



*The Exercise of Soft Power
by Female Monarchs
in the United Kingdom*

Anne Twomey



The Exercise of Soft Power by Female Monarchs in the United Kingdom

Anne Twomey
UNIVERSITY OF SYDNEY

Abstract: In the United Kingdom, female monarchs, such as Queen Victoria and Queen Elizabeth II, have been adept at the exercise of power through influence behind closed doors, eschewing public exercises of constitutional power against governments. This exercise of soft power has led to a general underestimation of their role as sovereign. Strict rules of secrecy concerning the Sovereign's actions have made it difficult to assess how a sovereign has fulfilled her constitutional role and her impact upon constitutional governance. But small chinks in the gilded curtain of secrecy show that the Queen's involvement and influence is greater and more effective than has been publicly recognised. This article traces the development of soft power from Queen Victoria to Queen Elizabeth II and notes how it has been particularly employed to their advantage by female monarchs.

Keywords: crown; queen; soft power; constitution; secrecy

Female monarchs often cultivate, or have conferred upon them, the role of mother or grandmother of the nation. They provide comfort and solace in times of loss and disaster, they confer honours and reward sacrifice, and they are a source of national unity. This is a form of soft power¹ through social influence and the creation of emotional bonds between sovereign and subject. It generates emotional responses “such as love, affection, admiration or trust,” resulting in a “more feminized” kind of power and the preservation of constitutional monarchies, now recognised as sources of stability and durability.² This is reflected in Australia in arguments that the Queen brings a kind of stability to the country that a republic would not,³ and that a republic should not be considered until after the death of the Queen, due to the love and respect that the people feel towards her.⁴

This article, however, discusses a different form of soft power and how it has been

¹ ‘Soft power’ has been defined as “the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment.” It “rests on the ability to shape the preferences of others”: Joseph S. Nye Jr., “Public Diplomacy and Soft Power,” *The Annals of the American Academy of Political and Social Science* 616, no. 1 (March 2008): 94.

² Frank Lorenz Müller, “Winning their Trust and Affection: Royal Heirs and the Uses of Soft Power in Nineteenth-Century Europe” in *Royal Heirs and the Uses of Soft Power in Nineteenth-Century Europe*, ed. Frank Lorenz Müller and Heidi Mehrkens (New York: Palgrave Macmillan, 2016), 10–11.

³ David Flint, “Queen Stability in Unstable World Declares Republican Broadsheet,” *No Republic!*, 23 October 2005, <https://norepublic.com.au/queen-stability-in-unstable-world-declares-republican-broadsheet/>.

⁴ Michael Perry, “Queen Elizabeth must die or abdicate for Australian republic,” *Reuters*, 28 January 2008, <https://www.reuters.com/article/us-australia-republic/queen-elizabeth-must-die-or-abdicate-for-australian-republic-idUSSYD6635920080128>.

affected by gender during the period bookended by two dominant monarchs—Queen Victoria and Queen Elizabeth II. It is a soft form of political and constitutional power that is exercised by way of influence, rather than the formal exercise of a reserve power to refuse ministerial advice or dismiss a government. While in practice constitutional power has shifted from monarchs to their responsible ministers, in legal form much constitutional power remains exercisable by the monarch, and in extreme circumstances could validly be exercised by the monarch against the advice and wishes of the monarch's ministers. The mere existence of such reserve powers and the possibility of their use is usually enough to cause ministers to moderate their behaviour or alter it to accord to the monarch's preferences, without the monarch having to exercise hard power at all. Its effectiveness is enhanced by the fact that the exercise of this soft power is cloaked from public view by both convention and, in more recent times, rigorously enforced laws of secrecy.

The public perception of monarchy in the United Kingdom and the realms of which the Queen is sovereign is an inaccurate one. Both Queen Victoria and Queen Elizabeth II have exercised far more constitutional and political power than is commonly recognised and to some extent that power has been enhanced, rather than limited, by their gender.

Bagehot and the Doctrinal Development of Soft Power

It was a nineteenth-century journalist, Walter Bagehot, who first crystallised in words the role of the Sovereign in influencing, rather than autocratically making, the decisions of government. In 1867, Bagehot famously described the British monarch's rights as follows:

To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights—the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others. He would find that his having no others would enable him to use these with singular effect.⁵

Bagehot pointed out that in the course of a long reign, a sagacious king would acquire “an experience with which few Ministers could contend.” The King could therefore raise previous examples when warning of the potential effects of a proposed policy.⁶ Bagehot added that because of the King's social superiority, a Prime Minister could not simply sweep away his arguments as insignificant. While the King might not always turn his Prime Minister's course, “he would always trouble his mind.”⁷

Bagehot wrote this analysis at a time when Queen Victoria had been on the throne for almost 30 years and after the death of her husband, Prince Albert, in 1861. In the discussion above on the rights and powers of the Sovereign, he refers throughout to the King and “he,” without any recognition that the reigning monarch of the time was female. He went on to praise Prince Albert, noting that had he not died so early, he would have acquired the experience and wisdom to guide governments.⁸

No such praise was conferred upon Queen Victoria, nor was consideration given to

⁵ Walter Bagehot, *The English Constitution* (London, 1867), 103.

⁶ Bagehot, *The English Constitution*, 104.

⁷ Bagehot, *The English Constitution*, 104.

⁸ Bagehot, *The English Constitution*, 106.

her role as a female monarch. Perhaps this was due to the Queen's withdrawal from public life in the wake of her husband's death. Indeed, earlier in his essay on monarchy, Bagehot referred to the Queen as a "retired widow" and her son and heir as "an unemployed youth."⁹ He conceded however, that the courtiers of both George III and Queen Victoria were agreed as to the "magnitude of the royal influence" and that it is "an accepted secret doctrine that the Crown does more than it seems."¹⁰ He concluded that the influence of Queen Victoria and Prince Albert would not be known until the history books were written by future generations.

