

If the Queen Has No Reserve Powers Left, What Is the Modern Monarchy For?

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The modern monarch has no political power. The Queen's personal prerogatives — the power to appoint the Prime Minister; to summon and dissolve parliament; and to give royal assent to bills — have been almost entirely extinguished. In exercising these powers, the monarch no longer retains any effective discretion.

What remains of monarchy are symbolic 'high' state ceremonial, and head of state representative duties. However, the Queen also has other important, non-constitutional functions: to symbolise national identity; provide stability in times of change; and encourage public service. These functions can be analysed by looking at four features of the modern monarchy's role: the national monarchy, the international monarchy, the religious monarchy, and the welfare or service monarchy. Does the monarchy's wider role mitigate the loss of discretion in terms of its 'hard' constitutional functions?

The monarchy will undergo further change as it responds to external pressures, including from the 15 realms, and the differing preferences of individual monarchs. Although at present the public and media remain firmly pro-monarchy, this should not be taken for granted: the media are fickle, and their persistent invasions of privacy remain one of the greatest threats to the future of the monarchy.

Le monarque moderne n'a pas de pouvoir politique. Les prérogatives personnelles de la Reine, c'est-à-dire le pouvoir de nommer le premier ministre, de convoquer et de dissoudre le Parlement et de donner la sanction royale aux projets de loi, ont presque entièrement été abolies. En exerçant ces pouvoirs, le monarque ne conserve plus de discrétion réelle.

Ce qui reste de la monarchie sont les plus hautes fonctions symboliques et cérémonielles et des fonctions de représentant de chef d'État. Cependant, la Reine a également d'autres devoirs importants qui ne sont pas rattachés à la Constitution : servir de symbole d'identité nationale, assurer la stabilité en période de changement et encourager le service public. On peut faire l'analyse de ces fonctions en examinant quatre caractéristiques du rôle moderne de la monarchie : la monarchie nationale, la monarchie internationale, la monarchie religieuse et la monarchie du bien-être ou de service. Le rôle plus large de la monarchie atténue-t-il la perte de discrétion sur le plan de ses fonctions constitutionnelles « dures »?

La monarchie subira d'autres changements au fur et à mesure qu'elle réagit aux pressions extérieures, y compris de la part des 15 royaumes, ainsi que les différentes préférences des monarques individuels. Bien que le public et les médias demeurent fermement monarchistes, ceci ne devrait pas être tenu pour acquis : les médias sont inconstants et leurs atteintes continuelles à la vie privée demeurent une des plus grandes menaces pour l'avenir de la monarchie.

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Introduction

Ever since the English Civil War, which determined that the Monarch reigned subject to Parliament, the powers of the Monarchy have gradually been reduced. In each century, those powers have grown less, and this process of attrition has continued into modern times, so that Queen Elizabeth II has less power than she did on her accession in 1952. As this paper will show, all 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. So, if the Queen has no reserve powers left, what is the modern Monarchy for?

This article goes on to discuss the answers traditionally given by Buckingham 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. To anticipate the remainder of our argument, we conclude that the loss of the Monarchy's "hard" constitutional functions has not necessarily depleted its standing; indeed, its acceptance by the political class may well 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 double-edged sword.

I. The loss of the Monarch's reserve powers

In writing about the royal prerogative, it is customary 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).¹ 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.

¹ Sir Ivor Jennings, *Cabinet Government*, 3rd ed (Cambridge: Cambridge University Press, 1959) ch XIII.

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 this power could be exercised today.² 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).³

The power to appoint a prime minister retained a discretionary element for longer, but that too is now gone. In 1931, King George V persuaded Ramsay MacDonald not to resign, but to head a National government dominated by the Conservatives after his Labour government had broken up.⁴ 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 parties have since extended voting rights to all party members.⁵

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

2 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. Robert Blackburn, “Monarchy and the Personal Prerogatives” (2004) Public L 546 at 551.

3 UK, Cabinet Office, *Cabinet Manual* (London: Cabinet Office, 2011), para 2.9.

4 Vernon Bogdanor, *Monarchy and the Constitution* (Oxford: Clarendon Press, 1995) at 104-12.

5 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 the two front-runners by the parliamentary party.

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

Chapter 2 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 ...

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 (para 2.18). So, the Monarch is left with no discretion in any circumstance 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 (paragraph 2.9).

