Constitutional Monarchs in Parliamentary Democracies

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Constitution-Building Primer

7

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1. Introduction

A constitutional monarch in a parliamentary democracy is a hereditary symbolic head of state (who may be an emperor, king or queen, prince or grand duke) who mainly performs representative and civic roles but does not exercise executive or policymaking power. Constitutional monarchies are found in parts of Western Europe (e.g. in Belgium, the Netherlands and Sweden), in Japan and Malaysia, and formerly in Nepal. Quasi-constitutional monarchies can also be found in some Arab states, although often these fall short of genuinely democratic practice.

Constitutional monarchy is often associated with a history of British rule and still exists in the 16 Commonwealth realms where the British monarch continues to be head of state. Outside the UK, the Queen is represented by a viceregal official, called the governor-general, who acts in place of the monarch and serves as the de facto head of state.

Advantages and risks

A constitutional monarch, with a ceremonial figurehead role, may provide continuity and stability, provide a unifying non-partisan representative of the state, and reinforce democratic legitimacy with other sources of authority, including traditional and in some cases religious authority. In some circumstances, the retention or restoration of a hereditary monarchy may reassure key elites and gain their support for democratic transition.

However, hereditary succession is an undemocratic way of choosing leaders, and some argue that a constitutional monarch, even with little or no effective power, necessarily represents undemocratic values. In some cases, depending on history, the monarchy may be compromised by association with a former non-democratic regime, or the monarch may be a divisive rather than unifying figure.

2. What is the issue?

This Primer focuses on the role of constitutional monarchs in parliamentary democracies, where (a) the effective powers of government are wielded by a prime minister and cabinet who are politically responsible to the parliamentary majority; and (b) there is a hereditary monarch who is restricted to representative, ceremonial and civic duties, and sometimes to the role of a constitutional arbiter.

The modern parliamentary system developed in the European constitutional monarchies of the 18th and 19th centuries. It emerged, in response to the pressure of popular politics, from a gradual transfer of governing power from titular hereditary ruler to ministers whose position was acknowledged to rest on the consent of parliament. The powers of the monarch passed, by conventional usage, to the responsible ministers, leaving a monarchical office with great symbolic importance but little substantive power. Thus, the offices of head of government and head of state were separated, with a prime minister (head of government) acting as chief executive and the monarch (head of state) relegated to a symbolic representative role, with only marginal and occasional discretionary powers of impartial constitutional arbitration.

From the perspective of constitutional design, the most important issues are:

- The political and symbolic relationship of the monarchy to the rest of the constitutional order: in a democracy, a hereditary monarch should be treated as a public official under the constitution, not a sovereign above it.
- The powers and functions of the monarch, in particular: (a) the extent to which the monarch has personal discretionary powers to act as a constitutional arbiter; and (b) the degree to which the boundaries of these powers are specified in the constitution or left to convention.

3. Functions and powers of constitutional monarchs

Functions

Embodying constitutional authority

Constitutional monarchs embody and represent the legitimate constitutional authority of the state, performing ceremonial and official functions in which the identity and authority of the state as such, rather than that of the incumbent government, is emphasized. For example, the monarch will usually accredit and receive ambassadors, open sessions of parliament and designate or appoint the prime minister. The monarch might also formally appoint certain high-ranking officials, and will almost always formally promulgate laws. In most parliamentary democracies, monarchs usually have little or no discretion in the performance of these official duties (being required to act, in most circumstances, on the ''advice'' of ministers), but their presence helps to strengthen the legitimacy of government acts, adding the monarch's universal and traditional authority to the government's—usually partisan—democratic mandate.

Protecting the political neutrality of the state

It follows from the above that the separation of offices between the head of government and the head of state helps to maintain a symbolic separation between the incumbent government, which is party-political, and the permanent institutions of the state, which are supposed to be politically neutral and universal. The monarch symbolically ensures that those who lead the government are at least notionally inferior to a higher authority that represents the

constitutional order as such, and the leader of a ruling party or coalition is thus subordinate to a non-partisan embodiment of the whole.

Representation

Constitutional monarchs can be effective representatives of the nation, promoting its image and reputation both at home and abroad. Having non-executive and non-partisan status, and being freed from political responsibility, they can devote more time to such activities, and are less easily compromised by the political decisions of their governments.