Later generations have indeed discovered that Queen Victoria was a far more influential and active monarch than would appear from Bagehot's work. Laski argued that since the publication of Queen Victoria's letters, the "famous picture" drawn by Bagehot is "no longer a tenable portrait." Laski observed of Queen Victoria:

So far from being, as [Bagehot] imagined, a passive instrument in the hands of her ministers, she was an active and insistent agent in the conduct of government. It is true, and it is important, that she never either refused a dissolution or vetoed a bill. But she played a considerable part in the choice of her ministers; she secured the appointment of some and prevented the appointment of others. She had no hesitation in forcing her views upon every aspect both of domestic and foreign policy.¹¹

Laski also noted that Queen Victoria "sought to control what her ministers should say in their speeches, and to have them rebuked when what they said was not to her liking."¹² Hardie has also observed that the political influence of Queen Victoria was "more indefinite, more intangible, more pervasive, and more far-reaching than Bagehot would have us believe."¹³

Bagehot's characterisation of the sovereign's rights in a manner that limited them to the "right to be consulted, the right to encourage, the right to warn" clearly had no relationship with reality at the time that it was written. It is unclear whether this was because the secrecy concerning the actions of the sovereign meant that keen political observers of the day, such as Bagehot, were ignorant of the extent of the powers of the sovereign, or whether he sought to use his book as a propaganda tool to effect a limitation of the powers of the sovereign through public belief in the existence of such a limitation.

While Bagehot's work is often lauded by monarchists due to its reference to the "magic" of monarchy and the effectiveness of the "dignified" aspect of the constitution, it primarily reads as a republican work. He considered that a hereditary system was defective because it was not conducive to achieving wise or suitable holders of the office and he saw monarchy as a sop for the uneducated masses who were incapable of understanding a democratic system of government. Most of his essay on monarchy concerned how the system of government could operate effectively without the need for monarchy at all.

Despite Bagehot's biting critique of the failings of a system of hereditary constitutional monarchy and the inaccuracy of his description of the powers or "rights" exercisable by the sovereign, his characterisation of those rights and the limits on them has since become the

⁹ Bagehot, *The English Constitution*, 57.

¹⁰ Bagehot, *The English Constitution*, 86–87.

¹¹ Harold Laski, *Parliamentary Government in England* (London: Allen & Unwin, 1938), 397.

¹² Laski, *Parliamentary Government in England*, 398.

¹³ Frank Hardie, *The Political Influence of Queen Victoria 1861–1901* (London: Frank Cass & Co, 1963), 27.

current orthodoxy. It has been claimed that George V, George VI, Elizabeth II, Prince Charles, and Prince William were all raised on Bagehot's work,¹⁴ although one wonders whether they were given an abridged version that excluded the references to lazy, stupid, dissolute, and meddling monarchs and the flaws in the system of hereditary monarchy. Certainly, Queen Victoria was none too impressed when she caught the future George V reading the work of such a "radical writer."¹⁵

The inaccurate vision of a monarch constrained to the right to be consulted, to encourage, and to warn, is now the publicly accepted vision of how the monarchy operates in the United Kingdom. It is soft power that is exercised, through encouragement and warning, rather than the formal rejection of advice or acting in constitutional matters without advice. Whether or not this is today an accurate picture remains uncertain because the exercise of this soft power is veiled by strictures of secrecy. As long as all records concerning a reigning sovereign are locked up in Windsor Castle until well after his or her death, a long-lived monarch can effectively deny the public any knowledge of how the role of sovereign has been fulfilled for well over half a century. Like Bagehot, we will have to wait for the historians of the future to make a complete assessment of the role of Elizabeth II as monarch, although the discussion below shows brief glimpses behind the veil of secrecy that were extracted from documents archived or released before that veil became an iron curtain in 2010.¹⁶

Bagehot was cognisant of the corroding effects of secrecy upon public accountability when it comes to government. In his criticism of constitutional monarchy under an activist King, he observed:

There is in it a secret power which is always eager, which is generally obstinate, which is often wrong, which rules ministers more than they know themselves, which overpowers them much more than the public believe, which is irresponsible because it is inscrutable, which cannot be prevented because it cannot be seen.¹⁷

The history of monarchy in the United Kingdom from Queen Victoria onwards has been one of gradual reduction in the appearance of monarchical power, masking the reality of its continuing influence.¹⁸ That influence was, and has remained, a significant one. As Disraeli noted in 1872:

The principles of the English Constitution do not contemplate the absence of personal influence on the part of the Sovereign; and if they did, the principles of human nature would prevent the fulfilment of

¹⁴ Elizabeth Longford, *The Queen: The Life of Elizabeth II* (New York: Knopf, 1983), 16–17; and David E. Smith, "The Crown in Canada Today: How Dignified, How Efficient?," in *Canada and the Crown*, ed. D. Michael Jackson and Philippe Lagassé (Montreal: McGill-Queen's University Press, 2013), 89.

¹⁵ Peter Gordon and Denis Lawton, *Royal Education: Past, Present and Future* (London: Frank Cass, 1999), 174; David M. Craig, "Bagehot's Republicanism," in *The Monarchy and the British Nation, 1780 to the Present*, ed. Andrzej Olechnowicz (Cambridge: Cambridge University Press, 2007), 139, 140.

¹⁶ The Constitutional Reform and Governance Act 2010 (UK) made the freedom of information exemption concerning documents relating to communications with the monarch absolute and extended complete secrecy for the life of the monarch plus five years (and 20 years after the relevant document was created), preventing access to relevant documents in the National Archives, even when they were older than 30 years.

¹⁷ Bagehot, *The English Constitution*, 117.

¹⁸ Hardie, *Political Influence*, 238.

such a theory.¹⁹

Queen Victoria and the Exercise of Soft Power

Queen Victoria acceded to the British throne in 1837. Prior to her accession, there had been a personal union of the crowns of the United Kingdom and Hanover. While the British law of succession favoured male heirs, but permitted female heirs to inherit, the Salic law, which applied in Hanover, did not permit females to inherit the throne. Hence, the union of the crowns was ended, with Victoria inheriting the British Crown and her uncle, the Duke of Cumberland, becoming King Ernest Augustus I of Hanover.

