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# THE QUEEN AT 90 THE CHANGING ROLE OF THE MONARCHY, AND FUTURE CHALLENGES

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The Constitution Unit

# The Queen at 90

## The changing role of the monarchy, and future challenges

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## Foreword

This report is being published in June 2016 for two main reasons. The first is to make a contribution to the official celebrations for the Queen's 90<sup>th</sup> birthday, and to reflect on the changing powers and functions of the monarchy which have taken place during her reign. This has seen a significant reduction in her personal prerogative powers, which are now more tightly regulated, as indeed are the prerogative powers exercised by ministers; but with no reduction in the monarch's ceremonial functions. Because the changes have happened piecemeal and over many years, it is not sufficiently appreciated how much the prerogative powers are now circumscribed. Parts I and II of the report record and analyse, for each of the prerogative powers, the limitations now placed on their exercise.

The second purpose of the report is to set the scene for two new projects on the monarchy which are being launched by the Constitution Unit in 2016. The first, led by Bob Morris, is on the next accession and coronation. It will look in particular at the accession and coronation oaths, and whether they need updating before the next monarch accedes to the throne. The second project, led by Robert Hazell, is to be a comparative study of the other monarchies of western Europe, which we hope will result in a conference about the changing role and functions of these monarchies, and the challenges they face.

The report originated as a paper for a conference in Victoria, British Columbia in January 2016, on The Crown in the 21<sup>st</sup> Century. We are grateful to the Institute for the Study of the Crown in Canada for inviting us, and to Professors Rodney Brazier, Meg Russell and Anne Twomey for their very helpful comments on earlier drafts. Parts I and II of the report have been written by Robert Hazell, Part III by Bob Morris, and both authors have contributed to Part IV.

## Executive summary

Some prerogative powers still remain in the hands of the monarch. These are known as the Queen's reserve powers, or the personal prerogatives.

The most important of the personal prerogatives are the power to appoint the Prime Minister; to summon and dissolve parliament; and to give royal assent to bills. In exercising these powers the monarch no longer has any effective discretion.

The constitutional conventions about the appointment of the Prime Minister have been codified in the Cabinet Manual, which explains that it is for the parties in parliament to determine who is best placed to command the confidence of the House of Commons, and communicate that clearly to the monarch.

The prerogative power of dissolution was abolished by the Fixed-term Parliaments Act 2011. Parliament is now dissolved automatically after five years, or earlier if two thirds of MPs vote for an early election, or the government loses a no confidence motion and no alternative government can be formed.

Royal assent to a bill has not been refused since 1707. It would only be withheld now (as then) on the advice of ministers. That might happen with a minority government which could not otherwise prevent the passage of legislation against its wishes.

The Queen might still have to exercise discretion in very exceptional circumstances: for example, if the Prime Minister suddenly dies. So the monarch remains the ultimate constitutional longstop.

Important prerogative powers exercised by ministers (to make war, to make treaties, to regulate the civil service, and to make public appointments) have also been restricted or brought under tighter parliamentary control.

Some prerogative powers, notably the power to create peers, have not yet been fully regulated and remain controversial. Until this situation is rectified, there remains some risk that the monarchy may be drawn into controversy.

The constitutional powers of the monarch are exercised as part of the official duties of head of state. But the monarch has other functions: to provide a focus for national identity and unity, and stability in times of change; recognise achievement and excellence; and encourage public and voluntary service. These functions can be analysed by looking at four different aspects: the national monarchy, the international monarchy, the religious monarchy, and the welfare or service monarchy. The discussion identifies aspects of these functions that may require further review.

The loss of discretion in exercising the monarchy's 'hard' constitutional functions has not necessarily diminished its standing; indeed its acceptance by the political class may depend on its powerlessness and complete neutrality. But for the general public its popularity will depend on its wider roles, in particular the welfare monarchy, and its contribution to celebrity culture, which may prove a two-edged sword.

## Introduction

Part I of this report records how all of the important prerogative powers remaining in the hands of the monarch in the UK have been removed or diluted in recent years. In particular, the power to choose a Prime Minister and the power to dissolve parliament have been significantly curtailed. Part II records how important prerogative powers exercised by ministers (to make war, to make treaties, to regulate the civil service, and to make public appointments) have also been restricted or brought under tighter parliamentary control. So if the Queen has no reserve powers left, what is the modern monarchy for?

Part III of the paper discusses the answers traditionally given by the Palace about the role of the monarchy by looking at four principal current aspects: the national monarchy, the international monarchy, the religious monarchy, and the welfare or service monarchy.

Part IV concludes that the loss of the monarchy's 'hard' constitutional functions has not necessarily diminished its standing; indeed its acceptance by the political class may depend on its powerlessness and complete neutrality. But for the general public its popularity will depend on its wider roles, in particular the welfare monarchy, and its contribution to celebrity culture, which may prove a two-edged sword.

## Part I: The loss of the monarch's reserve powers

It is customary in writing about the royal prerogative to distinguish between those powers still remaining in the hands of the monarch, and those powers which are now exercised directly by government ministers. The majority of prerogative powers now come into the latter category. But the Queen still exercises some prerogative powers herself, known variously as her reserve powers, constitutional powers, or the personal prerogatives (a term first coined by Sir Ivor Jennings). The most important powers are:

- to appoint and dismiss ministers, in particular the Prime Minister
- to summon, prorogue and dissolve parliament
- to give royal assent to bills passed by parliament.

### *The appointment of the Prime Minister*

The appointment and dismissal of ministers is made on the advice of the Prime Minister. The last time a Prime Minister was dismissed was in 1834: few would maintain that the power could be exercised today.<sup>1</sup> As the Cabinet Manual records, 'Historically, the Sovereign has made use of reserve powers to dismiss a Prime Minister or to make a personal choice of successor, although this was last used in 1834 and was regarded as having undermined the Sovereign' (the episode was William IV's dismissal of Lord Melbourne and replacement by Sir Robert Peel).<sup>2</sup>

The power to appoint a Prime Minister retained a discretionary element for longer, but that too is now gone. King George V persuaded Ramsay MacDonald not to resign in 1931, when his Labour government broke up, but to head a National government dominated by the Conservatives. A small discretionary element remained in the case of a mid-term change of Prime Minister (such as Churchill being succeeded by Eden in 1955, or Macmillan by Douglas-Home in 1963), with the monarch taking advice from the outgoing Prime Minister and party grandees, in the days when Conservative party leaders were anointed rather than elected. But that ended when the political parties introduced elections for the party leader: the Conservatives introduced election of the leader by the parliamentary party in 1965, and the Conservative and Labour party have since extended voting rights to all party members.<sup>3</sup>

When a party wins an overall majority in a general election the result is clear and the Queen appoints the party's leader as Prime Minister. When the result is unclear because no party has an overall majority, the convention is that the Queen will appoint that person who is most likely to command the confidence of the House of Commons. In the run up to the 2010 election, when a hung parliament was expected, the Cabinet Secretary published guidance in the form of an advance chapter of a wider Cabinet Manual. The guidance made it clear that it was for the political parties first to negotiate to determine who could command confidence in the event of a hung parliament, and the Queen would then appoint that person. A full draft of the Cabinet Manual was published after the election, and after minor revision following scrutiny by three parliamentary committees, the first edition of the Cabinet Manual was published in

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<sup>1</sup> Save as a deep reserve power. Robert Blackburn, in an article aimed at restricting any discretionary use of the monarch's personal prerogatives, suggested that 'A monarch is duty bound to reject prime ministerial advice, and dismiss the Prime Minister from office, when the Prime Minister is acting in manifest breach of convention'. The example he gave was if a Prime Minister, after a successful no confidence motion, refused to resign or call a general election. R. Blackburn, 'Monarchy and the Personal Prerogatives', *Public Law* (Autumn 2004), p. 551.

<sup>2</sup> Cabinet Office, *The Cabinet Manual* (London: Cabinet Office, 2011), p. 14.

<sup>3</sup> The Labour Party introduced one member one vote in 1993. In 1998 the Conservative party introduced a postal ballot of all party members (who must have been paid up members for three months), after an initial selection of two candidates by the parliamentary party.



October 2011. It follows quite closely the New Zealand Cabinet Manual, which is now in its fifth edition.

Chapter two of the Cabinet Manual, on elections and government formation, codifies the constitutional conventions about the appointment of the Prime Minister. The key paragraphs about a hung parliament are as follows:

### **Parliaments with no overall majority in the House of Commons**

2.12 Where an election does not result in an overall majority for a single party, the incumbent government remains in office unless and until the Prime Minister tenders his or her resignation and the Government's resignation to the Sovereign. An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative.

2.13 Where a range of different administrations could potentially be formed, political parties may wish to hold discussions to establish who is best able to command the confidence of the House of Commons and should form the next government. The Sovereign would not expect to become involved in any negotiations, although there are responsibilities on those involved in the process to keep the Palace informed ...<sup>4</sup>

The Cabinet Manual goes on to describe what happens if the Prime Minister resigns mid-term, stating that it is for the party or parties in government to identify who can be chosen as the successor.<sup>5</sup> So the monarch is left with no discretion in any circumstances in which she may be required to appoint a Prime Minister, whether post-election or mid-term. Indeed the Cabinet Manual makes clear that the whole purpose is to remove any residual discretion:

In modern times the convention has been that the Sovereign should not be drawn into party politics, and if there is doubt it is the responsibility of those involved in the political process, and in particular the parties represented in Parliament, to seek to determine and communicate clearly to the Sovereign who is best placed to be able to command the confidence of the House of Commons.<sup>6</sup>

One further reform advocated by the Institute for Government and the Commons Political and Constitutional Reform Committee, as well as the Constitution Unit, would be to hold a vote on the floor of the House of Commons as the first piece of business after an election, to determine who commands the confidence of the new parliament.<sup>7</sup> This is the practice followed in Scotland and Wales, and would help clearly to distance the monarch from the political process; but it has not yet found favour with the government at Westminster.<sup>8</sup>

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<sup>4</sup> Cabinet Office (2011), pp. 14-15.

<sup>5</sup> *Ibid.*, p. 15.

<sup>6</sup> *Ibid.*, p. 14.

<sup>7</sup> Political and Constitutional Reform Committee, *Government Formation Post-Election*, HC 1023 2014-15, March 2015, paras 62-3. Written evidence by the Institute for Government, para 16; and by R. Hazell, paras 10-12.

<sup>8</sup> P. Schleiter, V. Belu and R. Hazell, *Forming a government in the event of a hung parliament: The UK's recognition rules in comparative context* (London: The Constitution Unit, UCL, May 2016).

### ***The power to summon and dissolve parliament***

The summoning and dissolution of parliament has also been done by the personal prerogative. By convention, it has been the constitutional right of the Prime Minister to determine the timing of a dissolution and hence of the next election, and to advise the monarch accordingly. The majority view amongst constitutional experts has been that the monarch could refuse an untimely request for dissolution, even though there has been no refusal in modern times.<sup>9</sup> But any doubt or dispute is now academic, because the prerogative power of dissolution has been abolished by the Fixed-term Parliaments Act 2011. Unlike Canada's Bill C-16 in 2007, which expressly preserved the prerogative power of the Governor General to dissolve Parliament, dissolution in the UK is now regulated by statute not the prerogative; and it is a matter for parliament, not the executive.

