

The constitutional monarchy in the United Kingdom

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I. The Sovereign's constitutional role

A. *The development of constitutional monarchy*

A constitutional monarchy is a form of government in which the head of state is a Sovereign who governs according to the constitution, that is, according to rules, rather than arbitrarily. The United Kingdom, of course, does not have a codified constitution specifying the rights and duties of the Sovereign, whose role is determined less by statute than by conventions, non-statutory rules which, nevertheless, bind just as much as formal constitutional rules. The government of the United Kingdom is, therefore, as much dependent upon constitutional norms as the government of a country with a codified constitution.

The concept of a constitutional monarchy lies very deep in our historical experience. Almost from earliest times, it was accepted that the Sovereign must act in accordance with the law. A full history of the development of constitutional monarchy would have to begin with Magna Carta in 1215, when the barons succeeded in forcing King John to accept that they and other freemen had rights against the King. From this point of view, the reign of the Stuart Kings who propagated the theory of the divine rights of kings, that the Sovereign was subject only to God, and not to the law, was a deviation. The men of 1688-9, who were responsible for the Bill of Rights may be regarded as conservative revolutionaries, rather than radicals, since they saw themselves as restoring traditional rights, rather than creating new ones.

The development of constitutional monarchy, however, depended as much upon political developments in the 18th and 19th century, and, in particular, upon the development of the party system as upon statutory restrictions on the power of the Sovereign. In the 18th century, the modern Cabinet system began to develop, assisted by the fact that George I, who arrived in England from Hanover in 1714, had a very imperfect command of English; and, after 1717, he attended Cabinet meetings but rarely. This allowed the Cabinet to act collectively and to formulate policies, which, provided they were backed by a majority in the Commons, could not be resisted by the King. As late as 1801, however, when Pitt introduced a bill to emancipate Catholics, George III forced his Prime Minister's resignation by declaring that anyone who voted for it would be his enemy. But, in November 1830, the Duke of Wellington's government fell, even though it had

the support of the King, as a result of defeat in the House of Commons; and it was the passage of the Reform Bill in 1832, extending the franchise and basing it on more rational qualifications, which finally put paid to the idea that the government was the personal choice of the king. The last occasion on which a Sovereign was able to prevent the formation of a ministry which she found politically uncongenial was in 1839, when Queen Victoria refused to dismiss the Ladies of the Bedchamber despite being requested to do so by Sir Robert Peel, the Prime Minister – designate, who, in consequence, refused to form a government.

After 1832, the franchise was gradually extended, although Britain did not become a fully – fledged democracy until 1928 when all men and women over 21 were given the vote. As political parties came to assume their modern form, so the powers of the Sovereign were even further restricted. At the beginning of her reign in 1837, Queen Victoria could look to her Hanoverian predecessors for precedents; by the end of her reign in 1901, the contours of constitutional monarchy were clearly visible. Constitutional monarchy was reinforced during the reign of George V (1910-36), who faced a number of very delicate and potentially divisive constitutional problems, all of which he handled with a sure touch. He accepted, albeit not without misgivings, the advice of his ministers in 1910, that he might have to create peers to overcome the opposition of the House of Lords to the Parliament Bill, which severely limited the powers of the Lords; although, in the event, no creation was needed, the threat being sufficient to persuade the Lords not to defy the Commons. George V also refused either to withhold Royal Assent from the Government of Ireland Bill, 1914, providing for Home Rule for Ireland, or to dismiss his ministers, despite the threats of the opposition that the Bill could lead to civil war. He accepted Britain's first Labour Government in January 1924, and was insistent that a Labour Prime Minister must have 'the same facilities which would be accorded to any Minister entrusted by the Sovereign with the formation of a Government' ¹. It was perhaps in part because of the skill with which George V handled a number of complex situations that constitutional monarchy became so firmly established during his reign, a period in which five emperors, eight kings and 18 other dynasties disappeared ². It was in fact during the reign of George V that the development of constitutional monarchy reached its modern form; it is in essence the same now as it was during his reign.

B. *The essence of constitutional monarchy*

The essence of constitutional monarchy is that the Sovereign remain politically impartial. This is normally achieved through the convention that the Sovereign acts on the advice of responsible ministers. These ministers then become responsible for that advice and for any actions taken by the Sovereign as a result. In the past,

(1) H. NICOLSON, *King George V: His Life and Reign*. Constable, 1952, p. 384.

(2) H. NICOLSON, *op. cit.*, p. 106.

this crucial principle, 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 its function is quite different ; it is that of protecting the Sovereign from political involvement. For, if the Sovereign's public actions, such as giving assent to a bill, were really her own, they would be bound to become a subject of controversy. Thus the principle that the Sovereign acts on the advice of her ministers serves to shield the Sovereign from responsibility so that criticism of the Queen's government is directed at ministers, and not at the Sovereign.