Victoria was only 18 when she became queen. The vision of a young woman taking on the heavy mantle of sovereignty left many of her exclusively male privy councillors in tears at both her accession council and her coronation.²⁰ Her ministers felt not only protective towards her, but also the need to behave in a chivalrous manner and not force her will. To do so would be brutish and ungentlemanly. Hardie noted that while ministers always suffered the disadvantage of having to be restrained and respectful to the monarch and not being able to speak with the frankness of an equal, this was “especially the case when the Sovereign was a woman.”²¹

An early incident in Queen Victoria’s reign, known as the Bedchamber crisis, is indicative of her assertiveness against her ministers, even at a very young age. Queen Victoria initially relied heavily on the advice and support of her first prime minister, Lord Melbourne, and was unhappy about a change in government to a new prime minister who she did not know. When Lord Melbourne faced the prospect of loss of confidence in parliament, he told the Queen on 7 May 1839 that he had to resign and advised her to send for the Duke of Wellington.²² He also advised her about how to approach an alternative government. He wrote:

Your Majesty will do well to be from the beginning very vigilant that all measures and all appointments are stated to Your Majesty in the first instance and Your Majesty’s pleasure taken thereon previously to any instruments being drawn out for carrying them into effect and submitted to your Majesty’s signature. It is the more necessary to be watchful and active in this respect, as the extreme confidence which Your Majesty reposed in me, may have led to some omission at times of these most necessary preliminaries.²³

This is an interesting precursor of the current system of informal advice, followed by formal advice, as discussed below. It is the foundation of the exercise of “soft power” prior to formal decisions being put to the Queen for her approval.

The Duke of Wellington declined to form a Government due to his age and deafness, and advised the Queen to commission Sir Robert Peel instead. Peel, a Tory, asked her to show her confidence in his government by removing from her household some of her ladies-in-waiting (also known as ladies of the bedchamber) who were married to prominent Whig

¹⁹ T.E. Kebbel, ed., *Selected Speeches of the Late Right Honourable the Earl of Beaconsfield* (London, 1882), 3:493; Hardie, *Political Influence*, 245.

²⁰ Julia Baird, *Victoria, The Queen* (Sydney: Harper Collins, 2016), 62, 64, 66.

²¹ Hardie, *Political Influence*, 123.

²² Queen Victoria’s Journal, 7 May 1839, Lord Esher’s typescripts, 10:166.

²³ Queen Victoria’s Journal, 7 May 1839, Lord Esher’s typescripts, 10:168.

politicians.²⁴ She refused. She later wrote, expressing her indignation, that “The Queen of England will not submit to *such* trickery.”²⁵ Peel observed that given that he would be in minority in the House of Commons, unless the Queen demonstrated some confidence in his government by altering her household, a Tory Government “could not go on.”²⁶ Queen Victoria saw it as a mark of weakness if his only support was derived from her ladies. She sought Lord Melbourne’s advice. He advised her to stand her ground.²⁷ Peel declined to form a new government in the circumstances. Melbourne’s cabinet debated whether to remain in office, even though it would be under ongoing threat of a loss of confidence. It decided to do so out of deference to the Queen’s wishes.²⁸ Cecil described Lord Melbourne’s response as a “paternal impulse to rush to the rescue of the Queen in ... distress,”²⁹ and Longford described Melbourne’s colleagues as being swept along on a “wave of chivalry.”³⁰ It is doubtful that a male sovereign would have had the same effect.

In 1841, when Lord Melbourne’s government fell at an election and Peel was to be called upon to form a government, prior negotiations were undertaken with the Queen’s husband, Prince Albert, through an intermediary, to ensure that the Queen’s three senior ladies-in-waiting resigned. Peel, protesting that “his aim was to protect the dignity and feelings of the Queen” insisted that the change should be offered by her, rather than being imposed by him as a condition of forming the Government.³¹ He could not be seen publicly to be bullying a female sovereign at the commencement of his premiership.

Queen Victoria initially revelled in filling what had been seen as a male role, particularly in relation to the military. She recorded in her journal, after saluting her officers at a military review, that “I felt for the first time like a man, as if I could fight myself as the head of my troops.”³² Throughout her life she took an active role in determining army promotions³³ and even military strategy.³⁴ She was also very closely involved in foreign policy, frequently requiring that despatches be altered or policies changed.

Not all ministers, however, deferred to her wishes. One foreign minister who did not do so was Lord Palmerston. He received her instructions and alterations to his draft despatches, but simply ignored them when he wished.³⁵ The Queen declared that she would not permit such disregard of her orders.³⁶ She insisted that once she gave her sanction to a

²⁴ Queen Victoria’s Journal, 8 May 1839, Lord Esher’s typescripts, 10:178.

²⁵ Queen Victoria’s Journal, 9 May 1839, Lord Esher’s typescripts, 10:181.

²⁶ Queen Victoria’s Journal, 9 May 1839, Lord Esher’s typescripts, 10:182.

²⁷ Note Cecil’s observation that such advice, tendered by the Opposition, “could not possibly be reconciled with correct constitutional procedure”: Algernon Cecil, *Queen Victoria and Her Prime Ministers* (Oxford: Oxford University Press, 1953), 92.

²⁸ Queen Victoria’s Journal, 11 May 1839, Lord Esher’s typescripts, 10:191. See also: Baird, *Victoria*, 105.

²⁹ Cecil, *Queen Victoria and Her Prime Ministers*, 92.

³⁰ Elizabeth Longford, *Victoria R. I.* (London: Weidenfeld and Nicolson, 1964), 113.

³¹ Baird, *Victoria*, 180.

³² Queen Victoria’s Journal, 18 September 1837, Lord Esher’s typescript, 3:79. Interestingly, this statement is excluded from Princess Beatrice’s version of the Queen’s diaries.

³³ Hardie, *Political Influence*, 223.

³⁴ Hardie, *Political Influence*, 98, 149, 241.

³⁵ Paula Bartley, *Queen Victoria* (Abingdon: Routledge, 2016), 139; Brian Connell, *Regina v Palmerston* (London: Evans Brothers, 1962) 99–137.

