
The Monarchy and the Constitution

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IN THE strict sense of the term, a monarchy is a state ruled by a single absolute ruler. A constitutional monarchy, however, is a state headed by a sovereign who rules according to the constitution. Such a constitution may be 'written' and codified, as indeed it is in the vast majority of the constitutional monarchies of the modern world. For Britain is one of only two constitutional monarchies—the other is New Zealand—where the constitution remains 'unwritten' and uncoded.

The term 'constitutional monarchy' seems first to have been used by a French writer, W. Dupré, who wrote in 1801 of 'la monarchie constitutionnelle' and 'un roi constitutionnel'. The idea of constitutional monarchy, however, seems much older and it derives from antiquity. The first constitutional monarchy, indeed, seems to have been that of the Jews, who established the tradition that kings were subject to the Mosaic Law and could be overthrown for infractions, as were Queen Jezebel and Queen Athaliah of Judah.¹

Today, a constitutional monarchy is of course a monarchy in which the sovereign rules by reference not to divine rules but to human rules, to a constitution. But it is more than this. For, in modern times, constitutional monarchy is also a limited monarchy, and it is limited in two senses. The first limit is, naturally, the constitution, but there is also a second limit. For in modern democracies, the sovereign can perform only a very small number of public acts without the sanction of her ministers. Thus the constitution does not allow the sovereign actually to govern. Macaulay was one of the first, perhaps the very first, to notice this modern meaning of 'constitutional monarchy' when he wrote in 1855 in his *History of England*: 'According to the pure idea of constitutional royalty, the prince reigns, and does not govern; and constitutional royalty, as it now exists in England, comes nearer than in any other country to the pure idea.'

A constitutional monarchy, then, can be defined as a state which is headed by a sovereign who reigns but does not rule.

Until the first world war, monarchy was by far the prevalent form of government in Europe. Indeed, in 1914 there were only three republican governments in Europe—France, Portugal, whose sovereign had been deposed as recently as 1910, and Switzerland. Not every monarchy was

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constitutional, however. Constitutional monarchy was restricted to Britain, the Scandinavian monarchies—Denmark, Norway and Sweden—and the Low Countries—Belgium, Luxembourg and the Netherlands. Of the three great Continental empires, Austria-Hungary might just have been called a constitutional state, but Germany was doubtfully constitutional and Tsarist Russia certainly was not; nor were the monarchies of the smaller states of Central Europe.

Today by contrast, although the majority of states in Europe are republics, all of the monarchies which have survived are without doubt constitutional monarchies. Seven European states apart from Britain are monarchies—the three Scandinavian countries, the Low Countries and Spain, where it was restored in 1975 after the death of Franco. These states are amongst the most stable and prosperous in the modern world, and, with the exception of Spain, their history has been one of evolution rather than radical change. The survival of monarchy may indeed be said to symbolise this process of evolutionary change.

From very early times, there were attempts to ensure that the sovereign governed not solely according to his own wishes but under the law. William the Conqueror in his coronation oath and Henry I in his coronation charter in 1100 both promised to observe the laws of Edward the Confessor, although these promises were not always kept. But the real beginning of the idea of constitutional monarchy dates from Magna Carta in 1215, a 'first attempt to express in exact legal terms some of the leading ideas of constitutional government'.² Magna Carta laid down two fundamental principles. The first was that the sovereign ruled under the law and was accountable for the way in which he ruled. The second was that the rights of individuals took precedence over the personal wishes of the sovereign. Although hardly anything of Magna Carta remains on the statute book, the significance of these principles is such that the great 19th century mediaeval historian, Stubbs, went so far as to declare that 'the whole of the constitutional history of England' was but a 'commentary' on Magna Carta.³

The principles embodied in Magna Carta were in no way entrenched but declaratory, and they were often to be repudiated in later centuries. Nevertheless, their echo was to be heard in the great constitutional battles of the 17th century, when Magna Carta was used by parliamentarians as a weapon against the divine right theory of the Stuart kings. It acquired a symbolic significance and enabled the reformers to declare that it was they who were the genuine conservatives since they were acting in conformity with long-established principles rather than breaking with the past. This, of course, is a familiar motif in Britain's constitutional history.

The principles of Magna Carta were developed in the 'Glorious Revolution' of 1689 which defined the relationship between the sovereign and Parliament through the Bill of Rights. In contemporary usage,

a Bill of Rights, as in the United States, is a code which seeks to limit the powers of government and Parliament over the citizen. The Bill of Rights of 1689, was something quite different. For it sought to limit the powers of the sovereign vis-à-vis Parliament, and to establish a parliamentary monarchy.

