
An Activist Constitutional Monarchy

A Policy Brief from The Bow Group, by Andrew Lilico

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In this Golden Jubilee year, all thoughts turn to the future of the Monarchy. A better case needs to be made for the Monarch's role in the Constitution. The right of the Monarch to assert his or her constitutional prerogatives needs to be reinforced if our Constitution is to revert to balance. The best way to safeguard a more assertive Monarchy would be for each Monarch to be selected by a revised second chamber on the death of his or her predecessor.

In this Golden Jubilee year, it is important to consider why we have a Monarch, and what we want the Monarch to do. In this policy brief we shall argue that:

- the Constitutional Monarchy is a positively good system, and an important contributor to British liberties, not simply a pleasant anachronism;
- if the Constitutional Monarchy is to survive, it needs to be reformed by its friends, not its enemies;
- there is an urgent need for a period of constitutional activism on the part of the Monarch, to establish that such activism is still possible and useful;
- the simplest and most feasible reform would be for the Monarch to exercise her own discretion in appointing the Lord Chancellor in any incoming government rather than (as she does at present) rely on the advice of the Prime Minister. The Lord Chancellor would thus become the "Queen's Minister" in fact as well as name. This would have the additional advantage of increasing the political independence of the Judiciary; and
- in a phase of constitutional activism, the legitimacy of the Monarch needs to be clear. The best way to secure such legitimacy would be through having each new Monarch selected, on the death of the previous Monarch, by the Second Chamber - a House of Electors.

The Virtues of the Constitutional Monarchy

Much popular defence of the Monarchy focuses on its role in attracting tourism, or on the Queen's knowledge of foreign affairs. Another strand of argument, especially apparent in the debate on the Monarchy since the death of the Queen Mother, makes a sentimental case, arguing that the country needs emotion at its core. Whether these are good arguments for a Monarch or not, they are not arguments for the Constitutional Monarchy - that is, for having a Monarch with constitutional powers to dismiss governments, appoint ministers, and refuse to sign Acts of Parliament. There are, however, very good reasons for having such a Monarch.

As Head of State, our Monarch performs many important constitutional functions, such as resolving situations in which there is no overall majority in the House of Commons. Similar functions are performed (usually as effectively) by other types of Head of State, such as an elected President.

Where the British Constitutional Monarchy has a real advantage over other systems is in its role as the ultimate defender of liberty in the British constitution. Many countries, from Germany (in the case of Adolf Hitler) to Zimbabwe (in the case of Robert Mugabe), have acquired dictators through the ballot box. Once elected, with control of the Executive and majority control of the Legislature, such tyrants have been able to pass legislation oppressing minorities and undermining the rule of law. That such an assault on democracy in the UK seems almost inconceivable is in large part thanks to our Monarchy. Were we to elect such a tyrant, as soon as he started to go astray the Monarch could refuse assent to his legislation and dismiss his government, forcing fresh elections. Other systems sometimes have a President intended to perform this role, but in practice the political independence and historical legitimacy of our Monarchy would imbue our Monarch with more constitutional strength in such a situation than an elected Presidency would enjoy. Our present constitutional arrangements have grown up over hundreds of years, born of successive Monarchs' need to compromise with their notables in exercising their revenue-raising powers, of civil war and of religious dissent. A form of Monarchy has evolved which is there to protect us - and it has done so effectively.

The Constitutional Monarchy is not simply a pleasant and harmless anachronism. It is a central reason why, over the past three and a half centuries, we have not experienced the oppression suffered at various times by the people of France, Germany, Spain, and almost all other developed countries.

Perhaps tyranny from within seems like a distant threat in these peaceful times, and the idea that European-style Presidencies offer less protection than our Constitutional Monarchy may seem quaint. But if we do not ensure that, in the good times, our constitution retains proper checks and balances, we may find that one day tyranny will creep up on us and find our constitution unprepared to resist it. This is the reason, for example, that the Conservative party is currently objecting to the suggestion that the Home Secretary should take operational control over the police force. We must always be vigilant in protecting ourselves against tyranny, and the Constitutional Monarchy should be an excellent instrument for that protection. But for some time now its power to prevent such tyranny has been fading.