³⁶ Queen Victoria’s Journal, 17 February 1850, Princess Beatrice’s copies, 29:47.

measure it must not be “arbitrarily altered or modified by the Minister.” She concluded that she must consider such an act as “failing in sincerity towards the Crown, and justly to be visited by the exercise of her Constitutional right of dismissing that Minister.”³⁷ Her fury at being disobeyed suggests that ministers ordinarily accepted her demands, although her failure to secure Lord Palmerston’s dismissal indicated the practical limits of her powers.³⁸ She had significant influence, but she could not always impose her will.

After the death of Prince Albert, Queen Victoria withdrew from public life for a significant period. She would sometimes fall back on her status as a “poor unprotected widow”³⁹ as a means of getting her way. Six months after Albert’s death she pressured the opposition not to overthrow the government as “they would do so at the risk of sacrificing her life or reason.”⁴⁰ Yet she continued her direct involvement in political affairs, outside of the public view. She objected to giving a speech from the throne that contained a policy with which she disagreed,⁴¹ she helped negotiate compromise on the passage of the Third Reform Bill in 1884,⁴² she schemed against the appointment of Gladstone as prime minister,⁴³ and threatened to abdicate rather than appoint him as prime minister again.⁴⁴ Gladstone had previously noted that the sovereign’s threat of abdication was the greatest power that he or she possessed—for the position of a minister who forced abdication on a sovereign would be “untenable.”⁴⁵ Ultimately, Queen Victoria surrendered and appointed Gladstone again, once all other possibilities were eliminated. Although she did not exercise a reserve power by refusing to appoint him, she certainly vetoed the appointment of others as ministers and officials.⁴⁶

The Queen took the view that in matters of constitutional importance her consent should be obtained before any minister made a public declaration of policy.⁴⁷ She was prepared to insist upon the dissolution of parliament by requiring an “appeal to the country” to approve particular policies.⁴⁸ She also maintained that she had the right to dismiss her government, but

³⁷ “Letter by Queen Victoria to Lord John Russell, 12 August 1850,” in Arthur Benson and Viscount Esher, eds, *The Letters of Queen Victoria* (London: John Murray, 1908), 2:264. This was conveyed to Lord Palmerston who, according to Queen Victoria, responded that “if it was known that he had behaved with disrespect towards me he could never show his face again in society”: Queen Victoria’s Journal, 15 August 1850, Princess Beatrice’s copies, 30:24. For Prince Albert’s report of Palmerston’s response, see: Connell, *Regina v Palmerston*, 123–126.

³⁸ Queen Victoria lamented in her journal that it “is too unfortunate that every good opportunity for getting rid of Lord Palmerston has invariably failed”: Queen Victoria’s Journal, 7 August 1850, Princess Beatrice’s copies, 30:14.

³⁹ Queen Victoria’s Journal, 27 May 1862, Princess Beatrice’s copies, 53:207.

⁴⁰ Baird, *Victoria*, 327; Queen Victoria’s Journal, 16 June 1862, Princess Beatrice’s copies, 51:149.

⁴¹ Queen Victoria’s Journal, 5 January 1881, Princess Beatrice’s copies, 74:11–13. See also: Hardie, *Political Influence*, 75, 97–98 for changes made to the speech from the throne at the Queen’s insistence. Compare Margaret Homans, *Royal Representations: Queen Victoria and British Culture 1837–1876* (Chicago: University of Chicago Press, 1998), xxix.

⁴² Longford, *Victoria R. I.*, 470–471; Baird, *Victoria*, 416.

⁴³ Baird, *Victoria*, 421–422, 426.

⁴⁴ Longford, *Victoria R. I.*, 429–431. Note also earlier threats of abdication at 412—it was not an uncommon threat from Queen Victoria.

⁴⁵ Longford, *Victoria R. I.*, 430, referring to Sir Henry Ponsonby’s recollection of a statement by Gladstone. Compare Hardie’s view that a threat of abdication was of far less importance than a Minister’s threat of resignation, as abdication was a threat not likely to be carried into effect: Hardie, *Political Influence*, 122.

⁴⁶ Hardie, *Political Influence*, 86–87, 128–131; Longford, *Victoria R. I.*, 486; Baird, *Victoria*, 422.

⁴⁷ Hardie, *Political Influence*, 110.

⁴⁸ Hardie, *Political Influence*, 111–112.

whether it was wise to do so, she observed, “must depend on the circumstances.”⁴⁹

While the Queen cultivated the image of the domesticated widow pottering around in the countryside who was mother to her nation,⁵⁰ she used her mourning as a means of exercising soft power.⁵¹ Her withdrawal from public life misled the public,⁵² perhaps including Bagehot, into believing that her involvement in politics was confined to consultation, encouragement, and warning. Julia Baird has added that Queen Victoria also exercised “the right to berate, withdraw support, shape Cabinets, scheme against prime ministers, and instruct military officers.”⁵³ The Queen herself declared that she “*cannot* and will not be the Queen of a *democratic monarchy*.”⁵⁴

Curiously, Queen Victoria did not support women’s suffrage⁵⁵ and believed that women should not hold political power, while at the same time wielding it brutally and not being prepared to relinquish it to her son. Nonetheless, although she may not have supported political rights for women, her role on the throne still provided an example and support for early feminism and female suffrage.⁵⁶ Hardie summed up Queen Victoria’s reign from the death of Prince Albert in 1861 to 1901 by concluding that she “ruled as well as reigned.”⁵⁷

The Development of Soft Power from Edward VII to George VI

During the reigns of the male sovereigns between Queen Victoria and Elizabeth II, Bagehot’s depiction of the role of the monarch began to take root, at least in the mind of the public. Behind Palace doors, however, there was a greater degree of flexibility. Lord Esher, in advising George V, observed that:

If the Sovereign believes advice to him to be wrong, he may refuse to take it, and if his minister yields the Sovereign is justified. If the minister persists, feeling that he has behind him a majority of the people’s representatives, a constitutional Sovereign must give way.⁵⁸

Bradley and Ewing have refined this proposition by observing that the monarch “cannot reject the *final* advice that ministers offer.”⁵⁹ This raises the question of what makes advice “final,”

⁴⁹ Longford, *Victoria R. I.*, 516. Compare Hardie’s view that the dismissal of Melbourne’s Government in 1834 by William IV was done “at the cost of proving that it could never be done again,” which was why, he claimed, Queen Victoria did not dismiss her government in 1880: Frank Hardie, *Political Influence*, 234.