The consequences of this principle have been laid out by the constitutional lawyer Sir William Anson, in his authoritative work, *The Crown*, Vol. II of *The Law and Custom of the Constitution*³. They are as follows :

1. That the Sovereign should not take advice from anyone other than responsible ministers. This does not, of course, preclude the Sovereign from learning of the opinions of other leading politicians ; and, under modern conditions, it is generally the task of the Queen's Private Secretary to ascertain the general state of political opinion. But the Sovereign's only advisers are her own ministers.
2. That the Sovereign should not publicly express opinions on matters of State without the approval of her responsible ministers ; in general, she will be expected to confine any expression of her political views to her ministers. Even when expressing her views in private, however, the Sovereign must be prudent and cautious, so as to ensure that relations with her ministers are not compromised.
3. That the Sovereign must accept the advice offered by responsible ministers.

The principle that the Sovereign should only act upon advice ensures that she can have no personal policy of her own independent of that of her ministers. In accepting the advice of her ministers, the Sovereign is in effect giving expression to the will of the electorate as this has been made manifest in elections to the House of Commons. In this way, the rules relating to advice serve to reconcile the dignity and political impartiality of monarchy with the basic principle of democracy, that the will of the people, through their elected representatives, shall prevail.

The Sovereign does, however, retain certain residual personal prerogatives which may require to be exercised, without advice, in certain, fairly rare situations. It would now be unthinkable for the Sovereign to dismiss her ministers, or compel a dissolution of Parliament ; and so, in normal times, the only such personal prerogatives are the appointment of a Prime Minister and the dissolution of Parliament. In neither case does the Sovereign act on advice. But, in general, the Sovereign has no discretion ; the Prime Minister will normally be the elected leader of the party with a majority in the House of Commons, and will normally be entitled to a dissolution of Parliament as and when he or she asks for one.

(3) W. ANSON, *The Law and Custom of the Constitution*. Ed.: A. BERRIEDALE KEITH, *The Crown* (4th edition). 1935, p. 139 ff.

In the past, the Sovereign occasionally undertook an additional constitutional role, acting as a conciliator to help secure agreement between the political parties. Queen Victoria acted in this way and helped to resolve disputes between a Liberal House of Commons and a Conservative House of Lords in 1869 over the disestablishment of the Irish Church, and again in 1884-5, over the Reform and Redistribution bills. In July 1914, George V, having secured the agreement of his Prime Minister, summoned a Conference at Buckingham Palace to discuss the Irish question, it having been ascertained from the leader of the opposition that he would only attend such a conference if summoned by the King. The King's intervention thus made it easier for political leaders to parley without being accused of weakness by their supporters. In 1916 and 1931, further conferences were held at Buckingham Palace, to choose a new Prime Minister in a situation in which no one party enjoyed a majority in the House of Commons; and in August 1915 a Buckingham Palace conference was held on the question of whether military service should be made compulsory.

The Sovereign, however, cannot be an arbiter in the sense of being a judge between the claims of government and opposition. For the very notion of a mediator implies that the opposition has as much right as the government to have its point of view taken into account; it implies that the result of the election was irrelevant from the point of view of policy outcomes. The mediating function, therefore, probably only comes into play on occasions when a failure to reach inter-party agreement would seem to threaten civil war, as in 1914; or when, as in 1916 and 1931, the normal process of party politics break down in conditions of wartime emergency or economic crisis. On other occasions, the Sovereign's offer of mediation is likely to be rejected by the government. In 1926, for example, when George V offered his services during the General Strike, they were rejected by the Prime Minister, Stanley Baldwin, since mediation would cut across the policy of a government seeking unconditional surrender from the Trades Union Congress. In modern times, the Sovereign's position of impartiality is best preserved by her remaining passive during periods of strong inter-party conflict.

C. The appointment of a Prime Minister

The appointment of a Prime Minister is one of the few remaining personal prerogatives of the Sovereign. In appointing a Prime Minister, the Sovereign does not act on advice. She clearly cannot rely upon the wish of the outgoing Prime Minister: if the Prime Minister has died in office, his or her views will not be available; while if the Prime Minister has been defeated in the Commons, or at the polls, as was the case, for example, with James Callaghan in 1979, his authority to advise will have been seriously impaired.

Although the Sovereign does not act on advice in choosing a Prime Minister, her discretion is, nevertheless, severely limited by constitutional conventions. The fundamental requirement is to find someone who can command the confidence of the House of Commons. This requirement is normally secured by appointing

the leader of the party with an overall majority of seats in the Commons. It seems now to be a firm convention, following Lord Home's renunciation of his peerage in 1963, that the Prime Minister must be either a member of the House of Commons, or capable of being elected to the Commons. He cannot be Prime Minister and remain a member of the House of Lords.