The Fixed-term Parliaments Act 2011 provides for five year parliaments, with polling on the first Thursday in May five years after the previous general election; and automatic dissolution 17 working days before the election. Section 3(2) states baldly, 'Parliament cannot otherwise be dissolved'. There is provision for mid-term dissolution in section 2, but again by statute not under the prerogative. Section 2 allows for a mid term dissolution in only two circumstances: if two thirds of all MPs vote for an early general election; or if the House passes a formal no confidence motion 'that this House has no confidence in Her Majesty's Government', and no alternative government which can command confidence is formed within 14 days. The only tiny element of discretion which remains is the timing of an election following a mid-term dissolution: section 2(7) provides that 'the polling day ... is the day appointed by Her Majesty by proclamation on the recommendation of the Prime Minister'. The election would normally be held within three to four weeks.

So the prerogative power of dissolution has gone. What about the power to summon parliament, and determine the date of first meeting of the new parliament? This is done by proclamation issued by the monarch, but on the advice of the Prime Minister. So the outgoing Prime Minister determines the date when the new parliament will meet. This used to be six days after the election; but in 2007 the Modernisation Committee of the House of Commons recommended an interval of 12 days, to allow more time for induction of new MPs.<sup>10</sup> This was the practice followed in 2010 and 2015.

### ***The power to prorogue and recall parliament***

The prerogative power to prorogue parliament remains, but has not caused the kind of controversy which has occurred in Canada.<sup>11</sup> Prorogation happens at the end of a parliamentary session (normally each year); dissolution happens at the end of a parliament, to dissolve parliament before an election. The Cabinet Manual explains prorogation as follows:

2.24 ... Prorogation brings a parliamentary session to an end. It is the Sovereign who prorogues Parliament on the advice of his or her ministers. The normal procedure is for commissioners appointed by the Sovereign to prorogue Parliament in accordance with an Order in Council. The commissioners also declare Royal Assent to the Bills that have passed both Houses, so that they become Acts, and then they announce the prorogation to both Houses in the House of Lords.<sup>12</sup>

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<sup>9</sup> Robert Blackburn disagrees, in 'Monarchy and the Personal Prerogatives', pp. 554-561. For a rejoinder, see R. Brazier, "'Monarchy and the Personal Prerogatives'" - A personal response to Professor Blackburn', *Public Law* (Spring 2005), pp. 45-47.

<sup>10</sup> Select Committee on Modernisation of the House of Commons, *Revitalising the Chamber: the role of the back bench Member*, HC 337 2006-07 (June 2007), paras 36-39.

<sup>11</sup> P. Russell and L. Sossin (eds), *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009).

<sup>12</sup> Cabinet Office (2011), p. 16.

There has been no controversy about prorogation in the UK because the power is used routinely and has not been abused. The power to recall Parliament is not a prerogative power, but is worth mentioning briefly here. Under the standing orders of the House (SO 13), the House of Commons is recalled during a recess only when the government proposes a recall, and the Speaker agrees.<sup>13</sup> So the initiative lies with the government. Gordon Brown as Prime Minister proposed that a majority of MPs should also have the right to request a recall.<sup>14</sup> The proposal was referred to the Commons Modernisation Committee, and the committee initiated but did not complete an inquiry, so the proposal was not implemented.

### ***The power to give royal assent to bills, and royal consent to bills affecting the prerogative and personal interests of the Crown***

Royal assent to a bill was last refused in 1707, when Queen Anne, on the advice of her ministers, withheld royal assent to a bill to arm the Scottish militia. It is inconceivable that the monarch would withhold royal assent today, save on the advice of ministers. Robert Blackburn suggests that the monarch's role is limited to one of due process, and royal assent is a certificate that the bill has passed through all its established parliamentary procedures.<sup>15</sup> Rodney Brazier has argued that a monarch might still veto a bill which sought to subvert the democratic basis of the constitution, but accepts that this leads to grave difficulties of definition.<sup>16</sup> Even in such an extreme case, Brazier would prefer the monarch to find a means other than withholding royal assent to express their concerns.<sup>17</sup> The only circumstance in which it is conceivable that royal assent might be withheld is if a bill had been passed by both Houses against the wishes of the government, and it afforded the government a last ditch means of preventing the bill from becoming law. That might happen with a minority government which could not prevent the passage of legislation by the opposition majority, but did not wish to see it enacted.

Quite separate from royal assent is the requirement for Queen's and Prince's consent to bills affecting the prerogative, and the hereditary revenues, property and personal interests of the Crown and the Duchy of Cornwall. This requirement applies at the start, for introduction of a bill, not as the final stage. And it applies only to bills affecting the interests of the Crown. It is a little known requirement, which gave rise to controversy in 2013 when its scope became known following a freedom of information (FOI) request, and the *Guardian* newspaper criticised the wide range of bills (including tuition fees, identity cards, paternity pay and child maintenance) which were subject to the Queen's or Prince's consent.<sup>18</sup> The article reported that 39 bills had required royal consent, and quoted Andrew George MP saying that 'It shows the royals are playing an active role in the democratic process and we need greater transparency in parliament so we can be fully appraised of whether these powers of influence and veto are really appropriate'. Academic criticism followed, with Tom Adams saying on the UK Constitutional Law Blog:

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<sup>13</sup> The House has been recalled 28 times since SO 13 was introduced in 1948. See R. Kelly and L. Maer, *Recall of Parliament*, House of Commons Library Briefing Paper 1186 (March 2016).

<sup>14</sup> Ministry of Justice, *The Governance of Britain*, Cm 7170 (July 2007), paras 37-39.

<sup>15</sup> Blackburn (2004), p. 554. For a detailed account of the process of royal assent see R. Brazier, 'Royal Assent to Legislation', *Law Quarterly Review* 129:2 (2013), pp. 184-204.

<sup>16</sup> Mike Bartlett's play *King Charles III* (2014) is predicated on the new King Charles refusing royal assent to a bill restricting the freedom of the press.

<sup>17</sup> Brazier (2005), p. 47.

<sup>18</sup> R. Booth, 'Secret papers show extent of senior Royals' veto over bills', *The Guardian*, 14 January 2013, <http://www.theguardian.com/uk/2013/jan/14/secret-papers-royals-veto-bills>, last accessed 2 June 2016.

Quite apart from its scope it is worth emphasising that the content of the power is absolutely damning: it is not simply that the relevant bill fails to become law if consent is not given, although this is implied. It is that the bill cannot even be properly debated by our elected politicians.<sup>19</sup>

But it soon became clear that the Queen's or Prince's consent is only granted or refused on advice from ministers. Buckingham Palace quickly issued a statement to this effect. When the Political and Constitutional Reform Committee (PCRC) launched an inquiry, their main concern was to ascertain whether the consent requirement gave the Palace any influence over the content of legislation, and whether ministers ever used it as a means of blocking private member's bills. They found that private member's bills were occasionally blocked by refusing the Queen's consent, the worst case being the stifling of Tam Dalyell's 1999 Military Action against Iraq (Parliamentary Approval) Bill. But they did not find any evidence of undue Royal influence:

When the Queen or the Prince of Wales grant their Consent to Bills, they do so on the advice of the Government. We have no evidence to suggest that legislation is ever altered as part of the Consent process. The fact that the Prince of Wales has in the past both granted his Consent to a Bill, in a constitutional capacity, and petitioned against it, in a personal capacity, indicates the formal nature of the process. However, the process of Consent is complex and arcane and its existence, and the way in which the process operates, undoubtedly do fuel speculation that the monarchy has an undue influence on the legislative process. The fact that Consent is sometimes characterised as a veto underlines this point. In reality, it is a veto that could be operated by the Government, rather than the monarchy.<sup>20</sup>

The main benefit of the FOI disclosures and PCRC inquiry was to shed light on an arcane aspect of the legislative process, and to force publication of the detailed internal guidance on the topic by the Office of Parliamentary Counsel.<sup>21</sup> For those who love the peculiarities of the British constitution, the 27 page guidance provides plenty of odd examples.

### ***The retention of a deep reserve power***

So to conclude the argument of Part I, the monarch's personal prerogative powers contain no real political power. The Queen has no effective discretion in deciding whom to appoint as Prime Minister; in deciding whether to summon, dissolve or prorogue parliament; or to grant royal assent to bills, or consent to the introduction of bills. It is true that the monarch might, in very exceptional circumstances, still have to exercise a choice: for example if the Prime Minister were killed, or suddenly died. In that event, there would be no time to hold a vote of the party membership. An interim Prime Minister would need to be appointed until the party had elected a new leader; the monarch would look to the cabinet to nominate the caretaker.<sup>22</sup> Other hypothetical examples are possible: if the Prime Minister sought a sudden prorogation in order to avoid a parliamentary vote of no confidence (as happened recently in

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<sup>19</sup> T. Adams, 'Royal Consent and Hidden Power', UK Constitutional Law Association Blog, 26 January 2013, <https://ukconstitutionallaw.org/2013/01/26/tom-adams-royal-consent-and-hidden-power/>, last accessed 2 June 2016.

<sup>20</sup> Political and Constitutional Reform Committee, *The Impact of Queen's and Prince's Consent on the Legislative Process*, HC 784 2013-14 (March 2014), para 35.

<sup>21</sup> For the latest version see Office of Parliamentary Counsel, *Queen's or Prince's Consent*, July 2015, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448163/OP\\_Queen\\_s\\_and\\_Prince\\_s\\_Consent\\_July\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448163/OP_Queen_s_and_Prince_s_Consent_July_2015.pdf), last accessed 2 June 2016.

<sup>22</sup> P. Norton, 'A temporary occupant of No 10? Prime Ministerial succession in the event of the death of the incumbent', *Public Law* (January 2016), pp. 18-34.

Canada – see below)<sup>23</sup>; or if the government appears to have lost confidence while parliament is prorogued, and then refuses to advise that parliament be summoned (as has happened in realms in the South Pacific). In such circumstances the monarch retains a deep reserve power to dismiss the Prime Minister, or to summon parliament against the wishes of the Prime Minister. The monarch is the ultimate constitutional longstop; but in Britain’s political culture, it is hard at present to see those longstop powers ever needing to be exercised.

### **Contested prorogations in Canada**

Prorogation brings a parliamentary session to an end. In the UK its use is uncontentious; but Canada has a history of contested prorogations. In 1873, the Prime Minister Sir John Macdonald advised the Governor General to prorogue parliament in order to stop the work of a committee investigating Macdonald's involvement in bribes to build the Canadian Pacific Railway. The Governor General accepted the advice to prorogue parliament, but insisted that the prorogation be limited to ten weeks, and that a commission be appointed to continue the hearings. When parliament reconvened and received the commission’s critical report, Macdonald was forced to resign.

More recent times have witnessed two controversial prorogations, both sought by the Conservative Prime Minister Stephen Harper. In December 2008 his minority government was facing a no confidence motion tabled by the opposition parties, angered at the proposed budget, which he seemed likely to lose. He asked the Governor General for a prorogation which she granted, but only on condition that parliament reconvene soon. During the prorogation the opposition parties’ plans to form an alternative government fell apart, and the government revised its budget, which was passed when parliament reconvened. A year later in December 2009 Harper again advised the Governor General to prorogue parliament, for two months. Again prorogation was granted, but with echoes of the Macdonald affair, the opposition parties accused the government of seeking to avert a damning report from a parliamentary committee inquiring into the conduct of Canadian troops in Afghanistan.