⁵⁰ Dorothy Thompson, *Queen Victoria: Gender and Power* (London: Virago Press, 2001), 130, 142; Homans, *Queen Victoria*, 58–99.

⁵¹ Jane Ridley, “Bertie Prince of Wales: Prince Hal and the Widow of Windsor” in *Royal Heirs and the Uses of Soft Power in Nineteenth-Century Europe*, ed. Frank Lorenz Müller and Heidi Mehrkens (New York: Palgrave Macmillan, 2016), 123–126.

⁵² Thompson, *Queen Victoria*, 125.

⁵³ Baird, *Victoria*, 428.

⁵⁴ Hardie, *Political Influence*, 121, quoting from Letter by Queen Victoria to W. E. Forster, 25 December 1880.

⁵⁵ Longford, *Victoria R. I.*, 395; Baird, *Victoria*, 397.

⁵⁶ Hardie, *Political Influence*, 140; Thompson, *Queen Victoria*, 27.

⁵⁷ Hardie, *Political Influence*, 238.

⁵⁸ Ivor Jennings, *Cabinet Government*, 3rd ed. (Cambridge: Cambridge University Press, 1961), 337, quoting from the *Esher Papers*. See also: Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford: Clarendon Press, 1995), 70.

⁵⁹ A.W. Bradley, K.D. Ewing, and C.J.S. Knight, *Constitutional and Administrative Law*, 16th ed. (Harlow: Pearson, 2015), 240 (emphasis added).

given that any acquiescence by ministers in the face of refusal of advice by the Sovereign necessarily means it was not “final.”

During this period, while the sovereign seriously contemplated the exercise of reserve powers on a number of occasions, such as the refusal of dissolutions in 1910⁶⁰ and 1924,⁶¹ this was stymied by the absence of anyone else who would be able to form a stable ministry. The sovereign’s powers were primarily exercised through persuasion, such as the insistence a dissolution be held before the sovereign would be prepared to swamp the House of Lords or assent to Home Rule for Ireland.⁶² It was royal pressure that caused the Prime Minister to request an election—not the formal exercise of a reserve power.

Royal influence was maintained through the strengthening of the practice, which had first taken root in Queen Victoria’s time, that advice to the sovereign must first be given informally and approved before formal advice was given. This was established at the 1930 Imperial Conference as a convention in relation to advice from Dominion ministers, who were given the right to advise the sovereign directly as a consequence of the Crown becoming divisible. In advising the sovereign about the appointment of a vice-regal officer, a Dominion Prime Minister was first required to engage in informal consultation through the sovereign’s Private Secretary, before giving any formal advice.⁶³ This gave the sovereign the flexibility to reject or at least pressure change to advice at the informal stage, without ever being seen to reject formal ministerial advice.

Breach of this convention, however, could be punished only with royal displeasure. George V objected when the Australian Prime Minister, James Scullin, advised the appointment of Sir Isaac Isaacs as Governor-General. According to Lord Stamfordham, the King criticised Scullin for departing from the required practice of informal consultation and told him that “there was no record of the King’s wishes in such cases being ignored.”⁶⁴ Scullin was undeterred and Isaacs was eventually appointed, but without the customary expression of the King’s “pleasure” in doing so.⁶⁵

Elizabeth II: Exercises of Soft Power in the United Kingdom

Little is known of the extent to which Elizabeth II has exercised soft power in the United Kingdom due to the fact that documentary evidence of such action is kept secret.⁶⁶

⁶⁰ Maurice V. Brett, ed., *Journals and Letters of Reginald, Viscount Essex* (London: Nicholson & Watson, 1934), 3:34; Jennings, *Cabinet Government*, 414–415; Stanley de Smith and Rodney Brazier, *Constitutional and Administrative Law*, 8th ed. (London: Penguin Books, 1998), 124.

⁶¹ Harold Nicolson, *King George the Fifth: His Life and Reign* (London: Constable & Co., 1952), 400; Jennings, *Cabinet Government*, 426.

⁶² See further: Bogdanor, *The Monarchy and the Constitution*, 113–135.

⁶³ Imperial Conference 1930, “Summary of Proceedings,” Cmd 3717, 27. See also: Brendan Sexton, *Ireland and the Crown, 1922–1936* (Dublin: Irish Academic Press, 1989), 114.

⁶⁴ Joe Garner, *The Commonwealth Office 1925–68* (London: Heinemann, 1978), 67.

⁶⁵ Instead of announcing in the usual form that the King was “pleased to appoint,” the formal announcement simply said that the King “has appointed” Sir Isaac Isaacs as Governor-General of Australia. Note also that Elizabeth II was apparently displeased when Pierre Trudeau advised her to appoint Edward Schreyer as Governor General of Canada without any prior consultation: Philip Murphy, *Monarchy and the End of Empire* (Oxford: Oxford University Press, 2013), 154.

⁶⁶ Constitutional Reform and Governance Act 2010 (UK), Sched 7; Freedom of Information Act 2000 (UK), s37

From time to time, assertions are made of her involvement in political affairs, but usually this is based upon no more than the unattributable statements of those allegedly involved. For example, Hardman has contended that the Queen managed to overturn a decision of the Blair Government to terminate the Office of the Lord Chancellor. He said that “Palace sources are clear that the Queen put her foot down” and the office was restored. Hardman contended that the Queen was “entirely within her rights” to “square up to the government” and seek the reversal of its decision.⁶⁷ Similarly, it is claimed that the Queen successfully fought a rear-guard action to prevent herself from being displaced as head of state of Canada by the Governor-General in 1978.⁶⁸

