

## **Legislatures, Representations and Responsible Government**

### Canadian Liberal Democracy

- **Canada has a unique combination of institutions and practices within the broader liberal democratic family**
  - Based on the British Westminster model but with many features imported from the United States or home-gram
- **Distinguishing features include:**
  - Constitution with written and conventional (i.e. written) elements, Charter of Rights and Freedoms
  - Constitutional Monarchy - The Crown as embodiment of the State, formal channel of State authority
  - Federal system (divided State), largely autonomous provinces
- **Distinguishing features of Canadian Liberal Democracy also includes:**
  - Prime Minister (head of government) and Cabinet chosen from elected members of the House of Commons
  - Formally powerful but non-elected Senate
- **Civil Culture**
  - Politically neutral public serves the public interest by supporting the government of the day

***\*NOTE: Independent but UNIFIED judiciary***

### The Crown and the Constitution in Canadian Governance

- **While there is no formal doctrine of the State in Canadian governance, its essence is found in the Crown**
  - Elizabeth II as Queen of Canada
  - The same person as the Queen of the United Kingdom but constitutionally distinct
- **In the UK, the present day Crown can be traced directly back to origins in the 11th century**
  - Pre-dated modern concepts of the State and democratic governance
  - Yet over a long period has evolved into a Constitutional monarchy, supporting liberal democratic governance institutions
  - Canada's shared in more recent stages of that evolution and has added some distinctive features (such as n.b. and federalism)

- The Canadian Crown embodies the Canadian State in theory and in practice as well as in practice
- At the highest theoretical level it embodies the public interest
- It also provides the conceptual basis for the three branches of government:
  - Parliament (the legislative branch - ex. law-making authority)
  - The Executive [the Prime Minister, the Cabinet, public service(s)]
  - The Courts
- A distinctively Canadian feature is that the Crown is “divided” through the federal system
  - Provincial governments are also founded in the Crown
- In practice, virtually all the authorities of the Crown are exercised by the Governor General (vs. the Queen)
  - Lieutenant Governors in the provinces for provincial responsibilities
  - The Queen appoints the GG (the governor general) [on advice from the Prime Minister] and approves matters relating to herself (such as portraits of her, stamps of her and so on)
- The Governor General’s roles include:
  - Opening, postponing and dissolving (or closing) Parliament
  - Signing laws and regulations based on laws (Orders in Council)
  - Here she is also the Commander in Chief of the Canadian Forces
  - Also entrusted with making appointments for:
    - The Prime Minister - as leader of majority in the House of Commons
    - The Cabinet - on the advice of the Prime Minister
    - Ambassadors, judges (and various other positions) - on the advice of the Prime Minister and the Cabinet as well
- \* NOTE: The Crown is the source of governance authority, but the exercise of that authority is governed by the Constitution. (This means that the Crown is unable to act outside of its jurisdiction or *ultra vires* as the Canadian Constitution has placed limits on its power and control of governance authority)
- In Canada, the Constitution has 3 essential elements:
  - A written Constitution
  - Constitutional conventions
  - Judicial interpretation

### The Written Constitution

The written constitution has several components, notably:

- *The British North America Act* (also known as the BNA Act or more commonly known as the *Constitution Act*) of 1867
- Various amendments culminating in the *Constitution Act of 1982*
- The *Charter of Rights and Freedoms* (which is part of the Constitution Act of 1982)
- Yet most were originally Acts of the British Parliament (Westminster), but since 1931, Britain has claimed no authority over Canada

***\*NOTE: The Statute of Westminster applies to ALL Dominions in the British Empire***

- It established major formal institutions, including defining their powers and structures (notably for both the federal and the provincial governments)
- These include:
  - Executive authority - the Governor General and the Queen's Privy Council/the Governor Council to simply advise them
  - Legislative authority - Parliament, made up of the House of Commons and the Senate
  - Judicial authority - the courts and basis for the Supreme Court of Canada
  - The distribution of legislative powers between the federal and provincial governments
  - Other essential State instruments (such as taxation, foreign affairs and n.b.)
  - The Constitutional Amending Formula
  - The Charter of Rights and Freedoms - individual rights

#### The Unwritten Constitution - Constitutional Conventions

- Constitutional conventions are customary practices that have grown up in the Westminster system, yet with some Canadian additions
- They govern key elements of the system of democratic governance