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<sup>23</sup> Russell and Sossin (2009).

## Part II: Tighter regulation of the prerogative powers exercised by ministers

The first part of this report discussed the personal prerogatives exercised directly by the monarch, and argued that the Queen has no reserve powers left: she is left with no discretion over their exercise. This second section considers the main prerogative powers exercised on behalf of the Crown by ministers. They still enjoy considerable discretion, but in recent years most of the important prerogative powers have come under tighter parliamentary control. The initiative for this came originally from the House of Commons Public Administration Select Committee (PASC), with the baton being taken up by Gordon Brown. In his first week as Prime Minister in 2007 he published a bold constitutional reform agenda in *The Governance of Britain*, in which he stated that ‘The Government believes that in general the prerogative powers should be put onto a statutory basis and brought under stronger parliamentary scrutiny and control’.<sup>24</sup> The white paper went on to enumerate what it called the ‘prerogative executive powers’ which were going to be more tightly circumscribed: organisation of the civil service; ratification of treaties; going to war; and making public appointments. It also announced a wider review of the remaining prerogative executive powers, to consider whether in the longer term all these powers should be codified and put on a statutory basis.

### *Organisation of the civil service*

In 1854 the Northcote-Trevelyan report recommended that the core values and principles of the civil service be enshrined in legislation, but no government felt inclined to do so. The Prime Minister exercised prerogative powers to regulate the civil service, which was governed by orders in council. In response to a long parliamentary campaign, supported by the Committee on Standards in Public Life and the civil service unions, the Brown government agreed to embed the core values of the civil service in statute, and to put the Civil Service Commissioners on to a statutory footing.<sup>25</sup> This was eventually done in Part 1 and Schedule 1 of the Constitutional Reform and Governance Act 2010. The legislation is less detailed than in Australia, Canada and New Zealand, essentially putting into statute what had previously been set out in orders in council, and it is questionable what practical difference it has made.<sup>26</sup>

### *Making and ratification of treaties*

A similar change was made to the prerogative power to make and ratify treaties, by codifying in statute the long standing convention about parliamentary scrutiny of treaties known as the Ponsonby Rule. It was named after Arthur Ponsonby, Parliamentary Under-Secretary for Foreign Affairs, who in 1924 told the House of Commons

It is the intention of His Majesty’s Government to lay on the table of both Houses of Parliament every treaty, when signed, for a period of 21 days, after which the treaty will be ratified ... In the case of important treaties, the Government will, of course, take an opportunity of submitting them to the House for discussion within this period.<sup>27</sup>

Part 2 of the Constitutional Reform and Governance Act 2010 put the convention on to a statutory footing, and provides an enforcement mechanism if parliament believes that a treaty should not be ratified. The House of Commons can resolve against ratification and make it unlawful for the

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<sup>24</sup> Ministry of Justice (2007), para 24.

<sup>25</sup> Committee on Standards in Public Life, *Reinforcing Standards* (Sixth Report), January 2000, ch. 5; Public Administration Select Committee, *A Draft Civil Service Bill: Completing the Reform*, HC 128-I 2003-04 (January 2004).

<sup>26</sup> J. Harris, *Legislating for a Civil Service* (London: Institute for Government, 2013); A. Paun and J. Harris, *Reforming Civil Service Accountability: Lessons from New Zealand and Australia* (London: Institute for Government, 2012).

<sup>27</sup> House of Commons Debates, 5<sup>th</sup> ser, vol 171, cols 1999-2005, 1 April 1924.



government to ratify a treaty. The House of Lords cannot prevent the Government from ratifying, but can require the government to think again, and produce a further explanatory statement explaining why the agreement should be ratified.

### *The war making power*

There are few political decisions more important than going to war. The prerogative power to engage in military action without the need for parliamentary approval has come under increasing criticism, particularly since the invasion of Iraq in 2003. In 2007 the incoming Prime Minister Gordon Brown proposed that ‘On an issue of such fundamental importance, the government should seek the approval of the House of Commons for significant, non-routine deployments of the Armed Forces into armed conflict’.<sup>28</sup> He undertook to consult parliament and the public on how best to achieve this; and acknowledged the need not to prejudice operational security, or the need occasionally to take swift action with little time for parliamentary debate.

Parliamentary committees had already conducted several inquiries to consider how to ensure that the government could not embark on military action without the approval of the House of Commons. There are three possible mechanisms, in ascending order of stringency:

- An informal convention based upon precedent, starting with the Commons debate and formal vote approving the planned invasion of Iraq in 2003
- A formal parliamentary convention embodied in a resolution of the House of Commons, favoured by the Lords Constitution Committee<sup>29</sup>
- Legislation setting out the conditions the government would need to satisfy before it could wage war, proposed by the Commons Public Administration Committee.<sup>30</sup>

The Brown government subsequently opted for a parliamentary resolution, setting out in detail the processes parliament should follow before approving deployment of the armed forces; and appended a draft resolution to their white paper.<sup>31</sup> But a joint parliamentary committee criticised the definition of ‘conflict decision’, and the Commons Public Administration Committee was more critical, in particular of the Prime Minister’s control of the information which would be made available to parliament. The Brown government made no further progress before it left office in 2010.

The coalition government soon had to address the issue in March 2011, with the deployment of forces in Libya. Although a parliamentary debate was held after the bombing of Libya had commenced, the government acknowledged the existence of a convention that normally there should be a prior debate, and undertook to observe the convention except in cases of emergency. The test came in August 2013, when the government wanted to engage in bombing in Syria, but was defeated by 13 votes. As a result the government dropped its plans. A year later the government again sought parliamentary approval for action against ISIS in Iraq in September 2014, and on this occasion the House supported the proposed deployment. The following year the government sought parliamentary approval to extend the bombing of ISIS to Syria, and after a ten hour debate on 2 December 2015 the House approved the proposed action by a large majority.

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<sup>28</sup> Ministry of Justice (2007), para 26.

<sup>29</sup> Constitution Committee, *Waging War: Parliament’s Role and Responsibility*, HL Paper 236-I 2005-06 (July 2006).

<sup>30</sup> Public Administration Select Committee, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, HC 422 2003-04 (March 2004).

<sup>31</sup> Ministry of Justice, *The Governance of Britain – Constitutional Renewal*, Cm 7342-I (March 2008), para 215.

These successive precedents have enabled commentators to state with increasing confidence that there is now an established convention that the government will not deploy the armed forces overseas without prior recourse to parliament.<sup>32</sup> That is where things are likely to remain, because a convention leaves the government with a degree of discretion and flexibility. Earlier proposals for a Commons resolution, or legislation, just raised too many difficult questions of definition: how to define the sort of military action that would trigger parliamentary involvement; under what circumstances the government could circumvent parliament on grounds of urgency; whether escalation of an operation should require fresh approval. There were also unresolved questions about parliament's access to information, including legal advice and intelligence; and the risk of court challenges if parliament's role were placed on a statutory basis.<sup>33</sup> For all these reasons an evolving political convention requiring parliamentary approval of military action is likely to be more acceptable and more workable than a legal rule. Gordon Brown cannot really claim credit for the development of the convention, because it is based on the precedents of the parliamentary debates in 2003, 2013, 2014 and 2015.

### ***Scrutiny of public appointments***

Gordon Brown's most important constitutional innovation is also the least known, but is likely to have the most enduring impact. It stems from his decision to give the House of Commons a greater role in senior public appointments, by making key appointments subject to a 'pre-appointment scrutiny hearing' with the relevant select committee:

The hearing would be non-binding, but in the light of the report from the committee, Ministers would decide whether to proceed. The hearings would cover issues such as the candidate's suitability for the role, his or her key priorities, and the process used in selection.<sup>34</sup>

Following a process of bargaining between the Cabinet Office and the select committees, brokered by the Commons Liaison Committee, they agreed upon a list of 60 appointments which would be subject to the new procedure. This is a tiny fraction of all public appointments (estimated to be over 20,000), but includes the major inspectors, regulators and ombudsmen, and high profile positions like the chairman of the BBC. Ministerial powers of patronage had already been restricted since the Nolan report in 1995 recommended creation of an independent Commissioner for Public Appointments. The Commissioner ensures that all public appointments are made following a process of fair and open competition, run by an independent panel which draws up a short list of candidates, selected on merit, from which ministers make the final choice. Select committees provide a further check on ministerial patronage, testing candidates for their independent mindedness and suitability for the role, as well as discussing their initial priorities, and parliament's expectations.

It might be thought pre-appointment hearings would prove a waste of time, since the committees have no power of veto. 70 out of the 75 hearings held between July 2007 and March 2015 resulted in a positive recommendation from the committee, leading to appointment of the candidate. But in the remaining five cases where committees raised doubts, two candidates withdrew, and one was not

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<sup>32</sup> G. Phillipson, 'Historic' Commons' Syria vote: the constitutional significance (Part 1)', UK Constitutional Law Association Blog, 19 September 2013, <https://ukconstitutionallaw.org/2013/09/19/gavin-phillipson-historic-commons-syria-vote-the-constitutional-significance-part-i/>, last accessed 2 June 2016. See also Part 2 (29 November 2013, <https://ukconstitutionallaw.org/2013/11/29/gavin-phillipson-historic-commons-syria-vote-the-constitutional-significance-part-ii-the-way-forward/>, last accessed 2 June 2016) and 'Voting on Military Action in Syria: A Reply' (2 December 2015, <https://ukconstitutionallaw.org/2015/12/02/gavin-phillipson-voting-on-military-action-in-syria-a-reply/>, last accessed 2 June 2016).

<sup>33</sup> For further detail see C. Mills, *Parliamentary Approval for Military Action*, House of Commons Library Briefing Paper 7166 (May 2015).

<sup>34</sup> Ministry of Justice (2007), para 76.

appointed by the minister. In the remaining two cases the minister went ahead with the appointment, but had to justify his decision on the floor of the House of Commons in answer to an urgent question. So pre-appointment hearings do provide a further safeguard, and candidates say it gives them an added sense of legitimacy, as well as an early opportunity to meet the relevant select committee.<sup>35</sup>

### ***The appointment of peers***

The prerogative power to appoint peers officially rests with the monarch, but is in practice exercised only on the advice of the Prime Minister. In the past there has been no constraint on the numbers or the individuals whom the Prime Minister chose to appoint, and the practice of rewarding party donors with peerages goes back at least to the time of Lloyd George. There was a broad understanding that Prime Ministers would not simply pack their own side in the Lords, but no enforcement mechanism other than self-restraint. However in the last 20 years the power to award peerages has become more restricted in two ways: by the creation of the House of Lords Appointments Commission, and by commitments from all the main parties about the need for proportionality to regulate party balance in the Lords. Both developments appeared to offer real constraints, but both have been weakened under the premiership of David Cameron.

The House of Lords Appointments Commission (HoLAC) was created in 2000. Its first function is to make nominations to the independent Crossbenches. For these appointments HoLAC has effectively become the appointing body, because successive Prime Ministers have undertaken to pass on without amendment the Commission's recommendations, save in exceptional circumstances. During its first ten years the Commission nominated 53 people to the Crossbenches. But the Prime Minister still controls the numbers to be appointed. Since David Cameron became Prime Minister those numbers have been greatly reduced: in 2012 he asked the Commission in future to nominate only two individuals per year, and the 2010-15 parliament saw only eight nominations. At the same time Cameron has expanded his power to nominate in each parliament up to ten distinguished public servants to the Crossbenches on their retirement, by broadening it to a wider range of people, and not solely on their retirement.<sup>36</sup> Hence if the Commission is limited to two nominations per year, or ten per parliament, the Prime Minister can nominate up to half of all new Crossbenchers.