One further reform advocated by the Institute for Government and the Commons Political and Constitutional Reform Committee 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 confidence in the new Parliament.⁶ This is the practice followed in Scotland and Wales,⁷ and would help clearly to distance the Monarch from the political process; but it has not yet found favour with the government at Westminster.

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.⁸ 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 the *Canada Elections Act* of 2007, which expressly preserved the prerogative power of the Governor General to dissolve Parliament, dissolution in the UK is now regulated by statute and not the prerogative; it is a matter for Parliament, not the Executive (the prerogative power was preserved in Canada in order to avoid the need for constitutional amendment).

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 midterm dissolution in section 2, but again by statute not under the prerogative. Section 2 allows for a midterm 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.

6 UK, House of Commons Political and Constitutional Reform Committee, *Government Formation Post-Election* (HC 1023, London: The Stationary Office Ltd, March 2015) paras 62-63.

7 *Scotland Act 1998* (UK), c 46, s 46; *Government of Wales Act 2006* (UK), c 32, s 47.

8 Robert Blackburn disagrees, Blackburn, *supra* note 2 at 561. For a rejoinder, see Rodney Brazier “Monarchy and the Personal Prerogatives - A personal response to Professor Blackburn” (2005) Public L 45, 45-47.

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; 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.⁹ This practice was 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. The Cabinet Manual explains prorogation as follows:

2.24 Parliament may be prorogued before being dissolved or may just adjourn ... 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.

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.¹⁰ 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.¹¹ 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.

9 UK, House of Commons Modernisation Committee, *Revitalising the Chamber: the Role of the Backbench Member*, (HC 337, London: The Stationary Office Ltd, June 2007) ch 3.

10 The House has been recalled 29 times since SO 13 was introduced in 1948.

11 UK, HC, "The Governance of Britain", Cm 7170 in *Sessional Papers*, (July 2007) paras 37 to 39.

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.¹² 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.¹³ Even in such an extreme case, Brazier would prefer the Monarch to find a means other than withholding Royal Assent to express their concerns.¹⁴ 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.

The retention of a deep reserve power

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, whether to summon, dissolve, or prorogue Parliament, or to grant Royal Assent to bills. It is true that the Monarch might, in very exceptional circumstances, still have to exercise a choice: for example, if the prime minister is killed or suddenly dies. In that event, there would be no time to hold a vote of the party membership. A caretaker 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.¹⁵ 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 Canada);¹⁶ or if the government appears to have lost confidence while

12 Blackburn, *supra* note 2 at 554.

13 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.

14 Brazier, *supra* note 8 at 47.

15 Philip Norton, "A Temporary Occupant of No 10? Prime Ministerial Succession in the Event of the Death of the Incumbent" (2016) Public L 18.

16 Peter Russell & Lorne Sossin, eds, *Parliamentary Democracy in Crisis* (Toronto: University of Toronto Press, 2009).

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 to see those longstop powers ever needing to be exercised.

II. What is the modern Monarchy for?

The Sovereign's own website expressed the situation as follows:

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.¹⁷

Part I of this paper has already dealt with the UK Head of State 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*, that is where the UK Sovereign is also the head of state in 15 other Commonwealth states, known as the "realms," 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.

¹⁷ In December 2015. In 2016 the website underwent a major redesign, and this text no longer appears.

The national Monarchy

Although primarily ceremonial, these functions have important political and social content.¹⁸ The Sovereign formally opens each session of Parliament, which now commences in May or June.¹⁹ 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. 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.²⁰

Typical 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.²¹

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 recognizing achievement of various kinds. With wonderful catholicity, awards are made to captains of industry and school dinner ladies, professors and entertainers, doctors and soldiers.²² Spring has the annual Commonwealth service at Westminster Abbey. The summer sees the Trooping of the Colour,

18 "...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." David Cannadine & Simon Price, eds, *Ritual of Royalty: Power and Ceremonial in Traditional Societies* (Cambridge, Cambridge University Press, 1992) at 19.

19 Since May 2010 and the *Fixed-term Parliaments Act 2011* (UK), c 14, 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.

20 With less fanfare, the Queen also opens each newly elected five year Synod of the Church of England and for which see below.

21 Even in 1867, Bagehot observed "A Republic has insinuated itself beneath the folds of a monarchy," Walter Bagehot, *The English Constitution* (Oxford: Oxford University Press, 1927) at 44. The first reference to the UK as a "crowned republic" has been traced to the Epilogue (published 1873) of Tennyson's *Idylls of the King*. See Frank Prochaska, *The Republic of Britain 1760-2000* (London: Allen Lane, 2000) at 120.