Civic leadership

As a civic leader, a constitutional monarch may reflect and articulate the shared moral values and aspirations of the people. The civic leadership functions of the monarch may include patronizing arts and culture, supporting or encouraging charitable activities, visiting local communities, making speeches and hosting cultural events. Being free from day-to-day politics and from partisanship, yet having a national platform from which to speak, a constitutional monarch can act as the conscience of the nation, perhaps speaking up for those who are otherwise forgotten by the political process. The line between civic leadership and political interference is, however, a thin one: to protect their independence, constitutional monarchs are in many jurisdictions forbidden by law or custom from making public comments that could be interpreted as politically controversial.

Religious authority

In some countries, the monarchy has a religious dimension, with the monarch acting as the head of a national religious institution or claiming to have divine sanction for their rule. This combination of civil and religious authority can help to legitimize civil institutions and hinder the spread of destabilizing religious extremism. However, in religiously polarized jurisdictions where the monarch is associated with one side and not the other, it can have divisive and anti-democratic effects.

Constitutional arbitration

A constitutional monarch may be entrusted with certain discretionary powers which, by constitutional law or conventional practice, can be exercised at royal discretion. The terminology used to denote these powers varies. This Primer uses the term ‘discretionary powers’; in Australia and Canada, for example, the term 'reserve powers' is more common.

Discretionary powers are exempt from the rules of ministerial responsibility, meaning that ministerial countersignature is not required, and that ministerial advice may be ignored. The concept of constitutional *arbitration* is distinct from constitutional *adjudication*, as performed by judicial institutions. The former

relates to the maintenance of the democratic constitutional order by the moderation and arbitration of political disputes between the main institutions of government (i.e. acting as a balance between the parliament, government and people). These powers may include:

1. The discretionary authority to nominate and dismiss the prime minister—usually subject to the rule that the prime minister must enjoy the confidence of the parliamentary majority.
2. The discretionary authority, in certain circumstances, to dissolve parliament (e.g. if it is not possible to appoint a prime minister who enjoys parliamentary confidence, or if parliament passes a vote of no confidence in the government but the government refuses to resign) or to refuse a dissolution (e.g. if the government has lost the confidence of parliament, and if a new government that does enjoy the confidence of parliament can be appointed without a parliamentary election).
3. The discretionary authority (albeit only in rare circumstances) to refuse assent to legislation.
4. The discretionary authority to award honours. For example, the Queen of the United Kingdom personally awards the Order of the Garter, the Order of the Thistle, the Order of Merit and several other orders.
5. The discretionary authority to make certain non-political appointments. The King of Spain is permitted, under article 65.2 of the Spanish Constitution, to 'freely appoint and dismiss civil and military members of his Household' without ministerial advice or countersignature. It should be noted that this refers to the king's personal staff, who are not part of the government and have no jurisdiction over public policy or administration.

Codification and discretionary powers

In many 19th-and early-20th-century constitutions, the distribution of powers, functions and duties between the monarch and the government was not clearly specified. These constitutions would typically vest executive powers in the monarch (meaning that the monarch would be the source of executive authority), with the expectation that these powers would usually be exercised according to the constitutional conventions (accepted norms of constitutional propriety that, although not written down in the constitution, were nevertheless regarded as binding on political actors) of parliamentary democracy. In some cases, these conventions were written into the text of the constitution, being embodied in the rule of ministerial responsibility, in the need for ministerial countersignature or in

an explicit constitutional rule that the monarch had to act 'on the (binding) advice' of ministers.

Likewise, in such early constitutions, the basic principles of parliamentary democracy (i.e. that ministers must enjoy the confidence of, and are responsible to, the parliamentary majority) are usually either unstated in the written text of the constitution or stated only in a minimal way:

- The Constitution of Australia establishes a Federal Executive Council, by whose binding advice the governor-general (as the viceregal representative of the Queen) is to act, and states that ministers, who are to be appointed from among the members of parliament, are to be members of the Federal Executive Council. This hints at parliamentarism but does not specifically enshrine the principle that ministers must enjoy the confidence of parliament in the text of the constitution.
- The Constitution of the Netherlands states that 'ministers are responsible' and vests executive power in the ministers. This hints at a principle of parliamentarism, without prescribing the process of government formation and without formally or explicitly recognizing the right of parliament to force the resignation of a government in which it has no confidence.