The Commission's second function is to vet for propriety all nominations to the House, including nominees from the political parties. The Commission plays no part in assessing the suitability of those nominated, which is a matter for the parties themselves. Its role is limited to assessing propriety.<sup>37</sup> The Commission's website states that 'the making of a donation or loan to a political party cannot of itself be a reason for a peerage'. The Commission does not have a right of veto; it can merely draw its concerns to the Prime Minister's attention. Nevertheless, the Commission's vetting function has proved effective in screening out some of the candidates put forward. During its first 15 years, it is said that ten peerages

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<sup>35</sup> L. Maer, *Pre-appointment Hearings*, House of Commons Library SN/PC/04387 (February 2015); R. Hazell, M. Chalmers and M. Russell, 'Pre Appointment Scrutiny Hearings in the British House of Commons: All Bark, or some Bite?', *Journal of Legislative Studies* 18:2 (2012), pp. 222-241.

<sup>36</sup> Announced in House of Commons Debates, 5<sup>th</sup> ser, vol 583, col 37WS, 26 June 2014.

<sup>37</sup> Interpreted by the Commission as meaning that the individual should be in good standing in the community and with the public regulatory authorities; and that the past conduct of the nominee will not bring the House of Lords into disrepute.

were screened out in this way.<sup>38</sup> HoLAC's 2013-15 report disclosed that it successfully queried a further seven nominations in 2015.<sup>39</sup>

The need for a clearer convention about party balance in the House of Lords arose from the Labour party's 1997 commitment to remove the hereditary peers. Once they were gone, the Prime Minister could in future determine the membership of the Lords (save for the bishops). So Labour's 1997 manifesto stated 'Our objective will be to ensure that over time party appointees as life peers more accurately reflect the proportion of votes cast at the previous general election ... No one political party should seek a majority in the House of Lords'. Tony Blair made large numbers of Labour and Liberal Democrat appointments, which greatly increased proportionality, but this principle was never rigidly adhered to.<sup>40</sup>

The coalition government formed in 2010 adopted a similar commitment, that 'Lords appointments will be made with the objective of creating a second chamber reflective of the share of the vote secured by the political parties in the last general election'.<sup>41</sup> But with no provision for retirement, new appointments sent the size of the House spiralling upwards. As Meg Russell and Tom Semlyen have shown, the strict application of this principle would be a dramatic rise in this size of the chamber, and the only way to keep the numbers under control would be a cap on its overall size, and for each *new* round of appointments to reflect the proportion of votes cast at the previous election, rather than attempting to balance the chamber as a whole.<sup>42</sup> A commitment of this kind to proportionality would offer a constraint; but until there is a clear and shared agreement between the parties, the risk is that the chamber gets ever larger.

David Cameron has shown that Prime Ministerial appointments to the Lords remain essentially unregulated, save for the limited control by the House of Lords Appointments Commission. Since the formation of the 2015 government there have been occasional suggestions that Cameron might 'pack' the Lords by appointing numerous Conservative peers in order to make it easier to get his legislation through. Should he do so (or should a future Prime Minister of any party seek to do the same) this could place the monarch in a very awkward position. The last time any such move was attempted explicitly was immediately before the passage of the 1911 Parliament Act, when the monarch was still considered to have some discretion and the request from Prime Minister Asquith was refused – at least until a general election had been held to test public opinion on the policy matter under dispute. Should such a request be made today it is not clear whether the monarch would be able to resist it. For this and other reasons the Public Administration Committee, and its successor the Public Administration and Constitutional Affairs Committee, have proposed tighter regulation of this prerogative power.<sup>43</sup>

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<sup>38</sup> P. Dominiczak, S. Swinford and C. Hope, 'Revealed: seven peerages blocked after failing vetting process', *Daily Telegraph*, 26 August 2015, <http://www.telegraph.co.uk/news/politics/11826722/Revealed-Seven-peerages-blocked-after-failing-vetting-process.html>, last accessed 2 June 2016.

<sup>39</sup> House of Lords Appointments Commission, 'Annual Report October 2013-October 2015', para 36, <http://lordsappointments.independent.gov.uk/media/32548/holac%20report%202013-15.pdf>, last accessed 6 June 2016.

<sup>40</sup> For party balance across appointments per Prime Minister since 1958 see M. Russell and T. Semlyen, *Enough is Enough: Regulating Prime Ministerial Appointments to the Lords* (London: The Constitution Unit, UCL, 2015); for party balance across the chamber and in appointments per year since 1999 see M. Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013), p. 75.

<sup>41</sup> HM Government, *The Coalition: our programme for government* (London: Cabinet Office, May 2010), p. 27.

<sup>42</sup> Russell and Semlyen (2015).

<sup>43</sup> Public Administration Select Committee, *Propriety and peerages*, HC 153 2007-08 (December 2007); Public Administration and Constitutional Affairs Committee, *The Strathclyde Review: Statutory Instruments and the power of the House of Lords*, HC 752 2015-16 (May 2016).

### ***Review of all the prerogative powers***

The final contribution of the Brown government was to publish a comprehensive review of all the executive prerogative powers.<sup>44</sup> The review was the result of an exhaustive two year exercise which included a survey of all government departments and agencies to identify prerogative powers still in use, which were listed in an appendix to the report. Although the original aspiration had been to codify all the prerogative powers, the review concluded that this would not be practicable, nor desirable. In some areas, like the armed forces, it was very difficult to disentangle prerogative from statutory powers; in others the prerogative provided flexibility in dealing with exceptional circumstances not covered by statute. The review concluded:

The changes now in train will deal with the most serious concerns about the remaining ... prerogative powers. The Government has concluded that it is unnecessary, and would be inappropriate, to propose further major reform at present. Our constitution has developed organically over many centuries and change should not be proposed for change's sake ... any further reforms in this area should be considered on a case-by-case basis.<sup>45</sup>

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<sup>44</sup> Ministry of Justice, *The Governance of Britain – Review of the Executive Royal Prerogative Powers: Final Report* (October 2009).

<sup>45</sup> *Ibid.*, para 112.

### Part III: What is the modern monarchy for?

The sovereign's own website stated that:

The Queen's role is to:

Perform the ceremonial and official duties of Head of State, including representing Britain to the rest of the world;

Provide a focus for national identity and unity;

Provide stability and continuity in times of change;

Recognise achievement and excellence;

Encourage public and voluntary service.<sup>46</sup>

Part I of this report has already dealt with the monarch's constitutional functions. This Part will group the rest as follows:

- *The national monarchy* – those head of state functions outside the purely political/constitutional as described in Part I;
- *The 'international' monarchy* – where the UK sovereign is also the head of state in fifteen other Commonwealth states, known as the 'realms', fourteen UK/British overseas territories, and is styled as Head of the Commonwealth;
- *The religious monarchy* – the sovereign as head of the Church of England, the 'established' church, together with the monarchy's rather different relationship with the Presbyterian Church of Scotland; and
- *The welfare/service monarchy* – this aspect includes those functions where the sovereign, and members of the royal family, exercise forms of social patronage in relation to charities and other parts of civil society.

#### ***The national monarchy***

Although primarily ceremonial, these functions have important political and social content.<sup>47</sup> The sovereign formally opens each session of parliament, which now commences in May or June.<sup>48</sup> Travelling in a state coach in ceremonial dress with a mounted cavalry escort (usually with her husband and other members of the royal family), the Queen delivers a speech from the throne in the House of Lords. The members of the House of Commons are summoned to attend and remain standing throughout the proceedings. They wear no special clothing but the peers, including the 26 Lords (and

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<sup>46</sup> In December 2015. In 2016 the website underwent a major redesign, and this text no longer appears.

<sup>47</sup> '...no approach which defines power narrowly and ignores spectacle and pageantry can possibly claim to be comprehensive. Politics and ceremonial are not separate subjects, the one serious, the other superficial. Ritual is not the mark of force, but is itself a kind of power.' D. Cannadine, 'Introduction: divine rites of kings', in D. Cannadine and S. Price (eds), *Ritual of Royalty: Power and Ceremonial in Traditional Societies* (Cambridge: Cambridge University Press, 1987), p. 19.

<sup>48</sup> Since May 2010 and the Fixed-term Parliaments Act 2011, parliamentary sessions have run from May until May. Before then the parliamentary year began in the autumn, which is the reason why Guy Fawkes and his co-(Roman Catholic) conspirators chose the state opening in November for the gunpowder plot. The sovereign's survival in 1605 is still commemorated annually on 5 November, the date of the conspiracy's discovery.



now Ladies) Spiritual who wear clerical dress, do. The speech, prepared by the Prime Minister, outlines the most important measures that the government – the Queen’s government – plans to bring forward in the forthcoming session.<sup>49</sup>

Typically of Britain, the ceremonies belie the reality. Whereas the procedures seem to exalt the House of Lords as the more important of parliament’s two houses, the reverse is the truth. It is an example of how a state, once a personal monarchy, has become effectively a democratic republic whilst retaining monarchical forms.<sup>50</sup>

The national role includes an annual cycle of scripted events. It starts with the Queen’s televised Christmas message leading on to the New Year’s honours list which, with the summer birthday list, biannually bestows civic honours and medals recognising achievement of various kinds. Awards are made to a wide range of recipients, from captains of industry to school dinner ladies, professors and entertainers, doctors and soldiers.<sup>51</sup> Spring has the annual Commonwealth service at Westminster Abbey. The summer sees Trooping the Colour, a military pageant involving the Household regiments on the Horse Guards parade. Late summer/early autumn includes a long stay at Balmoral Castle in Aberdeenshire and a visit to the Highland Games as well as other engagements in Scotland.<sup>52</sup> Remembrance Day in November has the Queen attending the cenotaph service in Whitehall. Visits also take place to Windsor Castle in Berkshire (both a weekend retreat and a site of formal entertainment), and (more privately) Sandringham House in Norfolk where Christmas and the New Year is spent. State visits, both inwards by foreign heads of state and by the Queen outwards, are accommodated in the programme. The daily engagements of the Queen and other senior members of the royal family are published in the Court Circular. Every year, their number is totted up by an obliging private citizen who writes to the *Times* newspaper with the results. In 2015, 15 members of the royal family had just under 3000 official engagements. Half of these were official visits, opening ceremonies, sports, concerts and charity events. Princess Anne had the most engagements, in the UK and overseas (544), closely followed by the Prince of Wales (527), with the Queen carrying out 341 engagements and Prince Philip 250.<sup>53</sup>

For the Queen there is also much other and more formal business. She hosts investitures where honours are conferred. She greets new and retiring ambassadors and newly appointed Church of England bishops and High Court judges. She presides over meetings of the Privy Council which conducts swiftly – and whilst standing – much public business including the approval of subordinate legislation. She will meet outgoing and incoming senior civil and military officers, and the Colonels of her regiments. Normally, too, she will see the Prime Minister for an hour or so every Wednesday evening, for a private audience. The Queen reads a considerable range of cabinet and other papers to prepare for such occasions. Prime

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<sup>49</sup> With less fanfare, the Queen also opens each newly elected five year Synod of the Church of England (see below).