When, in 1689, James II, having fled the country, was declared to have 'abdicated', William of Orange and Mary became joint sovereigns. But their claim to the throne could not be one of hereditary right, nor was their claim based solely on the right of conquest. Instead, it was an Act of Parliament which declared William and Mary to be the rightful sovereigns. A deliberate breach was made in the order of succession so as to bring the monarchy once again under the rule of law as Magna Carta had asserted it to be. The preamble to the Bill of Rights emphasises its roots in the past, declaring that its provisions were designed for the 'vindicating and asserting of their ancient rights and liberties'. The Bill of Rights, together with the Triennial Act of 1694 provided for Parliament to be dissolved after three years, while the Civil List Act of 1698 and the Act of Settlement of 1701, gave further shape to the notion of constitutional monarchy.

This process of constitutional evolution, from Magna Carta to the Bill of Rights, established the principle that in Britain the monarchy was not only hereditary but also contractual, that the sovereign owed his position not only to hereditary right but also to the consent of Parliament. This principle is mirrored in the coronation oath whereby the sovereign promises to govern according to 'the statutes in parliament agreed upon, and the laws and customs of the same'. It is only because the sovereign is prepared to make this promise that he is entitled to allegiance. The implication of the 1689 settlement, enshrined in the coronation oath, is in essence contractual. Allegiance to the sovereign is not unconditional but dependent upon the sovereign keeping to the terms of the coronation oath. So it is that since the time of William III, the sovereign has owed his title to Parliament, not merely to the right of hereditary succession. Thus, the 'Glorious Revolution' not only altered the succession, it also fundamentally changed the basis on which the sovereign reigned. From that time onwards, the supreme power in the state was not the sovereign but the sovereign in Parliament. It is perhaps for this reason that one authority regards 1689 as 'a watershed in the political and constitutional history of Eastern and Western Europe. It is the greatest in the sense of being the most effective, of the revolutions that occurred in early modern European history.'⁴ In the mid-19th century, Macaulay was to argue that 'It is because we had a preserving revolution in the seventeenth century that we have not had a destroying revolution in the nineteenth.'⁵

The 'preserving revolution' of the 17th century established the principle of the supremacy of Parliament. But it still left the sovereign with very wide prerogatives and, during the 18th century, power was in

practice shared between the two. Gradually, however, the working of monarchy came to be profoundly affected by the development of constitutional conventions, non-legal rules which, nevertheless, acquired a binding force. Indeed, our system of constitutional monarchy became a reality as much through the development of conventions in the 18th century as through the 17th century revolution.

In the 19th century, two interconnected factors—the expansion of the franchise and the development of organised political parties—further weakened the influence which the sovereign had been accustomed to enjoy. These developments which transformed the nature of the monarchy were fundamentally the product of the spread of liberal and democratic ideas, ideas with which Queen Victoria had little sympathy. ‘She *cannot*’, she told W. E. Forster in 1880, ‘and will not be the Queen of a *democratic monarchy*.’⁶ Yet the prestige of the monarchy at the end of her reign stemmed from its association with parliamentary government, from the idea of an executive responsible to a Parliament which was elected by popular vote. The association of the monarchy with liberalism enhanced it as an institution, since at that time liberalism was seen as the ideology of human progress. It is a paradox, however, that our constitutional monarchy came about as a result of political forces which reached their fruition during the Victorian age and with which Victoria herself did not sympathise. Indeed, she devoted the latter part of her reign to a desperate attempt to stem the tide of that very parliamentary liberalism which was modernising the monarchy. Thus modern constitutional monarchy developed very much against the will of the queen who was Britain’s first constitutional monarch and the symbol of her constitutional stability.⁷

Under a democratic system of government, two offices may be distinguished—that of head of state and that of head of government. These two positions may be held by the same person as they are in the United States and France, under the Fifth Republic, and in Russia under the 1993 constitution where the directly elected president fulfils both functions—those of head of state and of head of government. It is more usual, however, for the two offices to be separated. The head of state can then be either a president or a hereditary sovereign.