22 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, UK, House of Commons Public

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.²³ 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 January, their number is totted up by an obliging private citizen who writes to the *Times* newspaper with the results.²⁴

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.²⁵ The Queen reads a considerable range of Cabinet and other papers to prepare for such occasions. In general, her labours relieve executive government from the burdens of ceremonial rule unlike in states where the head of the executive is also head of state.²⁶

The Monarchy comes with financial costs defrayed by the taxpayer. Formerly, the costs of undertaking public duties were underwritten by

Administration Committee, *The Honours System*, (HC 19, London: The Stationary Office Ltd, August 2012) at para 36.

23 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.

24 The Queen completed 393 engagements in 2014, the Prince of Wales the most of all the active royal family at 533, closely followed by his sister, the Princess Royal, at 528. The Queen's rate of strike is understandably declining as she reaches her 90th year: Martin, "Prince Charles 'Hardest Working Royal' for Seventh Year Running" (1 January 2015) *Royal Central*, online: <<http://royalcentral.co.uk/state/prince-charles-hardest-working-royal-for-seventh-year-running-42005>>.

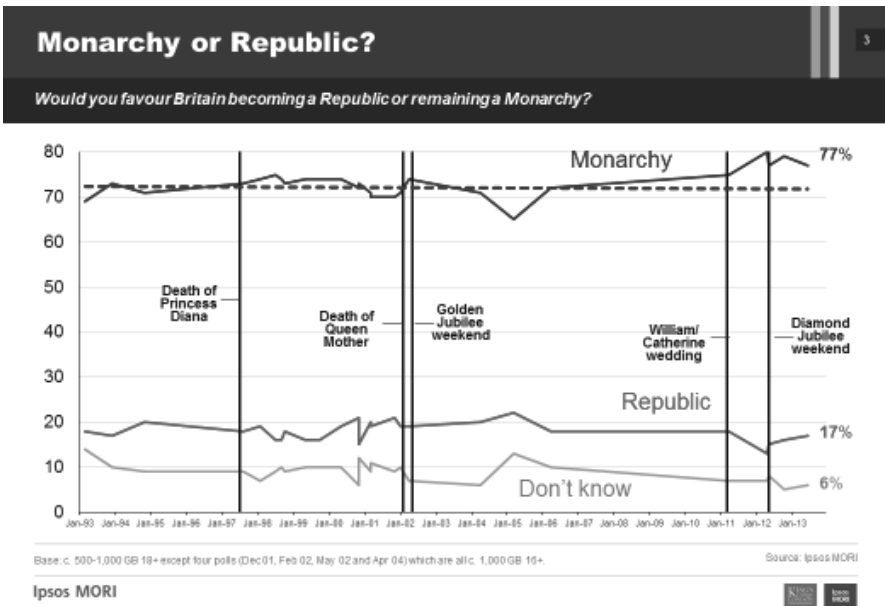
25 See Peter Morgan's play *The Audience*, first performed in 2013 with Helen Mirren playing the Queen.

26 In the USA, for example, the President is not only his own prime minister but, in responding to expectations of exercising moral leadership, also as it were an American Archbishop of Canterbury, Roman Catholic Cardinal and Chief Rabbi.

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 the Sovereign paid no tax on personal income. This was rectified from 1993 and the Queen (and the Prince of Wales) now voluntarily contributes 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.²⁷

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.



27 The Palace publishes detailed annual accounts of how the Sovereign Grant is spent: see <<https://www.royal.uk/royal-finances-0>>. The new arrangements have been criticised for being insufficiently austere: Gordon Rayner, "Queen's Finances are Safe from Cuts for Two Years" (21 June 2015) *Daily Telegraph*, online: <<http://www.telegraph.co.uk/news/uknews/queen-elizabeth-II/11689154/Queens-finances-are-safe-from-cuts-for-two-years.html>>.