<sup>50</sup> Even in 1867, Bagehot observed that ‘A Republic has insinuated itself beneath the folds of a monarchy’ – W. Bagehot, *The English Constitution* (Oxford: Oxford University Press, 1927), p. 44. The first reference to the UK as a ‘crowned republic’ has been traced to the Epilogue (published 1873) to Tennyson’s *Idylls of the King*. See F. Prochaska, *The Republic of Britain 1760-2000* (London: Allen Lane, 2000), p. 120.

<sup>51</sup> The chances of receiving one are enhanced by a recipient’s closeness to government, although public servants form a diminishing proportion of those honoured. See Public Administration Select Committee, *The Honours System*, HC 19 2012-13 (August 2012), para 36.

<sup>52</sup> Scottish independence is the aim of the governing party, the Scottish National Party (SNP), in the devolved Scottish government. Although the SNP’s official policy is to retain the Queen as head of state of an independent Scotland, it is thought that this position might not last if independence were achieved.

<sup>53</sup> T. O’Donovan, ‘Royal Family engagements for 2015’, *The Times*, 31 December 2015, <http://www.thetimes.co.uk/tto/opinion/letters/article4653569.ece>, accessed 3 June 2016. The Queen has been gradually handing more invitations to Prince Charles, who for several years has had the highest number of official engagements. For the figures from 2010 to 2014 see <http://royalcentral.co.uk/state/prince-charles-hardest-working-royal-for-seventh-year-running-42005>, accessed 16 November 2015.

Ministers attest to the value of these occasions, which are the main instances where the head of state can exercise the conventional rights to be consulted, to encourage and to warn. In the realms the Governor General rarely sees the Prime Minister with anything like the same frequency. The weekly audience may well give the monarch influence and soft or preventative power; but since the audience is private and no record is made, its significance cannot be independently assessed.<sup>54</sup>

The sum of these activities is considerable and has the clear public benefit of relieving executive government from shouldering also the burden of ceremonial rule. This is not the case in states where the head of the executive is also the head of state. In those states the functions are inseparably intertwined. Although the President of the United States, for example, may occasionally invite the Vice-President to take on some of the ceremonial burden, the President shoulders most of the load. Not only is the President his own prime minister but, in responding to expectations of exercising moral leadership, functions also as it were as an American Archbishop of Canterbury, Roman Catholic Cardinal and Chief Rabbi. Monarchy permits a clear distinction to be drawn between the ceremonial representation of the community on the one hand, and executive political responsibility on the other.

The monarchy comes with financial costs defrayed by the taxpayer. Formerly, the costs of undertaking public duties were underwritten by parliament in Civil List settlements made at the beginning of each reign. Well into Elizabeth II's reign it was discovered that undeclared concessions had meant that the sovereign paid no tax on personal income. This was rectified from 1993 and the Queen (and the Prince of Wales) now voluntarily contribute income tax like everyone else.

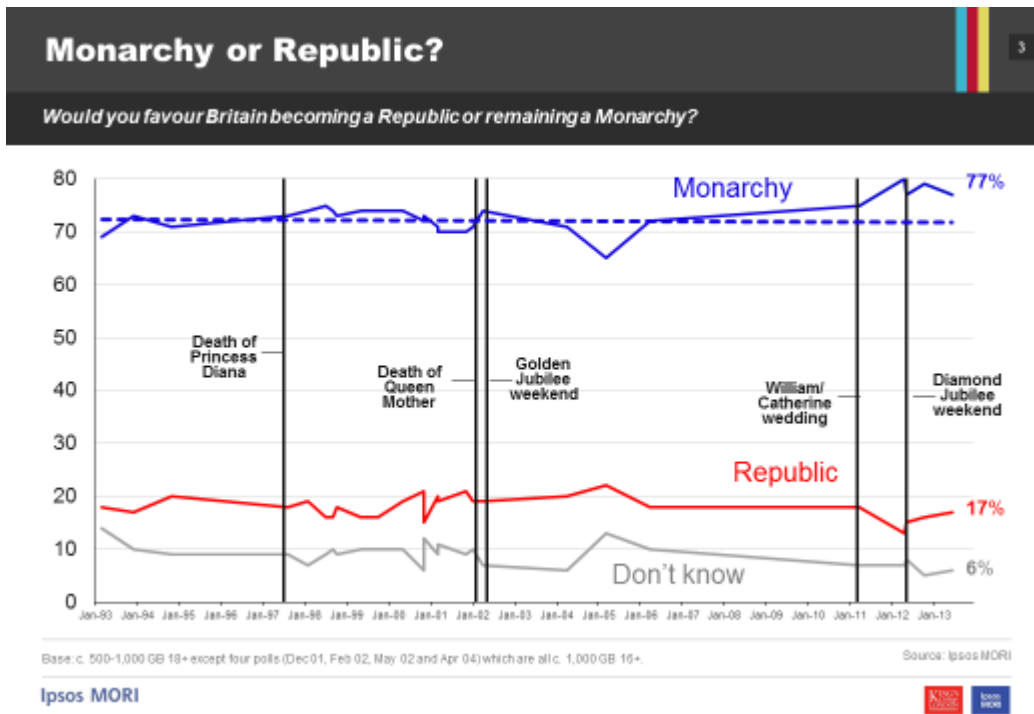
The recent coalition government decided to move to a different support system under the Sovereign Grant Act 2011. This set the level of support initially (reviewable every five years) at 15 per cent of the profits of the Crown Estate. The latter was until 1760 managed directly by the sovereign and used for the cost of civil government until George III surrendered the Estate in return for a fixed Civil List. The new arrangement delivers an annual sum in the region of £36 million. It is a form of indexation previously resisted because indexation was thought to discourage economy.<sup>55</sup>

Whatever reservations may exist about the new financial regime, what cannot be said is that the monarchy is unpopular. On the contrary, it remains very popular indeed with solid 70 per cent approval ratings.

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<sup>54</sup> For a popular rendering of what might take place, see Peter Morgan's play *The Audience*, first performed in 2013 with Helen Mirren playing the Queen.

<sup>55</sup> The Palace publishes detailed annual accounts of how the Sovereign Grant is spent – see <http://www.royal.gov.uk/LatestNewsandDiary/Pressreleases/2015/Sovereign%20Grant%202014-15.aspx>, last accessed 3 June 2016. The new arrangements have been criticised for being insufficiently austere: G. Rayner, 'Queen's finances are safe from cuts for two years', *Daily Telegraph*, 21 June 2015, <http://www.telegraph.co.uk/news/uknews/queen-elizabeth-II/11689154/Queens-finances-are-safe-from-cuts-for-two-years.html>, last accessed 3 June 2016.



## Public support for the UK remaining a monarchy, 1993 to 2013 (Source: Ipsos MORI)

### *The international monarchy*

Uniquely amongst remaining world monarchies, the British monarchy is not contained by its geographical boundaries. The British sovereign is both head of the Commonwealth of 53 independent sovereign countries and actually head of state in 15 of these countries – the ‘realms’<sup>56</sup> – other than the UK. In those countries the Queen is represented by a Governor General carrying out constitutional and public functions similar to those undertaken in the UK. Her long reign since 1952 means that she has visited all the realms, and all the other Commonwealth countries with the exception of the relatively late joiners Cameroon (1995) and Rwanda (2009). She has as a result become personally familiar with their societies and their leading politicians.

When visiting realms, the Queen acts on the advice of the responsible ministers in the particular country and not on the advice of her UK ministers. This can on occasion lead to tensions if their interests conflict.<sup>57</sup> On the other hand, her visits abroad outside the Commonwealth occur solely in her UK persona and not in respect of her headship of the other realms. Her association on such occasions with the promotion of solely UK interests has led to criticism in that regard<sup>58</sup> and a tendency for realms to promote international roles for their Governors-General.

These arrangements are a residue of empire, the outcome of local political maturation and British withdrawal, forced or otherwise. The Succession to the Crown Act 2013 required realm-wide agreement

<sup>56</sup> The countries are Antigua and Barbuda, Australia, The Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, and Tuvalu.

<sup>57</sup> For example when Canada hosted the Commonwealth Heads of Government meeting in 1973 and Pierre Trudeau invited the Queen to attend (which she did), against the wishes of the UK government. See P. Murphy, *Monarchy and the End of Empire: The House of Windsor, the British Government and the Postwar Commonwealth* (Oxford: Oxford University Press, 2013), p 131.

<sup>58</sup> V. Bogdanor, *The Monarchy and the Constitution* (Oxford: Clarendon, 1995), p. 293.

before it could be brought into force in the UK. This was because altering the rules of royal succession to make them gender neutral meant that all of the monarchies had to agree lest different rules in different realms resulted in different people as monarchs.<sup>59</sup> The realms were free to alter their constitutions without reference to the UK, but the UK could not do so on this occasion without seeking the realms' consent, so that the realms were freer to alter their constitutions than was the UK itself. This inversion of former imperial realities, though not new, still took some people by surprise. On the other hand, as Peter Boyce has pointed out, the fact that the initiative for change remains in the hands of the UK also reminds the realms that 'their crown is derivative, if not subordinate'.<sup>60</sup>

As to the realms generally, the present position appears to be as follows. Of the 'old' Dominions, New Zealand has the least developed republican movement, the government in 2016 losing a referendum to remove the Union Jack from the national flag.<sup>61</sup> Further, the totemic significance given to the 1840 Waitangi treaty and its monarchical dimension by the important Māori minority would have to be navigated with particular care. In Australia after a precipitous decline in support for the monarchy in the 1990s, and a narrowly failed referendum in 1999 on establishing a republic, support had climbed back up to 47 per cent by 2013.<sup>62</sup> The Prime Minister Malcolm Turnbull and the six state Premiers have all declared their support for a republic, but there is no appetite for a second referendum until there is much stronger grassroots support for one.<sup>63</sup> In Canada the issue has very little salience, and the polls suggest contradictory views: recent polls show support for the monarchy at 45 to 50 per cent (against 35 to 40 per cent support for a republic), but over 70 per cent agree with the statement that 'the head of state of Canada should be Canadian-born and live in Canada'.<sup>64</sup> Writing in 2008, Peter Boyce thought that, although the argument is rarely about principled republicanism rather than symbolism and national identity, 'One of the most significant findings of recent opinion polls in Canada and Australia has been that a clear majority believe that the Crown links should be severed at the expiry of Queen Elizabeth's reign'.<sup>65</sup>

It seems reasonable, therefore, to expect some change impelled by demise. Early runners could include Australia and Jamaica, as well as Tuvalu and Saint Vincent and the Grenadines where referenda have previously failed. However, it would not always be a simple process. Both Australia and Canada would need the agreement of their constituent states/provinces. Despite support for the monarchy having fallen to 34 per cent in 1998, the 1999 Australian referendum failed because there was no agreement on how the new head of state should be appointed. There are similar difficulties in Jamaica, where constitutional change requires a two thirds majority of both houses, plus a referendum. Successive Jamaican prime ministers have pledged to amend the constitution to make Jamaica a republic, but so far have failed to overcome this very high threshold.

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<sup>59</sup> This is why an expectation that there should be consultation with the realms on such issues was inserted in the Preamble to the Statute of Westminster 1931.

<sup>60</sup> P. Boyce, *The Queen's Other Realms: The Crown and its Legacy in Australia, Canada and New Zealand* (Sydney: Federation Press, 2008), p.23.