The functions of a head of state, where that office is separated, are generally of three main kinds. First, there are constitutional functions, primarily formal or residual, such as appointing a Prime Minister and dissolving the legislature. Second, there are various ceremonial duties. Third, and perhaps most important, is the symbolic function, by means of which the head of state represents and symbolises not just the state but the nation.⁸ It is this last role that is the crucial one; the ceremonial activities—once dismissed by President de Gaulle as opening exhibitions of chrysanthemums—are *means* through which the head of state can be seen as fulfilling his or her representative functions. That is why the

long withdrawal from public duties of Queen Victoria after the death of the Prince Consort in 1861 was so damaging to the monarchy. 'From causes which it is not difficult to define', observed Bagehot, 'the Queen has done almost as much injury to the popularity of the monarchy by her long retirement from public life as the most unworthy of her predecessors did by his profligacy and frivolity'.⁹ It was of no avail that the Queen continued with her constitutional functions, which she performed with extreme, perhaps excessive, assiduity, struggling with her boxes and penning her comments, heavily underlined, on government papers. That did not serve to assuage public disquiet. For, to be an effective symbol, a head of state and particularly a sovereign has to be *seen*. There is a theatrical element to effective representation and, unless this is recognised, a head of state will lack the authority which comes from public support. Then, in the long run, he or she will find it impossible, lacking that authority, to perform constitutional functions effectively.

In his book, 'The English Constitution', first published in 1867, Walter Bagehot drew a famous distinction between the 'efficient' and the 'dignified' elements of the constitution. The former were those with the power to make and carry out policy, such as the Cabinet. The latter, by contrast, such as the monarchy and the House of Lords, were those which enjoyed little effective power. This did not mean, however, that they were unimportant or superfluous. On the contrary, they were of fundamental significance in helping to reconcile the ruled to the rulers. For the 'dignified' elements in the Constitution created the aura of authority which helped to give government legitimacy.

It is easier for a head of state to fulfil this 'dignified' function if the 'efficient' functions are located elsewhere, for any exercise of these latter functions is almost bound to be controversial. The head of state will then cease to be able to represent all of the people, but only the particular section which agrees with his or her activities. That is a fundamental problem in countries where the position of head of state and head of government are combined. Many Americans, when Richard Nixon was President, felt something very near to horror at the thought that he was seen as the national representative of the United States. When, moreover, Nixon came to be tainted by the Watergate scandal, it affected the very symbolism of the state. In an earlier generation, the same revulsion was felt at Harry Truman from the opposite end of the political spectrum. Similarly, many Frenchmen and women did not feel themselves represented by François Mitterrand. For this reason, the position of head of state in the United States and France attracts to itself little of the emotional resonance which attaches to the monarchy in Britain. The central symbol of American life is not the President but the Constitution, while in France the central symbol—the French Revolution—is a contested one, and has divided Frenchmen and women of Left and Right for over two hundred years. It may be that part of the

reason for the political instability of France since 1789 is that the revolution put paid to one symbol of French unity—the monarchy—without putting in its place a viable alternative. The volatile history of French constitutionalism since 1789 may be seen as a search for such a symbol, but it has not yet been found.

In countries where the office of President is separated from that of head of government, the former has hardly any political functions and the constitutional functions usually resemble those of a monarch. The head of state may be chosen by popular election as, for example, in the Irish Republic, by the legislature as in Italy or by an enlarged assembly as in Germany. The position is almost always filled, however, if not by an ex-politician, by someone selected by a political party. Although in theory, some figure might be found without a political history who would admirably fulfil the position of president (the late Lord Franks was often mentioned as an ideal president for Britain for that reason), in practice the choice of a head of state would remain in the hands of the political parties and no candidate without the support of a major party would have very much chance of being elected.

It is, of course, perfectly possible for someone selected through the mechanism of party in this way to represent the nation as a whole—it might be argued that both Richard von Weizsaecker in Germany and Mary Robinson in the Irish Republic have succeeded conspicuously well in doing so. Nevertheless, the fact that the head of state has a political history must always make it more difficult. Monarchs, by contrast, have no political history. Provided they carry out their constitutional functions in an impartial way, they are in a better position to represent the nation as a whole and to be a representative whom everybody can accept.

Britain is the prototype of modern constitutional monarchies for two main reasons. First, it is, with the possible exception of the Danish, by far the oldest of the surviving monarchies; and second, it has probably played a more fundamental role in the history of the nation than is the case with monarchies in other countries. From the 1870s onwards, there was a powerful emotional identification with the monarchy which has no real counterpart in the surviving monarchies of the Continent. Yet Britain is also quite unique in that it has a monarchy but not a codified constitution. This has important consequences. For, in other European democracies, it is the constitution which logically—even if not historically—creates the office and specifies its powers. In Britain, by contrast, the opposite is true.

In his unpublished lectures on the comparative study of Constitutions, Dicey described the British constitution as a 'historic' one.¹⁰ By this he meant not only that it was an ancient constitution but, more importantly, that it was original and spontaneous, the product not of deliberate design but of historical development. The office of the monarchy has its origins in Anglo-Saxon times before the idea of constitutional rules was

at all understood. Whereas, on the Continent, and also in the overseas realms of the Commonwealth which recognise the Queen as their head of state, the constitution has specified the powers of the sovereign, in Britain, the process of constitutional development whittled away the powers of the sovereign and transferred them to other offices, primarily to ministers.