When a potential Prime Minister is called to the Palace, the Queen will ask him or her whether he or she can form a government. To this question, two responses are possible. The most usual is to accept, symbolised by kissing the Queen's hands. But, if the situation is uncertain, as it was with Lord Home in 1963, a potential Prime Minister can accept an exploratory commission, returning later to report either failure ; or, as occurred in 1963, success, after which the kissing of hands ceremony will take place.

In the normal course of political life, the appointment of a Prime Minister is unlikely to give rise to constitutional difficulties. The Prime Minister will generally be the leader of the party which wins a general election ; or the person elected leader, following the death or resignation of an incumbent Prime Minister. The Conservative Party, however, has only chosen its leader by election since 1965 ; and in the past, difficulties arose when a Conservative Prime Minister resigned, and a new Prime Minister had to be appointed. In 1923, George V was compelled to choose between Stanley Baldwin and Lord Curzon ; in 1957, Elizabeth II had to choose between Harold Macmillan and R.A. Butler ; and in 1963 between no less than four candidates, Lord Home, R.A. Butler, Lord Hailsham and Reginald Maudling. In none of these cases, however, did the Sovereign act on his or her discretion alone ; in each case, soundings were taken amongst senior party figures as to who would be most acceptable. Nevertheless, after the controversial choice of Lord Home in 1963, it came to be asked why the Sovereign should be faced with the task of deciding who would be most acceptable to a particular party, exposing herself to the charge of interfering with the internal processes of that party, when an electoral procedure could perform the same task with less embarrassment. Since 1965, when the Conservative Party decided upon an electoral procedure for future leadership contests, all the major British parties have chosen their leaders through an internal election. Thus the scope for discretion on the part of the Sovereign is much reduced. In 1976, when Harold Wilson announced his intention of resigning the Premiership, an electoral procedure was used for the first time to determine who should, as leader of the Labour Party, succeed to the Premiership ; and in 1990, similarly, an electoral procedure was used in the Conservative Party, following the resignation of Margaret Thatcher, as a result of which John Major became Prime Minister.

There are only two situations in which a problem might arise for the Sovereign in the appointment of a Prime Minister. The first would occur in the case of a so-called 'hung parliament', i.e. a parliament, like that following the general elections of 1923, 1929 and February 1974, in which no single party could command a majority in the House of Commons. In such a situation, it may not be obvious who

can best command the confidence of the Commons, and so the normal conventions may fail to dictate an unequivocal course for the Sovereign to follow. Either a minority government or a coalition will have to be formed. It is, however, impossible to lay down clear guidelines for what could become extremely complex situations, other than to say that the Sovereign must continue to be guided by the fundamental principle of constitutional monarchy viz. that she is seen to be impartial throughout, registering the decisions of the House of Commons and of political parties and not guiding them.

Were Britain ever to adopt a system of proportional representation for elections to the House of Commons, then hung parliaments would almost certainly become a regular occurrence, for no government since 1935 has been able to secure a majority of the popular vote. Under such circumstances, new procedures governing the appointment of a Prime Minister might have to be developed. For the present, however, existing procedures seem capable of coping with the comparatively rare occasions on which a general election yields an inconclusive result ⁴.

The second situation of uncertainty occurs when the normal processes of party government break down and a coalition government has to be formed, as in 1915, 1916 and 1931. On the first two occasions, there was no controversy concerning the actions of the Sovereign. The 1915 coalition was decided upon by the two party leaders, Asquith and Bonar Law, and no change of Prime Minister was involved. In 1916, following Asquith's announcement of his intention to resign, George V summoned a conference at Buckingham Palace, at which the political leaders there assembled came to the eventual conclusion that Lloyd George would be the most suitable wartime Prime Minister. In 1931, there was also a Buckingham Palace Conference, after which it was announced that Ramsay MacDonald, the Labour Prime Minister, had been appointed as Prime Minister of a National Government, supported by the Conservative and Liberal Parties, but opposed by the vast majority of Labour MPs. On this occasion, there was intense resentment on the part of the Labour Party at the alleged 'betrayal' of the Party by MacDonald, and the King himself did not escape criticism. The events of 1931 remain a subject of lively controversy amongst historians, but debate on the role of the King centres on the question of whether he acted unwisely, rather than whether he acted unconstitutionally.

In the normal course of events, there is no need for the Sovereign to consult with anyone before calling upon the leader of the party with an overall majority of seats in the Commons to form a government. Indeed, the Sovereign should not consult, if she is to preserve her political impartiality and accept the verdict of the electorate; for that would appear as an attempt to keep out the person selected

(4) For attempts to lay down guidelines in the case of a hung parliament, see V. BOGDANOR, *Multi-Party Politics and the Constitution*. Cambridge, 1983; and D. BUTLER, *Governing Without a Majority*. 1987.

by the electorate and the Commons⁵. Under other circumstances, however, such as the two situations mentioned above, – a hung Parliament and a breakdown in the normal processes of party government – the Sovereign is entitled to consult. The Sovereign may, but is not bound, to consult an outgoing Prime Minister. Gladstone was not asked for his opinion in 1894, nor was the dying Bonar Law in 1923. But an outgoing Prime Minister, or indeed any other political leader, is under a duty, if asked, to put his views before the Sovereign⁶. The Sovereign may also consult with senior Privy Counsellors if he or she so chooses. In 1923, George V sought the views of Lord Balfour, a former Prime Minister, and Lord Salisbury, an elder statesman; in 1957, Elizabeth II sought the views of Sir Winston Churchill, a former Prime Minister, and Lord Salisbury, Lord President of the Council, who was able to report on opinion within the Cabinet.