In contrast, newer monarchical constitutions, especially those adopted in the democratic reconstruction of Europe after 1945 and those adopted by Commonwealth countries during the 1960s wave of decolonization, have typically given explicit recognition to parliamentary principles and codified the powers of the monarch:

- The 1978 Constitution of Spain strictly limits the king's constitutional powers. Executive powers are expressly vested in the government, not in the king. The king's few powers are exercised always on the instruction of the prime minister and responsible ministers. The ministers have to countersign the king's acts, and thereby authorize them. An exception applies to the order appointing the prime minister and the order to prematurely dissolve parliament and hold new elections if a prime minister cannot be appointed. These are authorized not by the advice of a minister but by the advice and countersignature of the president of the Congress of Deputies (lower house). The king has almost no personal discretion and is limited to representative and ceremonial duties only.
- The 1962 Constitution of Jamaica requires the governor-general (as the representative of the Crown) to appoint as prime minister the member of the House of Representatives who would be 'best able to command the confidence of a majority of the members of that House', and specifically

authorizes the House of Representatives to pass a vote of no confidence in the government. It requires the governor-general to act only on the (binding) advice of the prime minister, except in certain limited instances where the governor-general is authorized to act with some personal discretion.

- The 1974 Constitution of Sweden formally transferred executive powers from the king to the government. Nomination of the prime minister became the responsibility of the speaker of the *Riksdag* (parliament), subject to approval by a parliamentary vote. The king ceased to have any (even theoretical) veto powers, as the government was required to promulgate legislation enacted by parliament.

Organic change, flexibility and the risk of constitutional uncertainty

Where written constitutional rules are few or imprecise, and heavy reliance is placed upon conventional rules, the relationships between key institutions can change by organic development in response to crises or other factors. While it may be desirable to allow such flexibility, uncertainty about the status of conventional rules also opens the possibility of a constitutional crisis, in which the legitimacy of an action permissible by the written rules, but long deemed unacceptable under conventional rules, is politically disputed:

- In 1975, the governor-general of Australia, Sir John Kerr, dismissed the prime minister, Gough Whitlam, when the Senate refused to pass the budget. Both the Senate, in refusing to pass the budget, and the governor-general, in dismissing the prime minister and appointing the leader of the opposition, Malcolm Fraser, to office, were clearly within the scope of their constitutional powers *on paper*. However, the extent to which their actions were permitted under constitutional conventions was contested (Ward 1987: 18).

4. Design considerations

Republic or monarchy?

Constitution-builders rarely have to decide on the question of whether to have a hereditary monarchy or elected president as head of state. These choices are usually predetermined by the historical, social and political context of the country. In countries where hereditary monarchy is well embedded in society and where the monarch continues to enjoy widespread popular support, establishing a republic could be unthinkable, and democratic reform might, of necessity, have to take place under the protection and tutelage of a hereditary monarchy. In such cases, a monarch who is willing and able to act as a non-executive head of state may provide a useful source of legitimacy and continuity that will strengthen democratic constitution-building and smooth the way to the successful consolidation of a democratic constitutional order (see Box 4.1 for an example).

Box 4.1. Spain's democratic monarchy

The King of Spain was active in his support for Spain's transition to parliamentary democracy after a civil war and a 40-year dictatorship. The restored king was able to bridge the gap between reformist and democratic movements and old military, clerical and economic elites. The king's traditional legitimacy reassured the old elites and enabled him to stabilize democratic institutions. When, following the election of the first Socialist government, the new democracy was threatened by an attempted military coup, the king appeared on television, ordered the troops back to their barracks and defended the constitution.

However, constitutional monarchy is not likely to be a viable option where there is no tradition of monarchy, no legitimate ruling dynasty, or where the monarchy has been discredited by partisanship or by association with an undemocratic regime. In Italy in 1946, for example, a referendum was held on abolishing the monarchy—which had become tainted by fascism—before the Constituent Assembly even began its work.

Pre-existence of conventional rules

In countries where the conventions of parliamentary democracy are already well understood and well entrenched in the practical operation of the political system, it might be acceptable to rely on conventional rules that are implied or only partially specified in the constitution. In newly democratizing states, however, or states where such conventional rules are poorly understood or weakly enforced, it is usually necessary to be more specific and explicit.

Party system and fragmentation

In a multiparty system, with no party winning an overall majority, the head of state might, depending on the government formation rules in place, have more latitude in the nomination of a prime minister and the building of a coalition. If it is desired to limit the partisan influence of the monarch in government formation, then it is particularly important for those rules to be explicit and unambiguous. It might be desirable, for example, for the constitution to empower parliament to elect the prime minister (as in Solomon Islands), or for the speaker to nominate the prime minister, subject to parliamentary approval (as in Sweden), so that the head of state is removed from coalition formation.