These have been maintained with hardly a tremor even after the *annus horribilis* of 1992 or the 1997 death of Diana, first wife of the Prince of Wales and the mother of his two sons. The organization Republic has gained little political traction. Although there are hesitations about how the Prince of Wales will perform as the Queen's successor, they do not appear to amount to reservations about the institution itself. The extent to which this state of affairs is dependent on the minimal political role of the Monarchy is explored in what follows.²⁸

Finally, the extinction of the active constitutional roles alters the relationship between the Sovereign and the politicians. A former royal private secretary, William Heseltine, writing in 2004 before the *Fixed-term Parliaments Act 2011* changed things, attached real importance to the fact that the prime minister had to request a dissolution in circumstances where the Sovereign retained some discretion. He foresaw the removal of that power leading to a situation where

the element of deference which is now paid by a Prime Minister to sovereigns would I think begin to disappear, and with it a useful aspect of the British political nexus ... A relationship in which the politicians are required to be a little deferential to a higher authority is a useful one for keeping them in their place ...²⁹

Fixed-term Parliaments could mean that prime ministers will not feel as bound to defend an institution upon which they are that much less dependent. But for other politicians, inaccurate perceptions may help to ensure continuing deference: few perhaps are aware that the Queen is left with no discretion in the exercise of the personal prerogative powers.

There is also the point noted by Frank Prochaska that constitutional changes which, at first sight, seem hostile to the Monarchy can actually strengthen the institution. Speaking of the Parliament Act 1911, which significantly reduced the powers of the House of Lords,

Many contemporaries assumed that the Act would lead to the decline of royal prestige, perhaps even to the collapse of the monarchy ... But with hindsight, the Act

28 John Wolffe points out that the degree of general popularity is accompanied by a significant decline in the audience for the Queen's televised Christmas address from 27 million in 1982 to 15.7 million in 1994 and 7.7 million in 2007. He concluded that the decline "suggests that the Queen was no longer articulating a cultural consensus" John Wolffe, "Protestantism, Monarchy and the Defence of Britain 1837-2005" in Callum G Brown & MF Snape (eds), *Secularisation in the Christian World - Essays in Honour of Hugh McLeod* (Farnham, UK: Ashgate, 2010) at 73. Audience figures appear to have continued at around the same level since.

29 Sir William Heseltine, "The Fabian Commission on the Future of the Monarchy" (2004) Constitutional L & Policy Rev 84.

may be seen as another instalment in the incremental rise of democratic republicanism, which brought the crowned republic into sharper focus.³⁰

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”³¹ — 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 the 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.³² On the other hand, her visits outside the Commonwealth occur solely in her UK persona and not in respect of her headship of the other realms. On such occasions, her association with the promotion of solely UK interests has led to criticism in that regard³³ and a tendency for the 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 the agreement of all the realms 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 the monarchies had to agree lest different rules in different realms resulted in different people as monarchs. 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’

30 Prochaska, *supra* note 21 at 153.

31 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.

32 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 Philip Murphy, *Monarchy and the End of Empire* (Oxford: Oxford University Press 2013) at 131.

33 Bogdanor, *supra* note 4 at 293.

consent; the realms were relatively freer to alter their constitutions than was the UK itself. This inversion of former imperial realities 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.”³⁴

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 totemic significance given to the 1840 Waitangi treaty and its monarchical dimension by the important Maori minority would have to be navigated with particular care. In Australia, a once-clear majority in favour of a republic has dwindled, and in Canada there may be still but a small minority. 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.”³⁵ Attempts in Australia to claim that the outcome of the recent UK referendum on EU membership has increased support for a republic have been discounted. Significantly, the Australian prime minister, Malcolm Turnbull, who led the campaign for a republic in the Australian 1999 referendum, has not made it an election issue and has discouraged any further initiative on the basis that the next opportunity to return to the issue should not be before the end of the Queen’s reign, a position true, perhaps, for all the realms — whatever the present state of opinion within them.

It seems reasonable, therefore, to expect some change after the reign of Elizabeth II. Early runners could include Australia and Jamaica, as well as Tuvalu, Saint Vincent, and the Grenadines where referenda have previously failed.³⁶ However, it would not always be a simple process. Both Australia and Canada would need the agreement of their constituent states/provinces. Despite majority opinion in favour, the 1999 Australian referendum failed because there was no agreement on how the new head of state should be ap-

34 Peter Boyce, *The Queen’s Other Realms: The Crown and its Legacy in Australia, Canada and New Zealand* (Sydney: Federation Press, 2008) at 23.

35 *Ibid* at 210.