Wider consultations may be carried out by the Sovereign's Private Secretary, who may seek the views of whomever he pleases within the limits of prudence and caution. But, however wide the consultations, the Sovereign is still responsible for the appointment of the Prime Minister in the sense that any misjudgment will be criticised. There may thus remain, under certain circumstances, an inherent degree of discretion in the appointment of a Prime Minister by the Sovereign.

D. *The right to refuse a dissolution*

The Prime Minister of the day may, at any time, request the Sovereign to grant a dissolution, and, under normal circumstances when a single party government enjoys a majority in the House of Commons, the Sovereign cannot refuse; for the government would then resign, and the Sovereign would be unable to find an alternative government capable of commanding the confidence of the Commons. She would then be compelled either to grant a dissolution to a new Prime Minister, who is unable to secure Commons support; or, alternatively, to return to the former Prime Minister and grant the dissolution which had been, at first, refused. In either case, the political impartiality of the Sovereign will have been compromised.

The question arises, however, whether, when such normal circumstances do not exist, the Sovereign has the right to refuse a dissolution. Does the Sovereign, for example, have the right to refuse a dissolution sought by a Prime Minister with only minority support in the Commons; does she have the right to refuse a dissolution sought by a Prime Minister who has lost the support of his or her Cabinet or Party? An authoritative memorandum by Lord Haldane, a former Lord Chancellor, in December, 1916, judged, *inter alia*, that the Sovereign can legitimately 'weigh the general situation and the Parliamentary position of the Ministry as formed', and, instead of agreeing to dissolve Parliament, 'dismiss the Minister who

(5) Compare I. JENNINGS, *Cabinet Government*. Cambridge, 1959, p. 40.

(6) I. JENNINGS, *op. cit.*, p. 51.

gives it, or receive his resignation' ⁷. If this view is correct, a Prime Minister cannot *advise* a dissolution, but only request one.

In practice, no modern Sovereign would dismiss her ministers, and the refusal of a dissolution would almost invariably lead to the resignation of the government. Most modern authorities would accept that the Sovereign does have the right to refuse, however, the refusal of a dissolution thus remaining, like the appointment of a Prime Minister, one of the personal prerogatives which the Sovereign still retains. ⁸.

This view would seem to be in accord with common sense since, were a Prime Minister to be defeated in a general election, and then request an immediate second dissolution, the Sovereign would surely be entitled, if not obliged, to refuse, at least until it had been ascertained whether or not an alternative government could be formed. Under such circumstances, respect for the verdict of the electorate requires the refusal of a dissolution rather than the granting of one.

The argument that dissolution has become automatic is based upon the historical fact that there is no unequivocal instance of a dissolution being refused in Britain in modern times; although there are a number of Commonwealth examples. Therefore, so it is suggested, the right to refuse has fallen into desuetude. But the conclusion does not follow. For it might be the case that no dissolution has been refused precisely because it has never been asked for under improper circumstances. The issue, then, is not *whether* the Sovereign is entitled to refuse a dissolution, but rather *under what conditions* she is entitled to refuse.

The question of the circumstances under which the Sovereign can properly refuse a dissolution was answered by Sir Alan Lascelles, Private Secretary to King George VI, in a letter published in *The Times*, 2 May 1950, under the pseudonym 'Senex'. Sir Alan wrote that:

'It is surely indisputable (and commonsense) that a Prime Minister may ask – and not demand – that his Sovereign will grant him a dissolution of Parliament; and that the Sovereign, if he so chooses, may refuse to grant this request. The problem of such a choice is entirely personal to the Sovereign, though he is, of course, free to ask informal advice from anybody whom he thinks fit to consult. Insofar as this matter can be publicly discussed, it can be properly assumed that no wise Sovereign – that is, one who has at heart the true interest of the country, the constitution, and the Monarchy – would deny a dissolution to his Prime Minister unless he was satisfied that; (1) the existing Parliament was still vital, viable and capable of doing its job; (2) a General Election would not be detrimental to the

(7) Cited in: H. NICOLSON, *King George V: His Life and Reign*. 1952, p. 289.