More often, however, the Queen’s approach has been one of pre-emption or warning. For example, she was not happy about the fact that Parliament was not prorogued prior to the 1964 British general election. She made her displeasure known through the Privy Council Office, which passed on to the Prime Minister that “Her Majesty said She regarded tradition to be of value and importance and would not like to see, in the future, this occasion being used as a reason for abandoning the normal procedure of proroguing Parliament before dissolution.”⁶⁹ She also insisted upon her prerogative to refuse a dissolution, pointing out to prime ministers that they could only “request” a dissolution, not “advise” one.⁷⁰ According to Pimlott, if any prime minister sought formally to “advise” a dissolution, he or she was instructed to re-write it as a “request,” so as to preserve the royal prerogative.⁷¹ It will be interesting to find out, when records are finally released in the future, how the Queen reacted to the abolition of this prerogative altogether in 2011 and what negotiations took place with her.⁷² It will also be interesting to see whether the Queen gave any warning or raised any concern in relation to Prime Minister Johnson’s controversial and unlawful prorogation of Parliament in 2019. It was widely reported in the British media that the Queen sought legal advice on her power to dismiss the Prime Minister during the prorogation crisis.⁷³

Academics often contend that if the Queen rejected ministerial advice, her government would resign in protest, causing a major constitutional crisis.⁷⁴ In practice, this is extremely unlikely. No prime minister wishes to engage in a conflict with a popular sovereign. As a consequence, ministers will ordinarily acquiesce to the sovereign’s will rather than cause a

and s63(2E). The Royal Archives will also not provide access to archival material on a reigning monarch. Note, however, that even the public release of letters between the Australian Governor General, Sir John Kerr, and the Queen from 1974 to 1977 did not reveal any significant exercises of power by the Queen:

<https://www.naa.gov.au/explore-collection/kerr-palace-letters#:~:text=The%20Kerr%20Palace%20Letters%20are,1974%20and%205%20December%201977.>

⁶⁷ Robert Hardman, *Our Queen* (London: Arrow Books, 2012), 184–185.

⁶⁸ Ben Pimlott, *The Queen: Elizabeth II and the Monarchy* (London: HarperCollins, 2001), 456.

⁶⁹ Letter by Godfrey Agnew, Privy Council Office, to D.J. Mitchell, Principal Private Secretary to the Prime Minister, 17 September 1964: UK National Archives [TNA] PREM 11/4756.

⁷⁰ Letter by Sir Michael Adeane to Derek Mitchell, Principal Private Secretary to the Prime Minister, 6 September 1964: TNA PREM 11/4756. See also: Pimlott, *The Queen*, 341.

⁷¹ Pimlott, *The Queen*, 341.

⁷² Fixed-Term Parliaments Act 2011 (UK).

⁷³ Cahal Milmo, “Queen ‘sought advice’ on sacking Prime Minister, source claims,” *I News*, 29 September 2019, <https://inews.co.uk/news/uk/queen-sought-advice-sacking-prime-minister-638320>.

⁷⁴ See, for example: Robert Blackburn, “Monarchy and the Personal Prerogatives,” *Public Law* 3 (Autumn 2004): 546, 558–559.

political crisis and risk their own jobs. One small example arose in 1965 when the Postmaster-General, Tony Benn, sought to remove the Queen's head from British stamps. The Queen resisted. Pimlott observed that Benn's ministerial advice to the Queen was only as binding as the Prime Minister's support for it. As the Prime Minister was not prepared to waste his political capital on such a dispute, the Queen won and Benn lost. Benn was informed by the Prime Minister's Principal Private Secretary that in practice, the Queen can reject the advice of her ministers. Her head remained on the stamps.⁷⁵

It would be a different matter if the conflict were played out in public. The Queen would not, for example, refuse royal assent to a bill that had passed the Westminster Parliament, except in the most extreme circumstances,⁷⁶ as this would be a public act that was inevitably perceived as being anti-democratic.⁷⁷ On the other hand, this does not stop the Queen from using soft power well in advance of the introduction of bills and outside of the public view to cause them to be altered or prevent them being proceeded with altogether.

This use of soft power is facilitated by the procedural requirement that the sovereign's consent must be obtained in advance before the introduction of any bill that affects the prerogatives of the sovereign, the hereditary revenues of the Crown, or the personal property or interests of the sovereign and the Duchy of Lancaster.⁷⁸ Government departments are required to forward such bills to the Queen's private solicitors at least 14 days prior to the proposed date for introducing the bill, in order to obtain consent.⁷⁹

If the Queen were no more than a rubber-stamp, there would be no point in her paying a firm of solicitors for private advice upon such bills and their effect on her interests. The requirement that her consent be obtained before the introduction of the bill into parliament gives the Queen time to exercise her soft power to influence the content of the bill or its progress if she is so minded in circumstances where it will not become publicly known.⁸⁰ While a parliamentary committee concluded that it had "no evidence to suggest that legislation is ever altered as part of the Consent process,"⁸¹ this is not surprising as any such evidence is

⁷⁵ Pimlott, *The Queen*, 365.

⁷⁶ Note the bitter debate in the United Kingdom about whether the Queen could or should refuse royal assent to a bill to prevent a no-deal Brexit, passed against the Government's wishes, if advised by ministers to refuse assent. See, for example: Robert Craig, "Could the Government Advise the Queen to Refuse Royal Assent to a Backbench Bill?" *UKCLA Blog*, 22 January 2019; Jeff King, "Can Royal Assent to a Bill be Withheld if so Advised by Ministers?" *UKCLA Blog*, 5 April 2019; and John Finnis, 'Royal Assent – A Reply to Mark Elliott', *UKCLA Blog*, 8 April 2019.

⁷⁷ The most likely reason for refusing assent, however, would be to protect democracy —e.g. if a bill were to extend Parliament indefinitely or give effect to other anti-democratic measures. See further: Jennings, *Cabinet Government*, 412; Geoffrey Marshall, *Constitutional Conventions* (Oxford: Clarendon Press, 1984) 26–27; and Graham Wheeler, "Royal Assent in the British Constitution," *Law Quarterly Review* 132 (2016): 495, 498.

⁷⁸ Malcolm Jack, *Erskine May's Treatise on the Law, Privileges Proceedings and Usage of Parliament*, 24th ed. (London: LexisNexis, 2011), 660–664. See also: UK House of Commons, Political and Constitutional Reform Committee, "The impact of Queen's and Prince's Consent on the legislative process" HC 784 (2014) 4 [5].

⁷⁹ On the procedure for sending bills to the Queen's private legal advisers, see: UK House of Commons, Political and Constitutional Reform Committee, "The impact of Queen's and Prince's Consent on the legislative process," HC 784 (2014) 7 [9].