In Britain, then, the symbol of the state and nation is not a constitution, as it is in the United States, nor a historical tradition, which may be deeply contested, as in France or the Irish Republic, but a person. It may be easier for citizens both to understand and to feel allegiance to a person than to a concept. For the people as a whole to feel allegiance to a symbol under a democracy, however, it is essential that the symbol does not enjoy decision-making power. Under dictatorships, such as those of Hitler and Mussolini, allegiance to a person with massive political power was enforced. In a constitutional democracy, allegiance is to a person who has no political power. This may serve to humanise power by stressing that the forces of political power are themselves subordinate to the symbol both of the state and the nation.

Democracy is a form of government in which political positions derive from popular election. This rule, however, does not apply to a monarch, an office transmitted by inheritance and held generally for life. The conflict between the two notions is reconciled through the idea of constitutional monarchy, a set of rules which limit the discretion of the sovereign so that her public acts are in reality those of her ministers. The fundamental purpose of such constitutional rules is to ensure that she acts in accordance with democratic norms. Thus, under modern conditions, a constitutional monarchy serves not to limit democracy but to underpin and indeed to sustain it.

It may seem that there is no obvious point at which the limitation of the power of the constitutional monarch should stop. That limit is reached, however, at the point at which the constitution itself, which determines the role of the head of state, comes to be subverted by political leaders. At that point the sovereign has the right (some would say duty) to exercise her discretion to ensure that the values which lie at the foundation of a constitutional system are preserved. For the doctrine that the sovereign is required to act on the advice of her ministers presupposes that ministers themselves act within the framework of constitutional government.

The sovereign is the head of state and, in Britain, formally, as the Crown, also the head of the executive with prerogative powers, including proclamation of war and ratification of treaties without the consent of Parliament. She is also a part of the legislature, the Queen in Parliament, and, in theory, could refuse assent to legislation in accordance with her own political predilections. She is, finally, the 'source of

justice' in that the courts are the Queen's courts and dispense her justice throughout the realm. These formalisms, however, have little substantive content in the modern world. For, in a constitutional monarchy, there is a fundamental distinction between the actions of the sovereign in a personal capacity and her actions, taken on the advice of ministers. Thus, although the sovereign is the head of the executive, the vast bulk of the prerogative powers of the Crown—probably over 95% of these powers—are exercised not by the sovereign personally but either by her on the advice of ministers or by ministers directly. The sovereign's judicial functions, too, are exercised entirely on the advice of ministers. Her personal powers arise only in those few situations, at the beginning or the conclusion of a government, where she may or must act without ministerial advice.

The crucial requirement of constitutional monarchy, that the sovereign must be politically impartial, is achieved, then, through the principle that almost all her public acts are taken on the advice of her ministers. But what is 'advice'? In everyday speech, to offer advice to someone is to offer an opinion or make a suggestion as to how that person should act. The recipient is quite free to accept or to reject it. The term 'advice' used in connection with constitutional monarchy, however, has a quite different meaning. When ministers offer advice to the sovereign, she normally has no option but to accept it. The consequence of rejecting advice would probably be the resignation of the government, and even if the sovereign were able to find another, it would be in office in virtue of the personal choice of the sovereign. The consequence would be a sovereign opposed by one of the great parties of the state. No constitutional monarch can survive for long once seen as partisan.

In the past the doctrine that the sovereign acts on the advice of her ministers was designed to protect Parliament and people from the arbitrary use of royal power. Today, it has a quite different function, that of protecting her from political involvement. For it follows from the doctrine that she speaks and acts on the advice of her responsible ministers, that it is her ministers and not the sovereign who are held responsible by Parliament and by the electorate. Were the sovereign's actions of giving assent to her bills really her own, and were the Queen's Speech to represent her own personal proposals rather than those of her government, they would become matters of controversy and she would have laid herself open to criticism. Thus the principle that the sovereign speaks and acts on the advice of her ministers serves to shield her from responsibility, so that criticism of her government is directed at ministers, and not at the sovereign herself.