(8) See, inter alia, E.C.S. WADE, A.W. BRADLEY, *Constitutional and Administrative Law*. 1985, pp. 239-241; S.A. DE SMITH, R. BRAZIER, *Constitutional and Administrative Law*. 1989, pp. 117-120; R. BLAKE, *The Office of Prime Minister*. Oxford, 1975, pp. 60-62; and G. MARSHALL, *Constitutional Conventions*. Oxford, 1984, Ch. 2.

national economy; (3) he could rely on finding another Prime Minister who could carry on his Government, for a reasonable period, with a working majority in the House of Commons⁹.

This statement has, naturally, proved extremely influential, – but it may be that it offers too broad an interpretation of the Sovereign's powers. For the Sovereign is not, in modern times, an umpire capable of determining whether or not a General Election would be detrimental to the national economy – although in circumstances of extreme economic crisis such as those of August 1931, the Sovereign might properly refuse a dissolution – but a head of state whose task it is to give effect to the will of the electorate as expressed in the House of Commons.

Sir Alan Lascelles' third condition – that the Sovereign can rely on finding another Prime Minister who could carry on the government for a reasonable period with a working majority in the House of Commons – constitutes a necessary but not a sufficient condition for refusing a dissolution. The Sovereign may be *entitled* to refuse a dissolution if there is an alternative government available – or – to put the matter negatively, she cannot refuse a dissolution *unless* an alternative government is available – but it does not of course follow that she is *obliged* in such circumstances to refuse a dissolution. Whether she should in fact refuse ought to depend, it is suggested, upon the following factors.

1. War or national emergency.
2. Where a Prime Minister, having already been granted a dissolution, has failed to secure an overall majority in the General Election, and has been defeated on an amendment to the Address, or very early in the life of a new Parliament. Then, it is suggested, the Sovereign can legitimately investigate whether an alternative government is available before granting a dissolution.
3. The Sovereign must, it is suggested, under modern conditions, consider not only whether an alternative government would have support in the Commons, but also whether it would have support in the country. It might, for example, be possible under certain circumstances to form an alternative government which involved a party switching coalition partners in the middle of a Parliament, contrary to its pledges to the electorate. It is unclear whether the Sovereign by refusing a dissolution should legitimise such a switch of allegiance.
4. The length of time the current Parliament has been in existence. The longer it has been in existence, the less justifiable the refusal of a dissolution becomes.

Under modern conditions, then, the Sovereign would hardly ever be in a position to deny a dissolution to a Prime Minister with majority support in the House of Commons; and it is suggested that she should act with extreme caution in other circumstances. The experience of Lord Byng, the Governor – General in Canada in 1926, who, under the mistaken belief that a stable alternative government could be formed without an election, refused a dissolution, and was then obliged to

(9) This letter is reprinted in J. WHEELER-BENNETT, *King George VI: His Life and Reign*. 1958, p. 775.

grant a new Prime Minister what he had refused to his predecessor, underlines the danger facing a head of state under conditions of acute political controversy. Thus, the right to refuse a dissolution of Parliament, although remaining a genuine personal prerogative of the Sovereign, is one to be exercised only in rare and unusual circumstances.

E. *The possibility of a more active role*

The Sovereign's constitutional powers, then, are essentially residual: they are powers necessary for the formation and ending of governments; and in general, the way in which they are used is uncontroversial. This is, in part, for two contingent reasons. First, since the Home Rule crisis of 1914, Britain has been spared emergency situations of the kind which might call for royal intervention. Second, the existence of a two-party system has meant that there have been few occasions when the Sovereign needs to exercise her discretion.

But, if either of these conditions were to change, the role of the Sovereign might also change. In an emergency, some would suggest that the Queen should act as guarantor of the Constitution, a defender of last resort of the conventions of parliamentary government. This was the role adopted by King Juan Carlos in 1981 when Spain was faced with a threatened military coup. In Britain, a commentator with the authority of Sir Ivor Jennings has argued that the Sovereign could legitimately refuse her assent to a policy 'which subverted the democratic basis of the Constitution, by unnecessary 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...'¹⁰

The second condition – the continued existence of a two-party system – is, clearly, a contingent factor, and the two-party system would probably be undermined if the electoral system came to be changed to one of the systems of proportional representation used by almost every other democracy in Europe. For, under such circumstances, single-party majority government might become very much the exception, and the Sovereign might be faced with a genuine dilemma, familiar to Continental Sovereigns, as to who should be asked to form a government, and whether a government lacking a majority in the House of Commons was entitled to a dissolution at a time of its own choosing.

It must not be assumed, therefore, that the role of the Sovereign in Britain is inherently a passive one. Since 1931, when the King played an important part in the formation of the National Government, no situation has arisen which has called for active royal intervention. But this could easily change if political circumstances change. If that happens, and the Sovereign has to play a more active role, con-

(10) I. JENNINGS, *Cabinet Government*, op. cit., p. 412.

stitutional monarchy could come under more strain in the future than it has done over the past sixty years.

II. The Sovereign's political role

A. *The Sovereign's three rights*

The main function of the Sovereign, however, lies not in the exercise of her normally uncontroversial and residual prerogatives, exercised at the beginning and end of a ministry, but rather in the impact which she can have upon the operation of government during the continuance of a ministry.