36 The Australian republic referendum was in 1999; St Vincent and the Grenadines in 2009; Tuvalu has held two referendums on the constitution, in 1986 and 2008, both asking whether Tuvalu should become a republic. The last two Prime Ministers of Jamaica, Portia Simpson-Miller (2012-16), and her successor Andrew Holness, have both promised to amend the constitution to make Jamaica a republic.

pointed. There are similar difficulties in Jamaica, where constitutional change requires a two-thirds majority of both Houses, plus a referendum.

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.”³⁷ 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.”³⁸

Whether the UK Sovereign should remain the Commonwealth’s “head” is linked to the general acceptability of the UK’s Sovereign 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 “anach-

37 Boyce, *supra* note 34 at 241.

38 Phillip Murphy, *Monarchy and the End of Empire: The House of Windsor, the British Government, and the Post-War Commonwealth* (Oxford: Oxford University Press, 2013) at 15.

ronistic and presumptuous”; not expressing interest would be characterised as neglectful. But quite apart from the prince’s purely personal dilemma, Murphy and Cooper 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.”³⁹ 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 while understanding that “it is not a done deal.”⁴⁰

Throughout all this, Elizabeth II’s devotion to the Commonwealth has remained notable. However, the Queen’s enthusiasm for the Commonwealth has not always been shared by her governments.⁴¹ The 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 Prime Minister Harold Macmillan, records Macmillan debriefing him after a discussion with the Queen revealed her disappointment that a planned 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.”⁴²

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, since 1707 onward, has sworn an oath on accession to uphold the Church of Scotland, the Kirk, a protestant

39 Phillip Murphy & Daisy Cooper, *Queen Elizabeth II Should be the Final Head of the Commonwealth* (London, Commonwealth Advisory Bureau, 2012).

40 Royal Nikkah, “Charles Courts Commonwealth” (22 November 2015) *Sunday Times*, online: <http://www.thesundaytimes.co.uk/sto/news/uk_news/Society/article1636087.ece>. The final communique was silent on the point though it “welcomed the presence” of the Prince of Wales and his wife, The Commonwealth, Press Release, “Commonwealth Heads of Government Meeting Communique” (29 November 2015), online: <<http://thecommonwealth.org/sites/default/files/news-items/documents/CHOGM%202015%20Communique.pdf>>.

41 See Ben Pimlott, *The Queen: A Biography of Elizabeth II* (London: Harper Collins, 1996) at 462-9 especially.

42 Harold Evans, *Downing Street Diary: The Macmillan Years 1957-63* (London: Hodder & Stoughton, 1981) at 71, cited in in Murphy, *supra* note 38 at 171.

Presbyterian church. Until the *Succession to the Crown Act 2013*, in addition to the ban on Roman Catholics, non-Trinitarian Christians and all other religions or none, 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. Virtually all civic disabilities imposed on Roman Catholics from the seventeenth century were abolished during 1828-1829.

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 a parliamentary committee, 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. Disestablishment occurred only in Ireland (1869) and Wales (1920), and active hostility has, apart from certain secularist sources,⁴³ declined along with Christian religious observance in general.

43 The best known and oldest is the National Secular Society. See its Charter at <<http://www.secularism.org.uk/secularcharter.html>>, 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 Bob Morris (ed), *Church and State: Some Reflections on Church Establishment in England* (London: Constitution Unit, University College London, 2008).

This general decline in religious belief and attendance has put both established churches into seemingly inexorable decline.⁴⁴ 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 anyone nowadays believes 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?”⁴⁵

This underlies the issue of abdication. If the Sovereign is uniquely anointed by God, then lifelong service can be considered a necessary consequence. This 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 was 90 and her heir was 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 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.⁴⁶

44 See Malcolm Doney (ed), *How Healthy is the C of E? The Church Times Health Check* (Norwich: Canterbury Press, 2014); and Bob Morris, “Alternative Futures for Formal Church Establishment: Two Case Studies from the UK” in François Guesnet, Cécile Laborde & Lois Lee (eds), *Negotiating Religion: Cross-Disciplinary Perspectives* (London: Routledge, 2016).

45 Decca Aitkenhead, “God Meets Queen Mum” (2 April 2002) *The Guardian*, quoted by Wolfe, *supra* note 28 at 68.

46 Abdication seems to be accepted practice in Belgium (1951, 2013), the Netherlands (1948, 1980, 2013), Spain (2014), and Luxembourg (1919, 1964, 2000). There is no similar tradition in the three Scandinavian monarchies.