Rules of hereditary succession

Democratic constitutions with a hereditary non-executive head of state vary in the extent to which the rules of succession are codified in the constitution. The Dutch and Spanish constitutions, for example, specify the rules of succession in some detail. In contrast, the Japanese Constitution allows the rules of succession to be determined by ordinary sub-constitutional legislation, in the form of an imperial house law. The rules of succession will depend on traditional and historical considerations particular to each country. For example, some countries might require the monarch to belong to a certain religion that has established status; some might exclude women from the succession, while others might give daughters and sons equal succession rights. Constitutional designers should think carefully before changing these rules, especially if doing so would divide loyalties and undermine the status of the monarchy as a unifying institution. Whatever the

content of these rules, it is important that they be clear and that the succession be unambiguous.

Alternative forms of succession

Occasionally, monarchs can be chosen by means other than hereditary succession. The head of state of Malaysia, for example, is chosen by the traditional princely rulers of nine Malay states, although the election is largely a formality and, in practice, a system of rotation prevails. Some Arab states have adopted a system of nomination whereby the reigning monarch, often in consultation with a family council, designates the successor as crown prince. Constitutional designers working to build a democratic order in a state transitioning might wish to consider the effectiveness of such arrangements but would be wise to change existing rules only after very careful reflection, and only if there is a consensus in favour of change; otherwise, the safest option will usually be to continue the existing practices in order to avoid a disputed succession.

Regency and abdications

Provision must be made, either by the constitution or by law, for the continuation of the monarch's functions in cases where a child who is not yet of legal capacity inherits the throne. The usual way of doing this is to establish a regency, which is where another person (often a member of the royal family) performs royal functions on behalf of the monarch with the title of regent. In some cases, the regency passes to the most proximate relative automatically, by constitutional prescription; in others, parliament might elect or appoint a regent. Likewise, some constitutions enable the monarch to abdicate at will, e.g. in case of old age or incapacity, or make it possible to remove a monarch who has become incapable of ruling. For example, the Belgian Constitution enables the Council of Ministers to declare that the king has become incapable of reigning, and to convene parliament to appoint a regent.

Patrimony and civil list

In a constitutional, parliamentary monarchy, the personal patrimony of the head of state must be carefully distinguished from public property, so that it is possible to separate what belongs to the monarch individually from what belongs to the public. Likewise, the personal accounts of the monarch and of the royal household should be kept separate from the public treasury: usual good practice in parliamentary monarchies is for revenues to be paid, without exception, into the public treasury, and for the state to pay an allowance to the monarch and

royal household (known as the civil list) to support them in the performance of their duties.

Royal marriages

Royal marriages can have diplomatic consequences and implications for future succession. In some jurisdictions, members of the royal family, or direct heirs to the throne, must get the permission of the government or parliament before marrying—with the penalty, if they do not do so, of forfeiting their claim to the throne.

Exclusions

Some constitutions enable parliament to exclude a particular person from the established order of succession on grounds of misconduct or incapacity. This provision helps to ensure that an incompetent or unsuitable monarch cannot inherit the throne or bring the country into disrepute. Article 29 of the Dutch Constitution, for example, states that 'One or more persons may be excluded from the hereditary succession by Act of Parliament if exceptional circumstances necessitate'.

5. Ensuring the monarchy is genuinely parliamentary

Restricting the royal court

In some monarchies, the royal court or royal household has extensive powers, acting as a private parallel government with control over the armed forces, the diplomatic corps and security institutions. This is damaging to democracy, since it excludes key state institutions from the control of ministers who are responsible to parliament. To prevent this, the constitution could require that all state authorities, including the military and security forces, report solely to the government (and through them to parliament), and not to the monarch. It could also require that the activities of the royal court fall under the responsibility of the prime minister, who should be answerable for the actions of the royal court in parliament (i.e. there should not be a special sphere in which the monarch can give orders). The budget assigned to the royal court should be determined by parliament and should be subject to the same robust scrutiny and auditing as other expenditures.

Keeping the monarch out of government

It is important to insulate the government from royal interference and to protect the apolitical monarch from political controversy. This can be achieved by ensuring that the prime minister, and not the monarch, presides over the cabinet, and by forbidding the monarch from attending cabinet meetings, except perhaps on ceremonial occasions.

Prohibiting members of the royal family from holding ministerial office

If the monarch or other members of the royal family hold ministerial office, the parliamentary nature of the political system is compromised. It is impossible to preserve the political neutrality of members of the royal family who are actively involved in day-to-day politics, and very difficult to hold ministers to account if they are also members of the royal family—with all that implies in terms of immunities and privileges. To avoid this, it is worth considering a constitutional rule, such as that found in the Constitution of Belgium, expressly prohibiting members of the royal family from holding ministerial office.