Walter Bagehot, the greatest of all commentators on monarchy, claimed that 'the sovereign has, under a constitutional monarchy such as ours, three rights – the right to be consulted, the right to encourage and the right to warn'. And then he added :

'And a king of great sense and sagacity 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' ¹¹.

It is only after the Sovereign has sought to exercise her influence that she ceases to be a free agent and is obliged, as a constitutional monarch, to give way. But, as Viscount Esher, a close friend of Edward VII, wrote in September 1913, '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' ¹². Disraeli, in a speech at Manchester in 1872, made the same point more pungently. '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 fulfilment of such a theory'.

The Queen thus enjoys the right, and even the duty, to express her opinions on government policy to the Prime Minister in their weekly audiences ; but this requires that communications between the Queen and her Prime Minister remain confidential. It is a fundamental condition of the Sovereign being able to exert influence that it remain private, for if it were to become known that the Queen

(11) W. BAGEHOT, *The English Constitution* : Collected Works : Vol. 5. London, 1974, p. 253.

(12) Memorandum of September 10, 1913, cited in : *Journals and Letters of Reginald, Viscount Esher*. Vol. 3. 1910-1915. OLIVER (ed.), Viscount Esher, 1938, p. 128.

differed from her government, she would be accused of partisanship. The fundamental constitutional rule that the Queen must act on the advice of her ministers is designed to ensure that no such accusation can be made. These three rules – that the Queen has the right and the duty to express her views on government policy, that she must abide by the advice of her ministers, and that communications between the Sovereign and her ministers must remain confidential – form the cornerstone of constitutional monarchy, and were authoritatively stated by Sir William Heseltine, writing as the Queen's Private Secretary, in a letter to *The Times*, published on 28 July 1986.

Thus, because of the very nature of constitutional monarchy, it is impossible to secure accurate information about the political role of the Sovereign. 'There is' noticed Bagehot, 'no authentic explicit information as to what the Queen can do, any more than of what she does – A secret prerogative is an anomaly – perhaps the greatest of anomalies. That secrecy is, however, essential to the utility of English royalty as it now is' ¹³.

On very rare occasions, in public speeches and statements, the Queen can express her own views on the dangers facing her realms. In her reply to addresses from both Houses of Parliament in May 1977, the year of her Silver Jubilee, she declared, '– I cannot forget that I was crowned Queen of the United Kingdom of Great Britain and Northern Ireland', and this was interpreted as a rebuke to Scottish and Welsh separatists. In her capacity as Queen of Fiji, the Queen, in 1987, made two public statements, the first stating that anyone who sought to remove the Governor-General, – the Queen's representative – from office, 'would, in effect, be repudiating his allegiance and loyalty to the Queen', and the second, regretting that, Fiji having become a republic, 'the ending of Fijian allegiance to the Crown should have been brought about without the people of Fiji being given an opportunity to express their opinion on the proposal'.

But, precisely because communications between the Sovereign and her ministers are confidential, it is impossible to form any precise estimate of the Sovereign's influence in normal times. One may nevertheless suspect that royal influence is likely to increase with the period of time that a Sovereign is on the throne. Bagehot was, once again, the first to notice the advantage that a Sovereign gains from continuity of experience.

'In the course of a long reign 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

(13) W. BAGEHOT, *op. cit.*, p. 243.

to discuss them with your older colleagues who took part in them. It is unwise to recommence a policy which so lately worked so ill' ¹⁴.

Queen Victoria, who reigned for nearly 64 years, was able to give Gladstone information which the Duke of Wellington had given her about Pitt ¹⁵. Elizabeth II who, by 1992, will have reigned for 40 years, has already been served by nine Prime Ministers, and she has a longer political experience than the vast majority of her subjects.

If, however, the Sovereign is to be able to exercise her influence, she must be in command of a wide range of political activity. 'There is no royal road to political affairs: their detail is vast, disagreeable, complicated and miscellaneous. A king, to be the equal of his ministers in discussion, must work as they work; he must be a man of business as they are men of business' ¹⁶. For someone who is willing to accept these exacting responsibilities, however, it will be found 'that the post of sovereign over an intelligent and political people under a constitutional monarchy is the post which a wise man would choose above any other' ¹⁷.

B. *The sovereign and the Commonwealth*

Elizabeth II, as well as being Queen of the United Kingdom is also Queen of sixteen other Commonwealth countries including Australia, Canada, the Bahamas, Bermuda, etc. In addition, she is Head of the Commonwealth, which is a voluntary organisation of independent states formerly under British rule and now agreeing, while remaining entirely responsible for their own policies, to consult and co-operate together in certain areas. The Commonwealth comprised in 1990, 50 countries, containing around one-quarter of the world's population. It symbolises, as the Queen declared, in a speech to the City of London during the Silver Jubilee celebrations on 7 June 1977, 'the transformation of the Crown from an emblem of dominion into a symbol of free and voluntary association. In all history this has no precedent'.