⁸⁰ Compare the view of Homans that "Queen's consent" is a mark of the Queen's passivity: Homans, *Queen Victoria*, xxvii.

⁸¹ UK House of Commons, Political and Constitutional Reform Committee, "The impact of Queen's and Prince's Consent on the legislative process," HC 784 (2014) 16 [35].

confidential and could not be obtained under freedom of information⁸² or other legal means. As discussed below, however, it has occurred, at least in relation to the *Australia Acts* 1986 (UK) and (Cth).

Thou Shalt Not Embarrass the Queen

The Queen's soft power is in part dependent upon the great social and political pressure "not to embarrass the Queen" by requiring her to act against her will or putting her in a position where she will need to reject advice or otherwise exercise her reserve powers. While this proposition applies to all sovereigns, it is given greater strength when the sovereign is female. As in Queen Victoria's day, it is still regarded as ungentlemanly for a male politician to seek to impose his will on a female sovereign, especially when she is young, a mother, or elderly—which covers most of a female sovereign's reign.

The risk of regal embarrassment has been used as a lever by the British Government and Palace officials to pressure the resignations of Governors-General from Sierra Leone, Fiji, and St Kitts and Nevis.⁸³ In the United Kingdom, political behaviour is also constrained by the premise that embarrassment to the Queen should be avoided at all costs. Hence, prior to the introduction of fixed-term Parliaments, a British prime minister would not ask for a fresh dissolution shortly after the previous election, as to do so would be seen as embarrassing to the Queen because it would force her to exercise her discretion to refuse a dissolution.⁸⁴ Similarly, it had been argued in relation to Canada that there would be no request for the prorogation of parliament as a means of avoiding a no-confidence motion, as this would also be seen to be embarrassing to the Queen.⁸⁵ When Prime Minister Johnson in the United Kingdom advised the Queen to prorogue parliament in circumstances where he had lost control of the House of Commons, much of the criticism directed towards him, particularly in the headlines, concerned how he had drawn the Queen into the dispute and "lied to the Queen."⁸⁶

The notion of "embarrassing the Queen" has spread beyond politicians to more common parlance and the achievement of other political aims. In 2017 over 1.85 million people in Britain signed a petition that stated that:

⁸² Freedom of Information Act 2000 (UK), s37. There is an absolute exemption for information relating to communications with or on behalf of the sovereign, the heir to the throne and the second in line to the throne until at least 5 years after the death of the relevant member of the royal family and at least 20 years from the creation of the document.

⁸³ See: Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge: Cambridge University Press, 2018), chapter 11.

⁸⁴ Pimlott, *The Queen*, 421.

⁸⁵ Bruce Hicks, "Rehabilitating Constitutional Conventions," *National Journal of Constitutional Law* 31, no. 1 (2012): 91, 106.

⁸⁶ "Boris Johnson lied to the Queen – in normal times no Prime Minister would survive this," *The Scottish Sun*, 25 September 2019, <https://www.thescottishsun.co.uk/news/scottish-news/4760102/boris-lied-to-the-queen/>; Philip Stephens, "Boris Johnson's lies are plunging Britain into a dark morass," *The Financial Times*, 19 September 2019, <https://www.ft.com/content/645d8786-d9f2-11e9-8f9b-77216ebe1f17>; Mikey Smith, "Boris Johnson 'apologises to the Queen' for embarrassing her over Brexit," *The Mirror*, 29 September 2019, <https://www.mirror.co.uk/news/politics/boris-johnson-apologised-queen-embarrassing-20327147>.

Donald Trump should be allowed to enter the UK in his capacity as head of the US government, but he should not be invited to make an official State Visit because it would cause embarrassment to Her Majesty the Queen.⁸⁷

The Exercise of Soft Power by the Queen in Relation to the Enactment of the Australia Acts (1986)

Although knowledge of the Queen's exercise of soft power in the United Kingdom is very limited, an impression of the extent of her power and the manner in which it is exercised can be gleaned from documentary evidence concerning the Queen's role in the Australian States in the 1970s and 1980s. It reveals the concern exhibited by politicians not to "embarrass" the Queen, the willingness of the British Foreign and Commonwealth Office ("FCO") to bend to the Queen's will on diplomatic matters, the alteration of bills and the development of conventions at the Queen's behest, and an extremely rare instance of the Queen's hand being forced by the combined will of seven Australian Governments.

The matter that most agitated the Queen was the prospect of receiving conflicting advice from different governments. This concern dated back to 1973 when two Australian states petitioned her to refer to the Judicial Committee of the Privy Council for an advisory opinion the question of who owned the seabed off the coast of Australia—the relevant Australian State or the Commonwealth of Australia. They sought to advise her to act in her capacity as "Queen of Tasmania" and "Queen of Queensland."⁸⁸ The Australian Commonwealth Government advised her not to refer the matter to the Privy Council.⁸⁹

On 7 June 1973, the Queen requested advice from the British Government as to who should advise her in these circumstances. After taking advice from constitutional experts, such as S.A. de Smith, and the Crown Law Officers, a British Cabinet committee concluded that the Australian states remained dependencies of the British Crown, despite Australia's independence at the national level. British ministers therefore continued to advise the Queen in relation to Australian state matters while Australian federal ministers advised her in relation to matters concerning the national level of government in Australia.⁹⁰

As both the states and the Commonwealth had an interest in the dispute over the ownership of the seabed, a risk of conflicting advice arose. In this case, the British Government decided to advise the Queen to act in the same manner advised by the Commonwealth Government, so that she did not have to make a choice.⁹¹ It expressly took into account as a relevant factor "the embarrassment to the Queen resulting from the receipt

⁸⁷ United Kingdom, *Hansard*, House of Commons, 20 February 2017, vol. 621, col 247 WH.

⁸⁸ Copies of these petitions may be found in National Archives of Australia [NAA] A432 1973/3262, Part 2.

⁸⁹ See the detailed account in: Anne Twomey, "Constitutional Convention and Constitutional Reality," *Australian Law Journal* 78 (2004): 798; and Anne Twomey, *The Chameleon Crown: The Queen and Her Australian Governors* (Sydney: Federation Press, 2006), 115–129.