6. Examples

Table 6.1. Constitutional monarchs in parliamentary democracies

Country	Recognition of parliamentary government	Vesting of power: countersignature/ advice requirements	Real discretionary/ reserve powers
Belgium Democracy since 1921 Parliamentary monarchy Federal state consisting of territorial regions and linguistic communities	'The Federal Government offers its resignation to the King if the Chamber of Representatives, by an absolute majority of its members, adopts a motion of censure, proposing to the King the nomination of a successor to the Prime Minister, or proposes to the King the nomination of a successor to the Prime Minister within three days of the rejection of a motion of confidence'	[Nominal executive power vested in the king] 'The King's person is inviolable; his ministers are responsible [before Chamber of Representatives] . . . Under no circumstances may a written or verbal order of the King diminish the responsibilities of a minister . . . No actions of the King may take effect without the countersignature of a minister, who, in doing so, takes responsibility upon himself'	No exceptions from ministerial countersignature specified in the constitution. Owing to the complex multidimensional multiparty system, the king, in practice, has an influential role in forming governments, and may exercise some discretion in accepting or refusing the resignation of the prime minister.
Japan Democracy since 1946 Parliamentary monarchy Unitary	Emperor appoints prime minister as designated by the Diet (parliament)	Emperor appoints chief judge of Supreme Court as designated by cabinet 'The Emperor, with advice and approval of Cabinet, shall perform the following acts in matters of state on behalf of the people: [specific non-executive functions listed in article 7 of Constitution]'	No effective discretionary powers provided for in the constitution or exercised in practice. Monarchy is ceremonial and representative only.

Country	Recognition of parliamentary government	Vesting of power: countersignature/ advice requirements	Real discretionary/ reserve powers
Spain Democracy since 1978 Parliamentary monarchy Quasi-federal (autonomous communities)	Prime minister nominated by king on the advice of the president of the lower house, subject to approval by vote of the lower house	'The actions of the King shall be countersigned by the Prime Minister and, when appropriate, by competent ministers. The nomination and appointment of the Prime Minister and the dissolution provided for in Article 99 [if a Prime Minister cannot be appointed] shall be countersigned by the President of the Congress of Deputies. The persons who countersign the acts of the King shall be responsible for them' (article 64)	No effective discretionary powers provided for in the constitution or exercised in practice. Monarchy is ceremonial and representative only.
Sweden Democracy since 1917 Parliamentary monarchy Unitary	'When a Prime Minister is to be appointed, the Speaker summons for consultation repres-entatives from each party group in the Riksdag' 'The Speaker confers with the Deputy Speakers before presenting a proposal to the Riksdag. The Riksdag shall vote on the proposal within four days, without prior preparation in committee. If more than half the members of the Riksdag vote against the proposal, it is rejected. In any other case, it is adopted' 'If the Riksdag declares that the Prime Mini-ster, or a member of his or her Government, no longer has its confid-ence, the Speaker shall discharge the minister concerned'	Executive powers vested in government and administration; monarch kept separate from the process	No effective discretionary powers provided for in the constitution or exercised in practice. Monarchy is ceremonial and representative only

7. Decision-making questions

1. What is the problem that the new/reformed constitution is trying to fix? Is it intended to reduce the power of the monarch in order to establish a more genuinely parliamentary system of government? Is it to restore a former monarchy as a source of unity and stability?
2. Is it intended that the monarch should be a mere figurehead whose duties are purely ceremonial and civic, or is it also intended that they should be a constitutional arbiter?
3. If the monarch is intended to perform only ceremonial and civic duties, then who, if anyone, is going to perform constitutional-arbiter functions, such as nominating the prime minister, dissolving the legislature and preventing the enactment of unconstitutional laws?
4. If the monarch is intended to be a constitutional arbiter with discretionary or reserve powers, then how can they be prevented from becoming a player in the political game rather than an arbiter who stands above and outside it? How can the existence of these powers and responsibilities be reconciled with democratic principles?
5. How clear are the powers and duties of the monarch in the constitution? How much scope for disagreement is there over the legitimacy or illegitimacy of an exercise of personal discretion by the monarch? Are all eventualities covered as well as reasonably possible?
6. What are the cultural assumptions of leadership? Is there a tradition of a separation between symbolic authority and actual power? Will a position

having symbolic authority but little real power be respected, or will it be ridiculed?

7. What does the monarch represent? The people? The state? The nation? The cultural majority? An otherwise under-represented cultural minority? A particular set of values and traditions? In terms of genuine public support, how inclusive and unifying is the monarchy?
8. How broad have consultations been? Are the provisions related to the head of state supported by all relevant actors? Does anyone want to sabotage it? If so, why, and can their objections reasonably be met?

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Annex

About the author

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About International IDEA

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