<sup>61</sup> T. Arseneau and N. Roberts, 'Blowin' in the wind: a postscript on New Zealand's flag referendums', Constitution Unit blog, 9 May 2016, <https://constitution-unit.com/tag/new-zealand-flag-referendum/>, last accessed 3 June 2016.

<sup>62</sup> L. Mansillo, 'Loyal to the Crown: shifting public opinion towards the monarchy in Australia', *Australian Journal of Political Science*, online advanced access (2016).

<sup>63</sup> Australian Associated Press, 'Australian state and territory leaders unite to call for republic', *The Guardian*, 26 January 2016, <http://www.theguardian.com/australia-news/2016/jan/25/state-and-territory-leaders-unite-to-call-for-republic>, last accessed 3 June 2016; D. Hurst, 'Australian support for monarchy has grown as debate for republic revived', *The Guardian*, 27 January 2016, <http://www.theguardian.com/uk-news/2016/jan/27/australian-support-for-monarchy-has-grown-as-debate-for-republic-revived>, last accessed 3 June 2016.

<sup>64</sup> A summary of all the polling data is at [https://en.wikipedia.org/wiki/Debate\\_on\\_the\\_monarchy\\_in\\_Canada](https://en.wikipedia.org/wiki/Debate_on_the_monarchy_in_Canada), last accessed 3 June 2016.

<sup>65</sup> Boyce (2008), p. 210.

British attitudes to a growth of republicanism outside Britain are relaxed. At the time of the Australian referendum, Buckingham Palace made it clear that the question was one entirely for Australians to decide. Indeed, British officials suggested that republican status might help Anglo-Australian relations, once they were 'purged of irritations and misunderstandings generated by real or imagined British condescension or by public controversy surrounding the Royal Family'.<sup>66</sup> Similarly, Philip Murphy has noted the extent to which the British government encouraged the new African Commonwealth countries to be republics: 'Officials and ministers feared that by involving the Crown in the politics of post-colonial Africa, they might be exposing the Queen to potential "embarrassment" in a way that would damage national prestige and undermine her capacity to serve as the focus of a specifically *British* identity.'<sup>67</sup>

Whether the UK sovereign should remain the Commonwealth's 'head' is linked to the general acceptability of the UK's sovereign being perpetually in that role. The office – such as it is – is not hereditary, there is no rule of succession, nor is there any means by which one could be legislated. The present position rests on the London Declaration of 1949 and its formula for permitting the inclusion of republics (in the immediate case India alone) to the Commonwealth where the King was accepted as 'the symbol of the free association of its [the Commonwealth's] independent member nations and as such the Head of the Commonwealth'.

Also relevant is the extent to which the Commonwealth has been developing some nascent political as opposed to co-operative machinery of its own beyond the secretary-general role established in 1965. Nowadays, between the biennial Commonwealth Heads of Government Meetings (known as CHOGM), the last host country's head of the executive carries on in a shadow caretaking function for the following two years until the next heads of government meeting. Previous talk about some kind of revolving headship has so far come to nothing.

Philip Murphy and Daisy Cooper have argued that the role of head of the Commonwealth should lapse on the Queen's death. The Prince of Wales is placed in an impossible position: putting himself forward will be 'anachronistic and presumptuous'; not expressing interest would be characterised as neglectful. But quite apart from the purely personal, they go on to maintain that 'Charles would not merely be an unsuitable symbol but a positively harmful one, reinforcing the prejudice that the Commonwealth is merely a throwback to Empire'.<sup>68</sup> They argue, too, that it is the very existence of the headship that may have inhibited the growth of the Commonwealth Secretariat into a stronger and more significant institution. Nonetheless, a report that the Prince of Wales was to accompany the Queen to the 2015 Malta CHOGM claimed that the Queen was understood to be determined to see the headship descend to her son, even though understanding that 'it is not a done deal'.<sup>69</sup>

Throughout all this Elizabeth II's devotion to the Commonwealth has remained notable. The sovereign's enthusiasm for the Commonwealth has not always been shared by her governments.<sup>70</sup> The

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<sup>66</sup> *Ibid.*, p 241.

<sup>67</sup> Murphy (2013), p. 15.

<sup>68</sup> P. Murphy and D. Cooper, *Queen Elizabeth II should be the final Head of the Commonwealth* (London: Commonwealth Advisory Bureau, 2012).

<sup>69</sup> R. Nikkhah, 'Charles Courts Commonwealth', *Sunday Times*, 22 November, 2015, [http://www.thesundaytimes.co.uk/sto/news/uk\\_news/Society/article1636087.ece](http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1636087.ece), last accessed 3 June 2016. The final communique was silent on the point, though it 'welcomed the presence' of the Prince of Wales and his wife – <http://thecommonwealth.org/sites/default/files/news-items/documents/CHOGM%202015%20Communique.pdf>, last accessed 13 December 2015.

<sup>70</sup> See B. Pimlott, *The Queen: A Biography of Elizabeth II* (London: Harper Collins, 1996), pp. 462-9 especially. The Blair government's decision in 1998 not to replace the Royal Yacht – an unbroken tradition since 1660 –



relationship with the Commonwealth added a post-imperial role and reach to an otherwise wholly UK institution which in important ways compensated for the decline in monarchical roles elsewhere. Harold Evans, press head at 10 Downing Street under Harold Macmillan, records the Prime Minister debriefing him after a discussion with the Queen. Disappointed that a planned royal visit to Ghana might not go ahead: 'She took very seriously her Commonwealth responsibilities, said the PM, and rightly so for the responsibilities of the UK monarchy had so shrunk that if you left it at that you might as well have a film star.'<sup>71</sup>

### ***The religious monarchy***

Since 1689, at a time of intense struggle against Roman Catholic monarchies in continental Europe, the sovereign of England has had to be 'in communion with' the protestant Church of England, and from 1707 swear on accession an oath upholding the Church of Scotland, the Kirk, a protestant Presbyterian church. Until the Succession to the Crown Act 2013, in addition to the ban on Roman Catholics, no-one married to a Roman Catholic could succeed as sovereign. A new sovereign has to make a declaration of their Protestantism and swear a coronation oath which includes upholding the Church of England and its privileges. While virtually all civic disabilities imposed on Roman Catholics from the seventeenth century were abolished in 1828/29, it remains the case that no-one who is a Roman Catholic, a non-Trinitarian Christian or who belongs to any other religion or none can succeed to the throne.

In England the sovereign is 'Supreme Governor' of the Church of England, and formally makes all senior Church appointments. The sovereign does not have any sacerdotal role. Accession is not dependent on coronation though, since the tenth century Wessex Saxon kings, the ceremony has used similar formulae to signify the descent of God's grace and blessing on the monarch. In Scotland the sovereign is not in any sense head of the Kirk but sends representatives (and very occasionally attends herself) to the Kirk's annual General Assembly without participating in its deliberations.

All these arrangements were features of a confessional state. Theological uniformity was regarded as a good in itself and something that worked towards the security of the nation. One effect was to bind executive government and the Church of England together into a joint project of governance and social control, roles managed more at arm's length in Scotland.

Much has changed since 1689 and only a small residue of the confessional state remains. Government control of the Church of England is attenuated to the point that the Church is for all intents and purposes autonomous. Committees of the Church recommend and in effect appoint to all senior posts: the Prime Minister nowadays automatically advises the sovereign to appoint the Church's nominees. Whilst the measures of the Church's Synod, its parliament, are subject to the approval of the Westminster parliament, they are enabled to amend statute and themselves have the force of statute. In the past, even these residues were attacked as inconsistent with the religious freedoms of others and demands were made for disestablishment. In the event disestablishment occurred only in Ireland (1869) and Wales (1920), and active hostility has, apart from certain secularist sources<sup>72</sup>, declined with the general decline in Christian religious observance.

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deprived the monarchy of a serviceable floating symbol of global reach so useful and prestigious on Commonwealth tours.

<sup>71</sup> H. Evans, *Downing Street Diary: The Macmillan Years 1957-63* (London: Hodder and Stoughton, 1981), p.71, noted in Murphy (2013), p. 171.

<sup>72</sup> The best known and oldest is the National Secular Society. See its Charter at <http://www.secularism.org.uk/secularcharter.html>, last accessed 13 December 2015. Nonconformist Christian churches were also formerly actively opposed to Anglican establishment but seem no longer to make it a current campaigning issue. See R. M. Morris (ed.), *Church and State: Some Reflections on Church Establishment in England* (London: The Constitution Unit, UCL, 2008).



This general decline in religious belief and attendance has put both established churches into seemingly inexorable decline.<sup>73</sup> Moreover, the religious landscape of the UK has changed radically. In addition to the formation of non-Christian religious communities, about half of the population is now prepared to say that it has no religion. Greater religious plurality is accompanied by a significant decline in religious belief. It is very unlikely that any significant number nowadays believe that the sovereign is chosen by any sort of deity. As a *Guardian* columnist has put it: ‘without a divine being to anoint the royal family, how can we be expected to think of them as different?’<sup>74</sup>

This underlies the issue of abdication. If the sovereign is uniquely anointed by God then lifelong service can be considered a necessary consequence. The sacramental nature of the coronation oath is understood to be why Elizabeth II refuses to contemplate abdication. The personal devotion is admirable, but on the other hand the result may be gerontocratic succession. In 2016 the Queen becomes 90 and her heir 68. The effects of carrying on regardless mean that an heir in very late middle age will succeed as an old man, and be succeeded in turn by a son who was 34 in 2016 but likely to be much older when his turn comes.

Solutions such as skipping a generation or resorting to some sort of late regency are not ideal. The first would need legislation and constitute a poor reward for an heir who has served very faithfully and industriously. The present Regency Acts offer no wiggle room. They are predicated on the appointment of a regent in the event only of the sovereign’s actual incapacity. Some sort of ‘soft’ regency where the heir silently took over most if not all the public duties would still leave the vital constitutional functions with the aged sovereign. Of course, no discussion could be encouraged in advance of ‘therapeutic’ abdication until the event was encompassed. But it remains the case that a private and personal commitment may be acting contrary to a more general public interest, let alone the interests of an heir. Perhaps such matters can be handled more flexibly in some of the other European monarchies precisely because none of them anoints their monarchs. The practical, managed result is that their monarchs reign for a generation during which their progeny can grow into their adult and family life before taking their turn in their adult maturity. Abdication seems to be accepted practice in Belgium (with abdications in 1951 and 2013), the Netherlands (1948, 1980 and 2013), Spain (2014), and Luxembourg (1919, 1964 and 2000); but there is no similar tradition in the three Scandinavian monarchies.<sup>75</sup>

Elizabeth II has throughout remained a strong supporter of the Church of England, although in no way hostile to other religious groups. On the contrary, she has seen the Church of England as an appropriate spokesman for and protector of all religions.<sup>76</sup> As John Wolffe has put it, ‘the monarchy has been looking towards a Christian Britain giving way to a religiously plural rather than a secular one’.<sup>77</sup> This is a view apparently reciprocated by all the other main religious groups who seem to value the benign

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<sup>73</sup> See M. Doney (ed.), *How Healthy is the C of E* (Norwich: Canterbury Press, 2004); and R. M. Morris, ‘Alternative Futures for Formal Church Establishment: Two Case Studies from the UK’ in C. Laborde et al. (eds), *Negotiating Religion: Cross-Disciplinary Perspectives* (Farnham: Ashgate, forthcoming).