Elizabeth II has throughout remained a strong supporter of the Church of England, although she is 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.⁴⁷ 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.”⁴⁸ This is a view apparently reciprocated by all the other main religious groups who seem to value the benign 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.⁴⁹

In addition to the citation “Head of the Commonwealth,” all 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.”⁵⁰ 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.⁵¹

47 Archbishop of Canterbury, Press Release, “Faith Communities Display Sacred Objects to the Queen” (15 February 2015), online: <<http://rowanwilliams.archbishopofcanterbury.org/articles.php/2355/faith-communities-display-sacred-objects-to-the-queen>>. Norman Bonney has characterised these claims as “Anglican Multifaithism,” an attempt to shore up Anglican significance. See Norman Bonney, *Monarchy, Religion and the State: Civil Religion in the United Kingdom, Canada, Australia and the Commonwealth*, (Manchester: Manchester University Press, 2013) at 128-143.

48 Wolffe, *supra* note 28 at 70.

49 Tariq Modood, “Establishment, Multiculturalism and Citizenship” (1994) 65:1 Political Q 53 at 72-73.

50 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.

51 “Do the Prince and Duchess Attend Church?” *The Prince of Wales and the Duchess of Cornwall* (2016), online: <<http://www.princeofwales.gov.uk/faqs/do-the-prince-and-the-duchess-attend-church>> and “Does The Prince of Wales Intend to Have a Multi-Faith Coronation?” *The Prince of Wales and the Duchess of Cornwall* (2016), online: <<http://www.princeofwales.gov.uk/faqs/does-the-prince-of-wales-intend-have-multi-faith-coronation-0>>. For the argument that it should be emphatically a

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 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.⁵² 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.⁵³

There is still the point that the UK Sovereign's obligatory Anglicanism might be thought dissonant in those Commonwealth realms such as Australia and Canada where majorities are anything but Anglican and may be, in fact, 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.⁵⁴ Though true, that response is less than a complete rebuttal of an affront to non-Protestant religious groups in the Commonwealth; it may be contended that “the 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.”⁵⁵ It remains to be seen whether the remaining Roman Catholic disabilities will feature significantly in constitutional discussions of this kind in the realms. They have not so far been salient when the practical implications on the ground must normally seem remote and uncontentious.

Christian event, see Nick Spencer & Nicholas Dixon, *Who Wants a Christian Coronation?* (London: Theos, 2015), online: <<http://www.theosthinktank.co.uk/publications/2015/09/01/who-wants-a-christian-coronation>>.

52 See Appendix for the text of the oaths.

53 Wolffe, *supra* note 28 at 69.

54 Gareth Grainger & Karen Jones, *The Australian Constitutional Monarchy* (Sydney: ACM Publishing, 1994) at 191-193.

55 Norman Bonney & Bob Morris, “Tuvalu and You: The Monarch, the United Kingdom and the Realms” (2012) 83:2 Political Q 368 at 372.

A long held axiom used to be that the Monarchy and the Church of England stood or fell together.⁵⁶ 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.⁵⁷

These uncertainties sometimes rise to the surface of public life. At Easter 2014, there was a brief discussion involving coalition ministers (including the prime and deputy prime ministers) about whether Britain could still be regarded as a Christian country. Letters to the *Telegraph* newspaper argued whether ministerial assertions that Britain did remain Christian could be supported.⁵⁸ More of this can be expected to materialize when the reign of Elizabeth II draws to a close.⁵⁹

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.⁶⁰

56 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.” UK, HC, *Parliamentary Debates*, sess 2012-2013, vol 557, No 1, col 252-253 (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: Michael Billig, *Talking of the Royal Family* (London: Routledge, 1992).

57 Hard but not impossible: see Art 74 of the Tunisian Constitution 2014, which requires the President to be a Muslim. For the background see Chris Stephen, “The Tunisia Quartet: How an Impossible Alliance Saved the Country from Collapse,” *The Guardian* (8 December 2015).

58 The discussion and the relevant data are discussed in Bob Morris, “Is Britain a Christian Country and, Whatever the Case, What Then?” *The Constitution Unit*, UCL (25 April 2014), online: <<http://constitution-unit.com/2014/04/25/is-britain-a-christian-country-and-whatever-the-case-what-then/>>. See also Stuart MacAnulla, “Cameron’s Conservatism: Why God, Why Now” (2014) 85:4 Political Q 462.