The Need for Reform

For most of its history, the Constitutional Monarchy worked in concert with another important check and balance in the British Constitution - an unelected second chamber of Parliament. This has, however, now lost almost all its influence, and seems

likely to pass away entirely in the not too distant future. There is a salutary lesson here for friends of the Constitutional Monarchy. Forty years ago, every serious Conservative would have known the arguments for a largely hereditary second chamber. But these arguments were allowed to fall into such disuse, and the constitutional position of the hereditary peers was allowed to become so decrepit, that when proposals finally came to remove the hereditary peers, even Conservatives did not know what the point of keeping them was supposed to be.

If we do not argue for the virtues of the Constitutional Monarchy now, collectively as a party we will forget what they are. And if we do not reform the Constitutional Monarchy ourselves, when reform comes - as it will - it will come at the hands of our opponents.

Let us be frank. The Constitutional Monarchy is almost a broken force. To be sure, there is little appetite for abolishing the Monarchy - most people still want there to be someone called "the Queen" and to have pleasant state occasions. But this sentiment is, at most, a form of Royalism - a kind of fan-club for the Queen's family. If Labour could be bothered, and introduced serious proposals in the next Parliament to strip the Queen of her constitutional powers - perhaps having the Speaker sign Acts of Parliament, and stripping the Queen of her theoretical ability to appoint ministers - opposition across the country would probably be fairly muted. If we are not to have a purely titular Monarchy, we must start proposing positive reform of the Constitutional Monarchy now, before it is too late.

A Period of Activism

Up until this point, the success of the Constitutional Monarchy has been exhibited by the lack of need for its intervention. Because an elected tyrant could not succeed in our system, there has been no serious attempt since the seventeenth century to impose tyranny from within for the Monarch to thwart. Consequently, the personal exercise by the Monarch of the prerogatives available to her (as opposed to their exercise by her Prime Minister) has declined.

But, like a man who lies in bed too long and eventually loses the use of his legs, the Constitutional Monarchy cannot afford to go on indefinitely without exercising its powers. Otherwise the legitimacy of their exercise will come into question. Even today if a Prime Minister with an overwhelming majority in the House of Commons tried to pass legislation banning unfavourable press reporting and started imprisoning political opponents, the Queen might find it difficult to refuse assent to his legislation and dismiss him. It has been so long since a Monarch did anything of this sort in the UK that it is slightly unclear whether it is even still possible.

What is required now is a little exercise of constitutional powers. The Monarchy needs to be encouraged into a phase of some limited constitutional activism, so as to re-establish the principle that the Monarchy can exercise its powers if they are required.

Specific Proposals

This brief accordingly puts forward two specific proposals, which would facilitate greater royal activism.

Royal Appointment of the Lord Chancellor

The simplest and most feasible reform to encourage the Monarch's constitutional activism would be for the Prime Minister to decline to offer advice to the Queen on whom to appoint as the next Lord Chancellor.

The Prime Minister's ability in practice to appoint the Lord Chancellor is already under fire, for it is thought undesirable that the person in charge of appointing judges should be a politician. In more general terms, recent years have seen an undesirable trend towards Government undermining the political independence of the Judiciary¹. Under our proposals, the Queen would, of course, take advice, but she would choose her own advisers and make the final decision herself. The Lord Chancellor's current remit over the courts should remain intact, and the proposed "Ministry of Justice" reforms should be resisted.

If directly appointing the Lord Chancellor proved successful, other choices of the Monarch (such as who are her bishops) might be examined, as well as the more regular direct exercise of other sorts of prerogative. But the threat to the independence of the Judiciary is a concrete immediate problem that the Constitutional Monarchy can be used to solve, at the same time exercising its own constitutional muscles.

A Monarch by Selection

The second reform proposed in this brief is that future Monarchs should be chosen by an unpartisan process of selection, so that the historic legitimacy and political independence of the Monarchy would be preserved but at the same time its constitutional activism would gain greater public acceptance.

The UK has not had a strictly hereditary Monarchy. The right to succeed is limited by various Acts of Parliament, and of course the last Monarch but one (Edward VIII) was forced to abdicate. The argument for the Constitutional Monarchy is not an argument for the right of some particular family to "rule" the country, and, at least since the formation of the United Kingdom, our acceptance of Monarchy has never implied our acceptance of such a right, existing independently of the will of Parliament.