<sup>74</sup> D. Aikenhead, *The Guardian*, 2 April 2002, quoted by Wolffe (2010), p. 68.

<sup>75</sup> The different Scandinavian tradition suggests that lifelong service need not be underpinned by a sacramental oath. Queen Margrethe of Denmark has said ‘I have always felt that it is a task that you are given, and that you have it as long as you live. That is my fundamental view. It is an integral part of the job that you have it for life’ – interview with B. Lidegaard, *Politiken*, 1 January 2012.

<sup>76</sup> Speech at Lambeth Palace, 15 February 2012, <http://rowanwilliams.archbishopofcanterbury.org/articles.php/2355/faith-communities-display-sacred-objects-to-the-queen>, last accessed 18 November 2015. Norman Bonney has characterised these claims as ‘Anglican Multifaithism’, an attempt to shore up Anglican significance. See N. Bonney, *Monarchy, religion and the state: Civil religion in the United Kingdom, Canada, Australia and the Commonwealth* (Manchester: Manchester University Press, 2013), pp.128-143.

<sup>77</sup> Wolffe (2010), p. 70.

interest of an English national church which, amongst other things, has 26 bishops sitting as full members of the upper house of parliament. The classic defence of this arrangement is that of the sociologist, Tariq Modood:

... the minimal nature of an Anglican establishment, its proven openness to other denominations and faiths seeking public space, and the fact that its very existence is an ongoing acknowledgment of the public character of religion, are all reasons why it may seem far less intimidating to the minority faiths than a triumphal secularism.<sup>78</sup>

In addition to the citation 'Head of the Commonwealth', all of the Commonwealth realms have adopted that part of the Queen's UK title that refers to the citation 'by the Grace of God'. Two realms – Canada and New Zealand – also include the citation 'Defender of the Faith'.<sup>79</sup> The Prince of Wales has mused on whether the latter title should be reinterpreted as 'Defender of Faith', reflecting Britain's multicultural society. He subsequently clarified that he intended no change to the title as such, and his official website comments that

He believes very strongly that the world in which we live can only become a safer and more united place if we all make the effort to tolerate, accept and understand cultures, beliefs and faiths different from our own.<sup>80</sup>

The website also makes clear that the Prince has no expectation that the next coronation will be a multifaith event. The next accession and coronation will expose these religious questions. Whilst there is probably nothing to be done before the next reign about the Scottish oath under the Act of Union 1707 and sworn immediately on accession to uphold the Church of Scotland, the Protestant Declaration Oath (1910) and the Coronation Oath (1688) raise sharper questions because there would be legislative opportunity after accession and before the oaths fell to be sworn.<sup>81</sup> As John Wolffe maintains:

It is improbable that any government will choose to grapple with such potentially contentious issues until forced to do so by the accession of a new monarch, but equally unlikely in the vastly changed circumstances of the twenty-first century that these texts would remain unaltered without considerable controversy.<sup>82</sup>

There is still the point that the UK sovereign's obligatory Anglicanism might be thought dissonant in those Commonwealth realms where majorities are anything but Anglican and – in both Australia and Canada – actually Roman Catholic, the religion that continues to face constitutional discrimination in the UK. This fact featured, if to no great extent, in the 1999 Australian referendum campaign. Australian monarchists argued that the point was irrelevant because the real head of state was the Governor-General and no religious tests applied to that office. Indeed, office holders had included two Jews and at least one atheist.<sup>83</sup> Though true, that response is less than a complete rebuttal of a situation where 'the

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<sup>78</sup> T. Modood, 'Establishment, Multiculturalism and Citizenship', *Political Quarterly* 65:1 (1994), pp.72-73.

<sup>79</sup> The title 'Fidei Defensor' was granted to Henry VIII in 1521 by one Pope and taken away by another after Henry's break with Rome in 1530. Originally awarded for a book defending the seven sacraments, it was later reconferred by parliament.

<sup>80</sup> <http://www.princeofwales.gov.uk/faqs/do-the-prince-and-the-duchess-attend-church> and <http://www.princeofwales.gov.uk/faqs/does-the-prince-of-wales-intend-have-multi-faith-coronation-0>, last accessed 19 November 2015. For the argument that it should be emphatically a Christian event, see N. Spencer and N. Dixon, *Who wants a Christian Coronation?* (London: Theos, 2015).

<sup>81</sup> See Appendix for the text of the oaths. All originated from a time when the sovereign was still head of the executive and had the power to deliver what was sworn.

<sup>82</sup> Wolffe (2010), p. 69.

<sup>83</sup> G. Grainger and K. Jones, *The Australian Constitutional Monarchy* (Sydney: ACM Publishing, 1994), pp. 191-193.

national Church of England is apparently able to dictate the rules of succession in respect of heads of state not only for the whole of the United Kingdom but also outside it'.<sup>84</sup> It remains to be seen whether the remaining Roman Catholic disabilities will feature significantly in constitutional discussions of this kind in realms. For practical purposes they have not so far been salient when the practical implications on the ground must normally seem remote and uncontentious.

A long held axiom used to be that the monarchy and the Church of England stood or fell together.<sup>85</sup> That may have been a plausible belief when the monarch *was* the executive. Nowadays that is no longer the case and the notion of mutual interdependence has much less cogency. There is, accordingly, a question of how far the monarchy should remain tied to a particular religious denomination, and whether the current defence of 'Anglican multifaithism' will be sufficient to carry the monarchy through the growth of religious pluralism and unbelief. It is hard to imagine, for example, that any modern democratic republic would impose a religious test on its head of state.<sup>86</sup>

These uncertainties sometimes rise to the surface of public life. At Easter 2014 there was a brief discussion involving coalition ministers (including the Prime Minister and Deputy Prime Minister) about whether Britain could still be regarded as a Christian country. Letters to the *Telegraph* newspaper argued about whether ministerial assertions that Britain did remain Christian could be supported.<sup>87</sup> More of this can be expected to materialise if and when the reign of Elizabeth II is perceived to be drawing to a close.<sup>88</sup>

The problem is how to adjust for the present an inheritance descended from a different past. This is tricky territory for a monarchy whose rationale must be to find ways of addressing the population as it is rather than as it once was. It follows that the religious role will remain serviceable only if it can be remade.<sup>89</sup>

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<sup>84</sup> N. Bonney and B. Morris, 'Tuvalu and You: The Monarch, the United Kingdom and the Realms', *Political Quarterly* 83:2 (2012), p. 372.

<sup>85</sup> It is still possible for this view to be advanced in parliament. For example, in 2013 on the second reading of the Succession to the Crown Bill, Sir Gerald Howarth said 'I believe that the established Church and the Crown are indissolubly linked' – House of Commons Debates, 5<sup>th</sup> ser, vol 557, cols 252-3, 22 January 2013. However, nothing in the subsequent debates demonstrated any significant support for that view. An investigation of popular attitudes to the monarchy discovered no spontaneous awareness of its religious dimensions – M. Billig, *Talking of the Royal Family* (London: Routledge, 1992).

<sup>86</sup> Hard but not impossible: see Art 74 of the Tunisian Constitution 2014, which requires the President to be a Moslem. For the background see C. Stephen, 'The Tunisia quartet: how an impossible alliance saved the country from collapse', *The Guardian*, 8 December 2015, <http://www.theguardian.com/world/2015/dec/08/tunisia-quartet-arab-spring-islamist-nobel-peace-prize>, last accessed 3 June 2016.

<sup>87</sup> The discussion and the relevant data are discussed in B. Morris, 'Is Britain a Christian country and, whatever the case, what then?', Constitution Unit blog, 25 April 2014, <http://constitution-unit.com/2014/04/25/is-britain-a-christian-country-and-whatever-the-case-what-then/>, last accessed 19 November 2015. See also S. MacAnulla, 'Cameron's Conservatism: Why God, Why Now?', *Political Quarterly* 85:4 (2014), pp. 462-470.

<sup>88</sup> A recent example is the report of the Woolf Institute's Commission on Religion and Belief in British Public Life – *Living with difference: community, diversity and the common good* (Cambridge: Woolf Institute, 2015).

<sup>89</sup> There is a long literature on this subject. Examples of 'reformist' Anglican views are W. Carr, 'A Developing Establishment', *Theology* 102 (1999), pp.2-10, and R. Strong, *Coronation: A History of Kingship and the British Monarchy* (London: Harper Collins, 2005), pp. 497-501. For a strong secularist position, there is Bonney (2013) and, for a 'modernising' perspective, see R. M. Morris (ed.), *Church and State in 21<sup>st</sup> Century Britain* (Basingstoke: Palgrave, 2009), Table 14.1, pp. 238-240.

### *The welfare/service monarchy*

More perhaps than any other, this aspect shows how far the monarchy has travelled in recent generations. From an august, heavily ceremonialised imperial presence<sup>90</sup>, it has moved to a much more demotic (including as to speech accent) and visible head of state form, interacting with the general population far beyond confined court circles.

A principal component of this change has been the monarchy's association with charitable endeavour. The Queen's website explains:

An important part of the work of The Queen and the Royal Family is to support and encourage public and voluntary service.

One of the ways in which they do this is through involvement with charities and other organisations. These range from well-known charities such as the British Red Cross to new, smaller charities like the Reedham Children's Trust, to regiments in the Armed Forces.

About 3,000 organisations list a member of the Royal Family as patron or president. The Queen has over 600 patronages and The Duke of Edinburgh over 700.<sup>91</sup>

The Prince of Wales's website gives a high place to his charitable work:

For 40 years His Royal Highness The Prince of Wales has been a leader in identifying charitable need and setting up and driving forward charities to meet it.<sup>92</sup>

The website declares that the Prince raises £100 million a year and has fourteen linked charities, thirteen of which he has founded himself. They extend to a broad range of areas including the built environment, the arts, responsible business and enterprise, young people, global sustainability and rural affairs. He has related charities or organisations in Australia, Canada and the US. He is also patron or president of more than 400 other organisations. His sister, Anne, the Princess Royal, has been president of Save the Children Fund since 1970 and acquired a solid reputation of effective involvement in that and her other public endeavours, which have included a first class equestrian career.

Whilst some of the Prince of Wales's activities have been thought idiosyncratic, they have also been innovative and thoughtful and have – for young people particularly – reached areas not well-favoured elsewhere. Frank Prochaska, the main chronicler of these developments, has pointed out that since at least George III the royal family has sought public approval by engaging in 'good works'.<sup>93</sup> As is evident from the prominence given to these activities on royal websites, the welfare and service function is seen as a very important part of the modern monarchy's role.

The royal family have also been effective fundraisers. Prince Charles is following a tradition going back at least to his great-grandfather:

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<sup>90</sup> See D. Cannadine, 'The Context, Performance and meaning of Ritual: The British Monarchy and the "Invention of Tradition", c.1820—1977', in E. Hobsbawm and T. Ranger (eds), *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983), pp. 101-164.

<sup>91</sup> <http://royalmirror.coraidier.com/output/Page4900.html>, last accessed 6 June 2016.

<sup>92</sup> <http://www.princeofwales.gov.uk/the-prince-of-wales/the-princes-charities>, accessed 19 November 2015.

<sup>93</sup> F. K. Prochaska, *Royal Bounty: the making of a welfare monarchy* (London: Yale, 1995).