The consequences of this fundamental principle were drawn out by the constitutional lawyer, Sir William Anson, in his authoritative work, *The Crown*, Volume II of *The Law and Custom of the Constitution*, first published in 1892, as 'first that she should not take advice from

others, in matters of State, unknown to them; next, that she should not give public expression to opinions on matters of State without consulting them; and lastly, that she should accept their advice when offered by them as a Cabinet, and support them while they remain her servants.’¹¹

The first principle, that the sovereign should not take advice from others without the knowledge of her ministers, requires her not to consult other politicians without the approval of her Prime Minister. It may admittedly be necessary on occasion for the sovereign to learn of the attitudes and opinions of leading politicians from the Opposition parties, one of whom might, in the future, come to form her government. This is normally achieved through the Queen’s Private Secretary whose task it is to ascertain the general state of political opinion. He can meet Opposition leaders and others whose views may differ from those of the government without seeking the permission of the Prime Minister.

The second principle requires not only that the sovereign’s public statements are made on the advice of her ministers, but that her private comments are made discreetly and cautiously so that relations with her ministers are not compromised. This applies also to other members of the Royal Family, even though they do not speak on advice. The future George V, as Prince of Wales, remarked after a dinner party in 1908, to Winston Churchill that his Cabinet colleague, H. H. Asquith was ‘not quite a gentleman’, and said to the Permanent Secretary at the Treasury, ‘I can’t think, Sir George, how you can go on serving that damned fellow Lloyd George’. George V’s entirely correct behaviour as sovereign could not entirely efface such comments. They were perhaps responsible for Asquith requiring the King to promise in advance that he would use his prerogative to create peers to ensure the passage of the Parliament Bill. The Prime Minister, perhaps, did not otherwise trust the King to do his constitutional duty when the time came. In 1914, George V admitted that Asquith might have a prejudice against him because of his comment six years earlier, ‘I ought not to have said it, and it was a damned stupid thing to say.’¹²

The third principle ensures that the sovereign can not have a policy of her own independently of her ministers. In accepting their advice, she is in effect giving expression to the views of the electorate as manifested in parliamentary elections. In this way, the rules relating to ministerial advice by reconciling monarchy with the basic principle of democracy, that the will of the people should prevail, serve as the basic foundation of constitutional monarchy.

Concentration upon constitutional powers, however, gives a misleading picture of the contemporary role of a constitutional monarch. For the personal prerogative powers, choosing a Prime Minister and refusing a dissolution, are used very rarely, and today are likely to be exercised

only under highly unusual circumstances, at least for as long as the two-party system and the first-past-the-post electoral system survive in Britain.

The prime constitutional role of the sovereign occurs, however, not when a ministry begins or comes to an end but during the everyday life of a government, and consists in the exercise of influence rather than power.

In the 19th century, as it became clear that the sovereign's powers were being limited, there were some who believed that Queen Victoria was becoming 'nothing but a mandarin figure which has to nod its head in assent, or shake it in denial, as his Minister pleases'.¹³ Disraeli saw that this would be unlikely to occur. 'I know it will be said', he declared in a speech at Manchester in 1872, 'that the personal influence of the Sovereign is now merged in the responsibility of the Minister. I think you will find a great fallacy in this view. The principles of the English Constitution do not contemplate the absence of personal influence on the part of the Sovereign; and if they did, the principles of human nature would prevent the fulfillment of such a theory.'¹⁴ Even a cursory reading of the biographies of recent sovereigns shows that the monarch is far more than a merely symbolic head of state, not a 'mandarin figure' in Stockmar's phrase but an active element in the constitution.

The rights of the sovereign under normal conditions have been summarised in Bagehot's classical trinity, the right to be consulted, the right to advise and the right to warn. 'And a king of great sense and sagacity', Bagehot added, 'would want no others. He would find that his having no others would enable him to use these with singular effect. He would say to his minister: "The responsibility of these measures is upon you. Whatever you think best must be done. Whatever you think best shall have my full and effectual support—I do not oppose, it is my duty not to oppose, but observe that I *warn*". Supposing the king to be right and to have what kings often have, the gift of effectual expression, he could not help moving his minister. He might not always turn his course, but he would always trouble his mind.'¹⁵

A constitutional monarch, however, is only able to exert influence within the framework of the constitutional rules concerning ministerial advice. This requirement was well analysed by Lord Esher, an unofficial adviser to Edward VII and George V, in a memorandum which he wrote for the latter in September 1913, when the king was considering whether he had the right to veto the Home Rule Bill. 'Every Constitutional Monarch possesses a dual personality. He may hold and express opinions upon the conduct of his Ministers, and their measures. He may endeavour to influence their actions. He may delay decisions in order to give more time for reflection. He may refuse assent to their advice up to the point where he is obliged to choose between accepting it, and losing their services. If the Sovereign believes advice to him to be wrong, he may refuse to take it, and if his Minister yields, the Sovereign is justified.