Until 1949, the member states of the Commonwealth were united through common allegiance to the Crown. In that year, however, it was agreed that India, which sought to become a republic, could remain in the Commonwealth, provided that it recognised George VI as Head of the Commonwealth. Most African and Asian Commonwealth members followed India's example so that today the majority of Commonwealth members are republics.

At the 1952 Commonwealth Prime Ministers' meeting, it was agreed 'that it should be placed on record that the designation of the King as Head of the Com-

(14) W. BAGEHOT, *op. cit.*, p. 253.

(15) See: I. JENNINGS, *op. cit.*, p. 340.

(16) W. BAGEHOT, *op. cit.*, p. 259.

(17) *Ibid.*, p. 252.

monwealth does not – imply that the King discharges any constitutional functions by virtue of the Headship'. The Queen's role as Head of the Commonwealth is entirely symbolic, and has no constitutional functions attached to it.

When the Queen visits one of her Commonwealth realms, she speaks and acts as Queen of that country, and not as Queen of the United Kingdom. When, however, she visits a republican member of the Commonwealth, she speaks and acts as Queen of the United Kingdom, and, as such, upon the advice of United Kingdom ministers.

Ultimately, on general Commonwealth matters, it is the Prime Minister of the United Kingdom who advises the Queen ; although, if he is wise the Prime Minister will make sure that he has the views of the Commonwealth heads of government before proffering advice on Commonwealth matters. When the Queen, speaking as Head of the Commonwealth, gives her annual Christmas and Commonwealth Day (the second Monday in March) messages, however, she does not speak on advice. These messages are unique in that they are delivered on the Queen's own responsibility ; although they will, as a matter of courtesy, be shown in advance to the Prime Minister. They form a breach, if a comparatively unimportant one, in the wall of ministerial responsibility for the actions of the Sovereign.

The 1983 Christmas broadcast aroused some controversy since some objected to it being concentrated on a Commonwealth Heads of Government meeting in Delhi and on an Indian Prime Minister, Mrs. Gandhi. Questions were asked in the House of Commons, but Mrs. Thatcher, the Prime Minister, disclaimed responsibility, declaring that 'The Queen makes her Christmas broadcasts as Head of the Commonwealth. She does not, therefore, make them on the advice of United Kingdom ministers' ¹⁸.

Although the role of Head of the Commonwealth imposes no constitutional functions, however, the possibility of conflict between the Queen's position as head of state in the United Kingdom and her position as Head of the Commonwealth, cannot be entirely excluded. Indeed, if the Commonwealth is to remain viable, the role of its head must be shown to be something more than a mere extension of the Queen's role as head of state in the United Kingdom. As Head of the Commonwealth, the Queen enjoys enormous prestige, no less amongst its republican members than in the monarchies, and it is important that her influence should not be exerted merely on behalf of policies favoured by the government of the United Kingdom. The Queen distinguishes between her various roles by using a personal flag – initial E and Crown within a chaplet or roses – for use at Commonwealth meetings where the royal standard would be inappropriate.

But, although the danger of conflict between the Queen's various roles may be great in theory, in practice it can be avoided provided that the Queen's ministers exercise tact and forbearance so that she is not put into the position of seeming

(18) Hansard, House of Commons, January 24, 1984. Column 763.

to act against the interests of the Commonwealth. Of the Queen's title, 'Head of the Commonwealth', a French-speaking newspaper in Quebec in 1953 declared that 'The solution of the problem is in the good British tradition: it is both efficient and devoid of logic'¹⁹. It is efficient because it has enabled the Queen, despite not being part of the machinery of government in the Commonwealth, to become a personal link and human symbol of the Commonwealth connection, whose essence is voluntariness. And, even if it may be devoid of logic, the ultimate test of any constitutional arrangement, surely, is that it works.

III. The Sovereign and public opinion

In mid-Victorian times, it was taboo to express disbelief in God, yet there was widespread criticism of the monarchy. Today, the opposite is the case. Atheism is widespread, but public criticism of the monarchy is taboo. How is this paradox to be explained?

During the decade or so after the death of the Prince Consort in 1861, Queen Victoria withdrew into solitude and came to be known as 'the Widow of Windsor'. For a time the monarchy became genuinely unpopular. Yet, although there was a republican movement in Britain, and politicians of national stature such as Joseph Chamberlain and Sir Charles Dilke flirted with it, popular feeling was not in essence republican at all. For criticism of Queen Victoria was directed, not at the institution of monarchy, but rather at the fact that she was neglecting an essential function of the Sovereign by not fulfilling her ceremonial duties. She was certainly fulfilling her constitutional duties, — indeed her interventions into government policy were rather too forceful for modern tastes. That, however, was irrelevant to the general public who wanted the Queen to be on display, to be seen publicly carrying out her ceremonial duties. 'The Queen', wrote Bagehot, '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'²⁰. When the Queen acceded to the demand to be more visible, during the period of the Golden and Diamond Jubilees in 1887 and 1897, her popularity rapidly recovered. For the monarchy had been criticised not for being too obtrusive, but for not being obtrusive enough so that the essential symbolism of the institution, which depends upon ceremonial, was being lost.