As Prince of Wales, and even more so as King Edward VII, he was extremely successful in persuading his rich, parvenu, socially ambitious friends like Cassell, Rothschild and Speyer to give seriously large sums to the Royal Hospital Fund. Here was the role that his successors have made very much their own: urging others to part with their money for charitable purposes, rather than parting with it themselves.<sup>94</sup>

Royal visits also have a long pedigree, and have lost none of their popularity: Lords Lieutenant who co-ordinate bids from the counties say that they receive far more requests from charities and local organisations than the royal family can possibly satisfy. They also report the uplifting effect of royal visits, in recognising local effort and charitable endeavour: royalty still has a stardust quality which politicians cannot match.

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<sup>94</sup> D. Cannadine, 'Social Workers', a review of *Royal Bounty* in *London Review of Books* 17:19 (5 October 1995), pp. 10-11.

## Part IV: Conclusions – the future of the monarchy

Part I has shown that the sovereign is left with no effective discretion in the exercise of the personal prerogatives, while remaining the ultimate constitutional longstop. What is left to monarchy are symbolic 'high' state ceremonial, and head of state representative duties. Part III has investigated four other principal aspects of the modern monarchy and the extent to which they are susceptible to monarchical initiative as opposed to extraneous forces. Further change can be expected, as the monarchy itself adapts to changing external circumstances, and the changing preferences of individual monarchs.

### *External factors driving change*

#### The Commonwealth and the realms

The Commonwealth may develop more clearly autonomous machinery to distance itself further from its colonial and imperial origins. Whether Prince Charles succeeds the Queen as head of the Commonwealth will depend on the politics of the Commonwealth at the time, the dynamic between the leading member states, and the alternatives. International organisations do not have to have figureheads: the UN simply has a Secretary General. Although it will be seen as a snub to the monarchy, it might come as a relief to the UK government if the monarch ceased to be head of the Commonwealth, because it would prevent the monarch from becoming a focus for the tensions which inevitably arise when the UK and the Commonwealth are at loggerheads over some issue. It would also remove a source of tension because of the Queen's scope to act on Commonwealth matters without UK ministerial advice.<sup>95</sup>

Prince Charles' accession may also provide a turning point for the realms, offering an occasion to consider introducing their own head of state in place of a distant British monarch. The Palace has always said it would readily accept the decision of any realm to become a republic. Privately it might actually welcome such decisions, because it would reduce the additional time and workload involved in being head of 15 other states, and scope for embarrassment (e.g. Australia's dismissal of the Prime Minister in 1975, the invasion of Grenada in 1983, Fiji's two coups in 1987). It would enable the British monarch to focus on Britain. But whether any of the realms do become republics will depend on their devising an alternative method acceptable to them for choosing their head of state, the difficulty on which the Australian referendum foundered in 1999. If one of the realms manages to do this, it is likely that others will follow.

#### Religion

Prince Charles' accession will also provide an early test of the religious monarchy. The accession oaths (which require the new monarch to maintain Protestantism and the established churches) and the coronation oath (which ties the monarch tightly to the Church of England) seem ripe for review. The Church of England's leadership values the close link with the Crown, and will want to use the coronation to celebrate the church's central organising role. It will also be a test of the Church's claim to represent other faiths, 'Anglican multifaithism': will they be marginalised, or genuinely involved? In the longer run, Anglican multifaithism may itself come under pressure inside the Church of England, if the evangelical tendency favouring congregational as opposed to societal priorities continues to grow. The monarchy may then be caught between the growing secularism and religious pluralism of society on the one hand and the evangelicalism of the Church on the other.

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<sup>95</sup> Murphy (2013), chapters 7 and 8.



### *Internal factors driving change*

The other driver of change is the changing preferences of individual monarchs. The Queen has been scrupulously professional in never expressing views on political matters and avoiding controversy. Prince Charles has bombarded ministers with his ‘black spider’ letters, and there is concern that he will continue to express views on policy issues even when he becomes King.<sup>96</sup> That would be a major change for the monarch to express such views publicly. He would be firmly advised by the government to confine his outbursts to his weekly audience with the Prime Minister. But he would still be able through his official engagements to signal his support for causes close to his heart, and the press would be quick to highlight any differences between his preferences and those of the government.

### Gerontocracy and abdication

Another internal threat to the monarchy is a gradual slide into a gerontocracy, because of the longevity of individual monarchs. In 2016 the Queen celebrated her 90<sup>th</sup> birthday. If she lives as long as the Queen Mother, who died aged 101, Prince Charles will be 80 when he becomes King. If he in turn lived to 100, Prince William would succeed to the throne at the age of 67. We may be in for a series of elderly monarchs, succeeded by heirs apparent who have spent all their adult life in waiting, only to assume the throne in old age. It may reasonably be asked whether it is kind to our monarchs to expect them to go on like this; or whether it is kind to their people to have a succession of monarchs who are all very old.<sup>97</sup>

This is the one remaining issue where the monarch has a clear individual choice. No government is going to advise a monarch to abdicate because of old age; but no government is going to prevent a future monarch from doing so. For the Queen abdication is unthinkable, because of the abdication crisis of 1936 and her own express, personal dedication; but for her successors it may be less taboo. If they want to look for a different model, they need look no further than the Netherlands, where the last three Queens have abdicated at around the age of 70, most recently Queen Beatrix who abdicated in 2013 at the age of 75. The 15 realms would have to agree to an abdication, and might require some shepherding (as happened with the Dominions in 1936, and the realms in changing the rules of succession in 2011-14); but the change in the rules of succession showed that, although protracted, it was not impossible.

### Lack of privacy, and other human rights

A final threat to the monarchy is the self-sacrifice involved on the part of the monarch and those in direct line of succession. We have already mentioned the requirement of lifelong service, with no prospect of retirement. Second is the loss of freedom. The Queen, Prince Charles and Prince William have to abandon freedoms which the rest of us take for granted. Freedom of privacy and family life; freedom of expression; freedom to travel where we like; free choice of careers; freedom of religion;

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<sup>96</sup> R. Evans and R. Booth, ‘Black spider memos’: second batch of Prince Charles letters released’, *The Guardian*, 4 June 2015, <http://www.theguardian.com/uk-news/2015/jun/04/black-spider-memos-second-batch-of-prince-charless-letters-released>, last accessed 3 June 2016; R. Booth, ‘Prince Charles will not be silenced when he is made King’, *The Guardian*, 20 November 2014, <http://www.theguardian.com/uk-news/2014/nov/19/becoming-king-not-silence-prince-charles-allies>, last accessed 3 June 2016.

<sup>97</sup> But the people show no sign of wanting the Queen to retire. In an Ipsos MORI survey for the Queen’s 90<sup>th</sup> birthday in April 2016 when people were asked ‘Do you think the Queen should abdicate at some stage, or should she remain Queen as long as possible?’ 70 per cent wanted her to remain Queen as long as possible. Even when reminded that the Queen was 90, that several other European monarchs had abdicated in old age, and that the last Pope had retired, the proportion who wanted her to remain Queen for life dropped only slightly to 61 per cent, with the proportion favouring abdication increasing from 21 per cent to 32 per cent. See <https://www.ipsos-mori.com/researchpublications/researcharchive/3720/Monarchy-popular-as-ever-ahead-of-Queens-90th-Birthday-celebrations.aspx>, last accessed 16 April 2016.

freedom to marry whom we like. For the royal family these basic human rights are all curtailed. The question is whether future heirs are willing to make the self-sacrifices required of living in a gilded cage.

Bagehot observed of the monarchy, 'Its mystery is its life. We must not let daylight upon the magic'.<sup>98</sup> But we have, especially through relentless invasions of privacy by the press. Prince Charles and his sons have been the main victims, and Prince William and the Duchess of Cambridge are caught up in celebrity culture. But the press are insatiable, and also fickle; if the popularity of the monarchy comes to depend on the support of the press, that Faustian pact may prove in the long run to be the greatest threat to the future of the monarchy.

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<sup>98</sup> Bagehot (1927), p. 53.

## Appendix: The royal accession and coronation oaths

### *Oath under the Acts of Union 1706/7*

The new sovereign has to swear to maintain and preserve the protestant religion and presbyterian church government of Scotland. The oath is administered the day immediately after accession at the meeting of the Accession Privy Council. The text sworn by Elizabeth II was as follows:

I, Elizabeth the Second by the Grace of God of Great Britain, Ireland and the British dominions beyond the seas, Queen, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the Settlement of the True Protestant Religion as established by the laws of Scotland in prosecution of the Claim of Right and particularly an Act entituled an Act for the Securing the Protestant Religion and Presbyterian Church Government and by the Acts passed in both Kingdoms for the Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland’.

### *Oath under the Accession Declaration Act 1910*

The Act prescribes the following form of words:

I [monarch’s name] do solemnly and sincerely in the presence of God profess, testify and declare that I am a faithful protestant, and that I will, according to the true intent of the enactments which secure the protestant succession to the throne of my realm, uphold and maintain the said enactments to the best of my powers according to law.

This formula was substituted for an earlier and much longer wording under the 1689 Bill of Rights which expressed severe hostility to the Roman Catholic religion in terms which came to be regarded as deeply offensive to the monarch’s Roman Catholic subjects.<sup>99</sup> The oath is to be taken at the first parliament of the reign or at the coronation. Elizabeth II took the oath at the opening of her first parliament.

### *The coronation oath*

This is prescribed in the Coronation Oath Act 1688. Without explicit statutory authority, the wording has been revised in some details (e.g. in the citation of then existing realms) from time to time on the basis of the doctrine of ‘implied repeal’. As administered to Elizabeth II in 1953, it was as follows:

Will you solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand, the Union of South Africa, Pakistan, and Ceylon, and of your Possessions and the other Territories to any of them belonging or pertaining, according to their respective laws and customs?

*I solemnly promise so to do.*

Will you to your power cause Law and Justice, in Mercy, to be executed in all your judgements?

*I will*

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<sup>99</sup> The text can be found in Morris (2009), p. 37.

Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?

*All this I promise to do.*

The Constitution Unit at UCL is the UK's foremost independent research body on constitutional change. It is part of the UCL School of Public Policy.

Robert Hazell founded the Constitution Unit in 1995 to do detailed research and planning on constitutional reform in the UK. The Unit has done work on every aspect of the UK's constitutional reform programme: devolution in Scotland, Wales, Northern Ireland and the English regions, reform of the House of Lords, electoral reform, parliamentary reform, the new Supreme Court, the conduct of referendums, freedom of information, the Human Rights Act. The Unit is the only body in the UK to cover the whole of the constitutional reform agenda.

The Unit conducts academic research on current or future policy issues, often in collaboration with other universities and partners from overseas. We organise regular programmes of seminars and conferences. We do consultancy work for government and other public bodies. We act as special advisers to government departments and parliamentary committees. We work closely with government, parliament and the judiciary. All our work has a sharply practical focus, is concise and clearly written, timely and relevant to policy makers and practitioners.

The Unit has always been multi disciplinary, with academic researchers drawn mainly from politics and law. We also have people with public service backgrounds, and welcome secondments from the public service. We maintain a forward-looking research programme which covers all aspects of the constitution. The Unit publishes a newsletter, *Monitor*, three times a year and many of our publications are available to download from our website.

**Web: [www.ucl.ac.uk/constituion-unit](http://www.ucl.ac.uk/constituion-unit)**

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**The Constitution Unit**