In a period of constitutional activism the need for the Monarch to be seen as legitimate and competent is particularly important. One good way to secure this would be to have the revised upper chamber of Parliament (a newly-dubbed "House of Electors") choose the new Monarch on the death of the old. Systems of this sort have been used throughout history when an active Monarchy has been desirable. English Monarchs were traditionally acclaimed by their notables before the Norman Conquest. The electors of the Holy Roman Empire selected its emperors. Today the Pope is still chosen by the College of Cardinals.

Ideally, this House of Electors should be free to choose anyone as the Monarch. Other more restricted solutions (such as permitting the selection of a Monarch only from a small number of families, or only from the Royal Family and on the basis of primogeniture but with the possibility of skipping a generation or preferring a younger to an older sibling) probably contain more problems than they solve. However, the crucial thing to note is that in this proposal selecting the Monarch is not conceived as part of some "ideal" in which everything governmental is elected, but, rather, as a means to the end of gaining popular support for constitutional activism. The important thing is that the selection process would enable the choice of a competent and popularly accepted Monarch.

Provoking A New Debate

This leads to one of the main objections to these proposals - namely would the public take kindly to a single person exercising such powers in a largely unaccountable fashion? A Constitutional Monarchy, as conceived here, is a system whose purpose is to promote and defend the liberal state and the rule of law. The plain lesson of history is that constitutions without checks and balances do not promote liberty. One element in the Constitution which sometimes needs holding in check is the democratic element. This is recognised throughout our system, for example in the restrictions on political control of the police, or objections to political interference in the Judiciary. Provided that the Monarch does protect the liberal state and the rule of law, the British public will accept Constitutional Monarchy for the pragmatic reason that *it works*.

Our second proposal does, of course, beg the question of the composition of the House of Electors. Though not an essential component of the proposal, it would probably be slightly better if the second chamber (or possibly its Grand Committee of Electors) were not itself largely elected. This is because one of the major roles of the Monarch is to limit the possibility of an elected tyrant. It is, as it were, to protect democracy from itself. Thus it would be best if the Monarch were not itself democratically selected.

However, even if the second chamber were fully elected, it would probably still be best to have the second chamber select the Monarch, because other methods have worse drawbacks, and using the second chamber to elect a head of state has some pedigree in presidential systems. Other recent proposals for electing the Monarch by popular plebiscite are highly undesirable, as is the proposal for approving the Monarch by plebiscite. They would lead inevitably to a politically partisan Monarchy or, worse still, a Monarchy which reflected the passing fashion of the moment for supermodels or pop stars. The Monarch should be appointed at the death of the previous Monarch, and be appointed by a constituency of opinion which differs from that which determines the identity of the Prime Minister. This would be best done by the second chamber.

This proposal still envisages a Monarchy. Some systems use a second chamber to elect a president every few years. That is not the proposal here. The selected Monarch would rule until his or her death, not for a limited term. The Monarch would thus not be a political figure as such as he or she would not need to be re-selected at any point.

Nonetheless, some Conservatives may worry that we will end up with a populist and political Monarch, a "King Tony I" scenario. The selection of a leading politician as our next Monarch could not be objected to if he was the best candidate at the time. Inevitably in a period of constitutional activism the Monarch's political sympathies will become relevant and observable. But although each candidate for the Monarchy will probably have residual political tribal loyalties, a properly constituted House of Electors would not pick a candidate whose loyalties might be inappropriately exercised.

Another issue is whether a future incoming government would accept the new constitutional convention that the Prime Minister should not offer the Monarch advice on the appointment of the Lord Chancellor. Provided that this convention had been adhered to for some time, and had proved to work effectively, it should not matter whether advice is offered later. If the Monarch finds the advice useful, he can listen to it. If not, a

newly activist and possibly selected Monarch could ignore the advice offered and appoint her own preferred candidate. If activism works, it will continue. Only if the Monarch makes poor decisions will her prerogative come under question (as indeed it should).

Conclusion

This paper has proposed a significant reform of the Constitutional Monarchy, so as to preserve its role as the ultimate defender of British liberties. The specific proposals are that an incoming Conservative Prime Minister should not propose a Lord Chancellor, and that future Monarchs should be selected by the second chamber of Parliament.

Other forms of constitutional activism are, of course, possible. Perhaps some would follow once a phase of constitutional activism was entered into. But if we want to preserve the Constitutional Monarchy, we need to start arguing for it, we need to have it do something, and we need to reform it ourselves.

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¹ For more on this, see Martin McElwee's February 2002 Bow Group Policy Brief, *Judicial Review - Keeping Ministers in Check*.