59 A recent example is the report (published 7 December 2015) of the Woolf Institute’s Commission on Religion and Belief in British Public Life, *Living With Difference: Community, Diversity and the Common Good* (Cambridge: The Woolf Institute, 2015), online: <<https://coralivingwithdifference.files.wordpress.com/2015/12/living-with-difference-community-diversity-and-the-common-good.pdf>>.

60 There is a long literature on this subject. Examples of “reformist” Anglican views are Wesley Carr “A Developing Establishment,” (1999) 102:805 *Theology* 2, and Roy Strong, *Coronation: A History of Kingship and the British Monarchy* (London: Harper Collins, 2005) at 497-501. For a strong

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 ceremonialized imperial presence,⁶¹ 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 700.⁶²

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

For more than 35 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.⁶³

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 involve-

secularist position, see Bonney, *supra* note 47 and, for a "modernising" perspective, see Bob Morris (ed), *Church and State in 21st Century Britain* (Basingstoke, UK: Palgrave Macmillan, 2009) at table 14.1, 238-240.

61 See David Cannadine "The Context, Performance and Meaning of Ritual: The British Monarchy and the 'Invention of Tradition', c.1820 — 1977" in Eric Hobsbawm & Terence Ranger (eds), *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983) at 101-164.

62 "Charities and Patronages" *Home of the Royal Family*, online: <<http://www.royal.gov.uk/CharitiesandPatronages/Overview.aspx>>.

63 See, "Biography" *The Prince of Wales*, online: <<http://www.princeofwales.gov.uk/the-prince-of-wales/biography>>.

ment in that and her other public endeavours, which have included a first-class equestrian career. Her part of the royal website records that in 2014 she fulfilled 528 engagements in the UK and abroad.

Whilst some of the Prince of Wales's activities have been thought idiosyncratic, they have also been innovative and thoughtful and have — for the benefit of young people in particular — 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.”⁶⁴ 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:

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.⁶⁵

Royal visits also have a long pedigree, and have lost none of their popularity: lords lieutenant who coordinate bids from the counties say that they receive far more requests from charities and local organisations than the royal family can possibly satisfy.

III. Conclusions: the future of the Monarchy

Part I has shown that the Sovereign is left with no discretion in the exercise of the personal prerogatives. What is left to the Monarchy are symbolic “high” state ceremonial duties, and head of state representative duties. Part II 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.

64 Frank Prochaska, *Royal Bounty: the Making of a Welfare Monarchy* (London: Yale University Press, 1995).

65 David Cannadine, “‘Social Workers,’ a Review of *Royal Bounty*” (1995) 17:9 *London Rev of Books* 10.

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 organizations do not have to have figureheads: the UN simply has a Secretary General. In some respects, it might be 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 various issues. It would also remove a source of tension because of the Queen's scope to act on Commonwealth matters without UK ministerial advice.⁶⁶

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.⁶⁷ Privately, it might actually welcome such decisions because they would reduce the additional time and workload involved in being head of 15 other states, and also reduce 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 break free 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 organizing role. It will also be a test of "Anglican multifaithism," the Church's claim to represent

⁶⁶ Murphy, *supra* note 32, ch 7-8.

⁶⁷ e.g. for Australia in 1999, see *ibid* at 185.

other faiths: 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.

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 thus avoiding controversy.⁶⁸ Prince Charles has sought to engage 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.⁶⁹ 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 will be 90. 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.

68 For an apparent exception, see *The Sun* 9 March 2016, which carried the front page headline “Queen backs Brexit.” This led the Palace to make a formal complaint to the new Independent Press Standards Organisation, who upheld the complaint on 17 May 2016.

69 Rob Evans, “Prince Charles Letters” (4 June 2015) *The Guardian*, online: <<https://www.theguardian.com/uk-news/2015/jun/04/prince-charles-letters-black-spider-memos-freedom-information>>, Robert Booth, “Prince Charles will not be silenced when he is made king, say allies” (20 November 2014) *The Guardian*, online: <<https://www.theguardian.com/uk-news/2014/nov/19/becoming-king-not-silence-prince-charles-allies>>.

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 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 with the realms in changing the rules of succession in 2011-14); but the change in the rules of succession showed that, although protracted, the process 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; 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."⁷⁰ 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 Kate are caught up in celebrity culture. But the press is 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.

⁷⁰ Bagehot, *supra* note 21 at 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 entitled 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.⁷¹ 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

⁷¹ The text may be found at Morris, "Church and State," *supra* note 60 at 37.

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

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.