If the Minister persists, feeling that he has behind him a majority of the people's representatives, a Constitutional Sovereign must give way.

It is precisely at this point that the dual personality of the Monarch becomes clear. Hitherto he has exercised free volition, he has used his prerogatives of criticism and delay, of personal influence and remonstrance. But now the King ceases to be a free agent.' Yet, as Esher concludes, 'It is irrational to contend that because under our constitutional rules and practice the Sovereign has now and then to act automatically, he is therefore an automaton without influence or power.'¹⁶

The constitutional parameters which the sovereign must respect if she is to exercise influence constitutionally were laid out by Sir William Heseltine, as the Queen's Private Secretary in a letter to *The Times* on 28 July 1986. He laid down three propositions. The first was that the Queen enjoyed the right, and indeed the duty, to express her opinions on government policy to the Prime Minister. The second was that the Queen must act on the advice of her ministers, whatever her own opinions might be. If, therefore, she were to express reservations about some area of government policy, but was unable to persuade the Prime Minister, she would be bound, in the last resort, to give way. Sir William's third proposition was that communications between them were entirely confidential. Indeed, at the weekly audiences which the Queen grants the Prime Minister when both are in London, neither her Private Secretary nor any civil servant, nor indeed any third person, is present although a note of the audience may be dictated by the Queen to her Private Secretary afterwards.

It is important to notice that the sovereign's right to express her opinions on government policy, Sir William's first proposition, entails his third proposition, that communications between her and the Prime Minister remain confidential. She is not entitled to make it known that she holds different views on some matter of public policy from those of her government. It is a fundamental condition of royal influence that it remains private. It follows, therefore, that the sovereign must observe a strict neutrality in public and great discretion in her private conversation.

It is, however, because relations between the sovereign and her Prime Ministers must remain confidential that it is impossible ever to form an accurate estimate of the influence of the current monarch. 'The metaphysics of limited monarchy', declared Harold Laski in 1938, 'do not easily lend themselves to critical discussion. On no element in the Constitution is our knowledge so inexact'.¹⁷ Historians can estimate the influence of Queen Victoria or King George V, but political scientists necessarily find themselves unable to answer basic questions about the working of the monarchy in the era in which they live. What has been the nature of the relationships between the Queen and her nine Prime Ministers? Has she exerted significant influence over her governments?

What is the relationship between her and her Private Secretary? On none of these questions is it possible to pronounce with the slightest degree of confidence. Good journalists might, no doubt, penetrate into the inner sanctum of government so as to produce fairly accurate reports of private governmental discussions; they will not be able to penetrate the monarchy; were they able to do so, the monarchy would be in danger. It must remain hidden by an efficient veil of discretion. It is for this reason that, as Bagehot noted, 'there is no authentic explicit information as to what the Queen can do, any more than of what she does'.¹⁸

In modern times, the sovereign gives an audience to the Prime Minister once a week, usually on Tuesday, when both of them are in London. Margaret Thatcher has declared that 'Anyone who imagines that they are a mere formality or confined to social niceties is quite wrong; they are quietly businesslike and Her Majesty brings to bear a formidable grasp of current issues and breadth of experience.'¹⁹ James Callaghan in his autobiography records how in early 1976, the Queen encouraged him, as Foreign Secretary, to take an initiative which he already had in mind to resolve the Rhodesian problem. 'Inevitably', he declares, 'the Queen's opinion was enough to tip the scales, for she is an authority on the Commonwealth and I respected her opinion—I have always thought that the Queen's initiative on Rhodesia was a perfect illustration of how and when the Monarch could effectively intervene to advise and encourage her Ministers from her own wide experience and with complete constitutional propriety.'²⁰

These scattered hints apart, one can only speculate on the influence of the Queen. Three thoughts can perhaps be ventured. The first is that the influence of a sovereign is likely to increase during her reign, for the longer she remains on the throne the greater the political experience which she accumulates. By 1996, the Queen will have been on the throne for 44 years, known nine Prime Ministers and have enjoyed a longer experience of public life than anyone who is politically active today. 'In the course of a long reign', Bagehot declared, 'a sagacious king would acquire an experience with which few ministers could contend. The king could say: "Have you referred to the transactions which happened during such and such an administration, I think about fourteen years ago?" They afford an instructive example of the bad results which are sure to attend the policy which you propose. You did not at that time take so prominent a part in public life as you now do, and it is possible you do not fully remember all the events. I should recommend you to recur to them, and to discuss them with your older colleagues who took part in them. It is unwise to recommend a policy which so lately worked so ill.'²¹

One might suggest secondly that the Queen's influence is likely to be greater on matters that are not fundamental to party ideology; and finally perhaps that it will be felt most strongly where Commonwealth

affairs are at stake because of her position as Head of the Commonwealth. But these are no more than speculations.