Today, the popularity of the monarchy is enormously high. A Gallup poll in December 1989 revealed that 82% of the public favoured the monarchy 'as it exists at present, with the Queen as Head of State'. A survey carried out by Social and Community Planning Research in the same year showed that the monarchy was the attribute which made people proudest of being British.

(19) Cited in: E. LONGFORD, *Elizabeth R.* 1983, p. 127.

(20) W. BAGEHOT, *The Monarchy and the People*. In: *Economist*, 22 July 1871. In: *Collected Works*, Vol. 5, p. 431.

TABLE
Things that makes proud of Britain

Listed below are some things people have said make them proud of Britain : Please write '1' in the box next to the thing that makes you feel proudest of Britain. Then write a '2' in the box next to the thing that makes you feel next proudest of Britain and '3' next to the third thing : ²¹.

% expressing national pride in	1ste	All choosing
monarchy	37	65
scientific achievements	22	61
welfare state	16	52
Parliament	8	33
sporting achievements	5	29
artistic achievements	3	21
economic achievements	2	16
nothing	7	n/a

In his book *The English Constitution* (1867), Walter Bagehot distinguished between the 'dignified' and the 'efficient' elements of the Constitution. The 'efficient' elements were those such as the House of Commons and the Cabinet which actually played an important role in the government of the country, while the 'dignified' elements were those such as the monarchy and the House of Lords which enjoyed little effective power, but yet played a vital role in the government of the country.

To the historian, constitutional lawyer or political scientist, the essential functions of the monarchy are constitutional, functions which Bagehot labelled 'efficient'. But the essence of a monarchy, as opposed, for example, to a presidential system, lies in its 'dignified' functions, those bound up with ceremonial display and pageantry, functions which symbolise and make concrete basic feelings of patriotism and national identity. It is these 'dignified' attributes which account for the appeal of monarchy in Britain amongst a public which may know little and care less about the monarchy's constitutional role.

There is, however, an intimate relationship between the 'efficient' functions and the 'dignified' ones. For, if the Sovereign is to be able to fulfil her 'dignified' functions of symbolising and reinforcing national unity, then she must be impartial in the performance of her 'efficient' constitutional duties. Any sign of partisanship weakens her symbolic position, while political neutrality reinforces it. It is for this reason that the popularity of the monarchy has increased so considerably over the past century during a period in which its actual power, and perhaps also its political influence, have markedly declined. Thus the paradox of a monarchy more popular but less powerful is only a seeming one. The monarchy is more popular not in spite of being less powerful, but precisely *because* it is less powerful.

(21) R. TOPF, P. MOHLER, A. HEATH, Pride in one's country : Britain and West Germany. pp. 124-125. In : R. JOWELL, S. WITHERSPOON, L. BROOK, *British Social Attitudes*. Gower, Aldershot, 1989.

In a democracy, monarchy, if it is to survive, must become constitutional monarchy. It is only if the Sovereign comes to be divorced from partisan activity that she can mobilise sentiments of national unity amongst the whole population. In a democratic era, monarchy has become ever more directly dependent upon popular support. 'I think it is a misconception', the Duke of Edinburgh declared 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'²².

It is, therefore, probably idle to speculate in the abstract whether constitutional monarchy is a desirable form of government. For the preference for monarchy, an institution that appeals as much to the heart as to the head, is in the last resort as much a matter of temperament as it is of logic. What is clear is that constitutional monarchy suits the temperament of the British people, and indeed forms an important part of their national identity. In Britain, monarchy since the reign of Queen Victoria has been seen not as the negation of parliamentary government and the rule of law, but rather as its guarantor; and it is for this reason that its survival and popularity seem assured.

Summary: The constitutional monarchy in the United Kingdom

In a constitutional monarchy, the Sovereign acts according to constitutional rules, rather than arbitrarily. That is so even in a country such as Britain which has no codified constitution. Today the rules of constitutional monarchy whose purpose it is to preserve the political neutrality of the Sovereign, serve to protect her from political involvement. Her powers remain essentially residual - selection of a Prime Minister and refusal of a dissolution under very rare circumstances.

The main influence of the Sovereign, however, comes through her exercise of the three rights identified by Bagehot - the right to be consulted, the right to encourage and the right to warn; and through her role as Head of the Commonwealth.

The enormous popularity of the monarchy in Britain today arises because it has come to be divorced from partisan politics, and so can act as a focus of national unity.

(22) Cited in D. LIVERSIDGE, *Prince Philip*. 1976. p. 123.