated from this, expressing sympathy for the democratic values that are the fundamental principles of the Japanese Constitution and creating a new image of the Emperor. In contrast, Emperor Reiwa seems to avoid expressing personal sentiments, remaining hidden behind a metaphorical curtain. So far, Emperor Reiwa's behavior might be seen as a return to the symbolic emperor system originally envisioned by the Japanese Constitution. The transition from the era of Emperor Heisei, who openly displayed his personal qualities and expressed support for democracy, to the era of Emperor Reiwa, who focuses solely on statutory acts, may seem understated and lackluster to those who experienced the Heisei era. However, this might indeed be the position the Japanese Constitution originally intended for the Emperor.

Emperor Heisei's conduct was reminiscent of Western monarchs who actively speak out on issues such as immigration, war, and social problems, resembling the role of the Governor General of Canada. One might say that Emperor Heisei had a Western-style constitutional monarchy in mind. In contrast, it will take time to discern how Emperor Reiwa intends to shape the Japanese monarchy. We have

had very few opportunities to understand Emperor Reiwa's personal qualities and characteristics so far since his coronation.

During the harassment and resignation scandal of Governor General Julie Payette, the Washington Post columnist J.J. McCullough argued in a column titled "*Here's the simple way Canada could work without a governor general*" that Canada's constitutional monarchy, or the office of the Governor General, should be reformed to resemble the Japanese imperial system.<sup>39</sup> In other words, he suggested that stripping the Governor General of Reserved Powers and limiting their role to Statutory Powers, similar to the Japanese Emperor, would prevent various issues associated with the Governor General. He stated the following:

*"Japan is a fine model. After World War II, the Japanese emperor was stripped of power and no longer exercises "constitutional monarch" prerogatives. Instead, the Japanese constitution states that following an election, a "Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet. This designation shall precede all other business." The power to dissolve the Diet - that is, call a parliamentary election - is trusted to the prime minister, but the Diet itself can also force elections through a vote of no confidence."*<sup>40</sup>

In essence, McCullough argues that if the Prime Minister were elected by the Parliament, as is done in Japan, the Governor General would not need to make substantive decisions, even in the case of a hung parliament. However, as discussed in this paper, the Japanese Emperor, who is supposed to have only

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39 J.J. McCullough, "Here's the simple way Canada could work without a governor general" *Washington Post*, 02 Mar 2021. (<https://www.washingtonpost.com/opinions/2021/03/02/canada-governor-general-constitutional-monarchy/>)

40 Ibid.

Statutory Powers, in practice wields a non-negligible influence in various contexts. Thus, it would be difficult to accept McCullough’s suggestion at face value. Considering and comparing constitutional monarchies is indeed a challenging endeavor, and this paper concludes with this rather self-evident observation.

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