The rules relating to advice apply only during the existence of a government. They do not apply when it comes to an end through the death or resignation of the Prime Minister, nor when a Prime Minister seeks a dissolution of Parliament. On these occasions, the sovereign retains personal prerogatives and acts without advice. It may be that there are other personal prerogatives also and that, in extreme circumstances, as, for example, with the Irish Home Rule Bill of 1914, there is still power to refuse the royal assent to a bill.

When exercising these personal prerogatives the Queen acts in her personal capacity and not on the advice of ministers. The extent and scope of the personal prerogatives is, however, unclear. It is difficult if not impossible to circumscribe them accurately. It may, indeed, be inherent in the notion of constitutional monarchy that they remain undefined in scope. This is perhaps particularly the case in the United Kingdom with its uncoded and uncertain constitution. But the introduction of a codified constitution would not necessarily serve to determine their precise scope, although they might determine what the prerogatives actually were. For many constitutions lay down the powers of the head of state in purely formal terms—as in the Dutch Constitution, which simply states that ‘The King appoints and dismisses ministers’. The real powers of the sovereign are generally determined more by convention than by the articles of a constitution.

A monarchist might conceive it to be a positive advantage that, under the uncoded British constitution, options are not determined in advance. For too rigorous a characterisation of precedents may be used in an attempt to bind the sovereign, so limiting her freedom of action. Those who seek to limit her power might suggest that, because in the past, she took a particular course of action, she is bound to undertake the same course in the future. But the sovereign can not be bound by precedent. She will be called upon to do what is best in a specific situation whose precise contours cannot be predicted. Thus, in 1923, when George V chose Stanley Baldwin as Prime Minister, rather than Lord Curzon, it was authoritatively stated by the King’s Private Secretary, Lord Stamfordham, that the King was not laying down a general doctrine that a peer could never accede to the office. Indeed, in the very different circumstances of 1940, George VI was to favour the claims of Lord Halifax over Winston Churchill. The King then took the view that Lord Halifax’s peerage was not an obstacle, since he believed that it could be laid in abeyance for the time being. The only claim being made by George V in 1923 was specific, not general. He was saying that in the particular conditions of the time the Prime Minister ought to be in the House of Commons and not the Lords, especially because the official Opposition, the Labour Party, was virtually unrepre-

sented in the latter, and so it would be impossible for it to question the Prime Minister.

There are, however, dangers in the argument that the extent and scope of the powers of the sovereign should be uncircumscribed. For there is a tension between the basic principle of constitutional government that the sovereign must remain politically neutral and the claim that her prerogative powers should not be laid out in advance in the form of a set of rules. For the greater the discretion which she enjoys, the greater the possibility of her using that discretion in a manner that offends one or other of the major parties of the state. Monarchists seek both to preserve the political neutrality of the sovereign but also to maintain the notion that the sovereign is the fundamental source of political authority, so that the prerogatives must be preserved intact. 'We must preserve her right of dissolution', Sir Martin Charteris declared when Private Secretary to the Queen, 'because I think there has to be some risk attached in order to provide excitement for the monarchy'.²² This 'excitement for the monarchy', however, could easily compromise her political neutrality. In logic, it is difficult to reconcile the two principles that the sovereign must remain neutral and that the extent of her prerogatives should remain undetermined. Despite this, however, conflict with regard to the sovereign's powers has occurred but infrequently in twentieth century Britain.

But the sovereign's ability through most of the 20th century to adopt a formal role in relation to the appointment of a Prime Minister and the granting of a dissolution of Parliament, is contingent not inherent. It has rested upon two inter-connected factors. The first is the existence of a two-party system, which has meant that there have rarely been occasions when the sovereign has needed to exercise his or her discretion. A return to a multi-party system such as characterised the mid-Victorian era, or the introduction of proportional representation which would entrench a multi-party system, would certainly alter her role, propelling her into making decisions which could not remain uncontroversial.²³ For many of what we regard as conventions of the constitution are in reality conventions of the two-party system.

The second reason why the role of the sovereign has been largely formal in the 20th century is that, since 1914, Britain has been spared emergency situations such as the Ulster crisis of that year which seemed to some to call for royal intervention. There are some who would argue that, in an emergency situation, the sovereign should be able to exercise a prerogative power as a guarantor of the constitution, a defender of last resort of the conventions of parliamentary government. That was the role adopted by King Juan Carlos of Spain in 1981 when the country was threatened by a military *coup*. In his classic text, *Cabinet Government*, Sir Ivor Jennings argued that under emergency conditions the sovereign could legitimately refuse his or her assent to a policy 'which subverted the democratic basis of the Constitution, by unneces-

sary or indefinite prolongations of the life of Parliament, by a gerrymandering of the constituencies in the interests of one party, or by fundamental modification of the electoral system to the same end. She would not be justified in other circumstances.²⁴

Constitutional monarchy is a form of government that ensures legitimacy by settling beyond dispute the crucial question of who is to be the head of state. Thus it places the position of head of state beyond political competition. In yielding continuity to the form of the state, constitutional monarchy can serve both to accommodate radical change and also to cushion the political system from the consequences of failure.

It is perhaps idle to argue in the abstract whether constitutional monarchy is in general a desirable form of government. Whether it is regarded as desirable depends, after all, less on general principles than on popular attitudes, which will differ from nation to nation. In the modern world, constitutional monarchs, deprived of power, rest essentially upon opinion. 'I think it is a complete misconception', the Duke of Edinburgh suggested in Canada in 1969, 'to imagine that the monarchy exists in the interests of the monarch. It doesn't. It exists in the interests of the people.'²⁵

Those European countries which have retained their monarchies have probably done so because, enjoying a stable and continuous evolution towards parliamentary democracy, they found no need to alter the form of the state. Perhaps the absence of ideological conflict in the progress towards democracy was also an important factor in assisting their economic progress. It may be, indeed, that the same factors in the political cultures of the constitutional monarchies which have made for their stability have also persuaded them to retain their monarchies.

It is precisely because Britain enjoyed a smooth progress towards democracy in the 19th and early 20th centuries and because she was a victor in two world wars that republicanism has remained the concern of a very small minority. When, in 1923, the Labour Party last debated republicanism, it was heavily defeated by 3,694,000 votes to 386,000. In December 1936, immediately after the abdication, a republican motion in the House of Commons attracted only five votes.

Thus, as the 20th century draws to a close, Britain remains one of a small group of nations, mainly in Western Europe, in which constitutional monarchy survives. In these countries, far from undermining democracy, it serves to sustain and to strengthen democratic institutions. If the conjunction of monarchy and democracy may seem a contradiction, it would be well to bear in mind Freud's aphorism that it is only in logic that contradictions can not exist.

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- 4 L. G. Schworer, *The Declaration of Rights 1689* (John Hopkins University Press, 1981).
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- 6 *The Letters of Queen Victoria*, 2nd series, ed. G. E. Buckle (John Murray, 1926–8), vol.iii, p. 166.
- 7 See A. J. P. Taylor in *Essays in English History* (Penguin 1976), p. 66.
- 8 See A. Jay, *Elizabeth R*, (BBC Books, 1992).
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- 10 Manuscript in the Codrington Library, All Souls College, Oxford.
- 11 Ed. A. Berriedale Keith (Oxford University Press, 4e 1935), vol.II, part 1, p. 139–40.
- 12 K. Rose, *King George V*, (Weidenfeld and Nicholson, 1983), p. 71.
- 13 Lord Stockmar to the Prince Consort in 1854, cit. R. Blake in J. Murray-Brown (ed.), *The Monarchy and its Future*, Allen and Unwin, 1969, p. 493. Stockmar is referring to what he believes the Whig view of the monarchy to be.
- 14 T. E. Kebbel (ed.), *Selected Speeches of Lord Beaconsfield* (Longmans, Green and Co, 1881), vol. 2, p. 493.
- 15 W. Bagehot, *The English Constitution*, op.cit., p. 253.
- 16 Memorandum of 10 September 1913, cit. *Journals and Letters of Reginald, Viscount Esher*, vol. 3, 1910–1915 (Ivor Nicholson and Watson, 1938), pp. 126–8.
- 17 H. Laski, *Parliamentary Government in England*, Allen and Unwin, 1938, p. 388.
- 18 *The English Constitution*, p. 243.
- 19 M. Thatcher, *The Downing Street Years* (HarperCollins, 1993), p. 18.
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- 21 Op.cit., p. 253.
- 22 In conversation with Tony Benn, T. Benn, *Against the Tide: Diaries 1973–76* (Hutchinson, 1989), p. 94.
- 23 See V. Bogdanor, *Multi-Party Politics and the Constitution* (Cambridge University Press, 1983).
- 24 Cambridge University Press, 3e 1959, p. 412.
- 25 Cit. in J. D. B. Miller, *Survey of Commonwealth Affairs: Problems of Expansion and Attrition*, 1953–69 (Oxford University Press, 1974), p. 421.