⁹⁰ Record of meeting of the Defence and Overseas Policy Cabinet Committee, 30 July 1973: TNA FCO 24/1651. This conclusion was supported by advice from the Lord Chancellor and the UK Attorney-General that the UK had a right to advise the Queen on the petitions.

⁹¹ Cabinet Minute DOP(73) 77 (for the Defence and Overseas Policy Committee of the UK Cabinet), 17 December 1973: TNA FCO 24/1619. See also the letter to Sir Martin Charteris, Buckingham Palace, 31 December 1973, confirming Cabinet approval of the Minute.

of conflicting advice.”⁹²

The Queen made her concerns clear to Commonwealth Government officials. Sir John Bunting, Australia’s High Commissioner in London, recorded during a visit to the Queen at Buckingham Palace in March 1975 that although “she did it with a smile” the Queen raised her “Australian predicament” with him and the difficulty that would arise if she had, in effect “to write conflicting letters to herself.” Bunting told the Queen that the Prime Minister, Gough Whitlam, was “conscious of her problem and would be seeking not to embarrass her.”⁹³

Whitlam had already been defeated by the Queen’s will in relation to her “royal style and titles” in 1973. Amongst other changes, he wished to remove “by the Grace of God” and “the Second” from her title, as she was the only Queen Elizabeth who had ever been Queen of Australia. The Queen insisted on maintaining “by the Grace of God,” as it was “important to her,” and her designation as “Elizabeth II,” for political reasons concerning Scotland.⁹⁴ Even Whitlam, a Prime Minister who had insisted that the Governor-General must act on his advice, acceded to the Queen’s will.⁹⁵

The Queen’s concerns about the Australian states were raised again in 1979, when it was announced in the Governor’s speech on the opening of the New South Wales Parliament that it would enact legislation to terminate Privy Council appeals from State Courts and require that the Queen appoint the State Governor upon the advice of the State Premier.⁹⁶ This speech was, according to custom, laid before the Queen.

The FCO sought to deal with this development through diplomatic channels, noting that it retained the power to advise the Queen not to assent to a bill from an Australian state if it would have a “seriously adverse effect on Her Majesty’s constitutional position.”⁹⁷ It also noted that it would seek a means of pointing out to the New South Wales government “the potential embarrassment to The Queen if we were forced to advise Her to refuse assent to New South Wales constitutional legislation on the grounds that it was against the letter of existing constitutional law, however much we might agree with its spirit.”⁹⁸ In the meantime, however, it proposed that the ordinary reply be sent to the Governor noting that the speech had been laid before the Queen.

The Queen, through her Private Secretary, rejected this approach. She wanted a direct warning to be sent through the Governor to the New South Wales Government. Her Private Secretary, Sir Philip Moore, wrote to the FCO:

Her Majesty is very reluctant to agree that you should inform the Governor that his speech has been laid before The Queen without drawing his attention to this paragraph [concerning the appointment of the

⁹² Opinion of the Crown Law Officers, 28 November 1973: TNA FCO 24/1619; and Cabinet Minute DOP(73) 77, 17 December 1973: TNA FCO 24/1619.

⁹³ Letter by Sir John Bunting to Mr J. Menadue, Secretary, Dept of Prime Minister and Cabinet, 17 March 1975: NAA A 432 1973/3262 Prt 7.

⁹⁴ Note by Sir J Bunting 22 April 1973 on meeting with Sir M. Charteris at Windsor Castle on 21 April: NAA: A5391 CL 377.

⁹⁵ E.G. Whitlam, *On Australia’s Constitution* (Camberwell: Widescope, 1977), 234–235.

⁹⁶ NSW, *Parliamentary Debates*, Legislative Council, 14 August 1979, 9 (Sir R. Cutler).

⁹⁷ Memorandum by Mr Whomersley, Legal Adviser, FCO, to Mr Upton, FCO, 3 September 1979: UK Government FOI papers (“UKG”) FPA 012/1/79.

⁹⁸ Letter by Mr Walden, PS to the Foreign Secretary, to Mr Heseltine, Buckingham Palace, 2 October 1979: UKG FPA 012/1/79.

Governor and the abolition of Privy Council appeals]. Notwithstanding the opinion of your legal advisers that the absence of any comment could not be implied to be a judgement about the constitutional validity of such a Bill, The Queen feels it would be proper at this stage to warn the Governor that the Foreign and Commonwealth Secretary might well be forced to advise Her Majesty to refuse Her assent.⁹⁹

In deference to the Queen's wishes, and contrary to its own view of how best to deal with the matter, the FCO negotiated with the Palace the form of a despatch to the Governor that would operate as a "warning shot across the bows of the State Government."¹⁰⁰ The Queen's Private Secretary approved of the despatch that he said met "very well" the point previously made by the Palace.¹⁰¹ The despatch, by the Foreign Secretary, Lord Carrington, stated that it would be his duty to advise the Queen to refuse her assent to legislation of this kind, whatever its merits.¹⁰² This warning was effective, with the New South Wales Government abandoning the request for royal assent to the bill to abolish Privy Council appeals, which had already passed both Houses, and eventually dropping its proposal for legislation concerning the appointment of the Governor.¹⁰³ Instead, the New South Wales government supported inter-governmental negotiations to terminate residual links with the United Kingdom, which was to culminate in the enactment of the *Australia Acts* 1986 (UK) and (Cth).

This process again raised the issue of who would advise the Queen in relation to Australian state matters if British ministers ceased to do so. The states sought to advise the Queen directly, as they did not trust Commonwealth ministers to advise her on their behalf. At a premiers' meeting in 1982, the Australian Prime Minister, Malcolm Fraser, refused to advise the Queen to accept advice directly from Australian state premiers on state matters, as he said he was not prepared to put the Palace and the Queen in the "embarrassing position" of having to reject it.¹⁰⁴ The Australian Attorney-General, Senator Peter Durack, had been informed by Sir Philip Moore, the Queen's Private Secretary, that it was not acceptable to the Queen that she be advised separately by state premiers, and Fraser felt obliged to protect the Queen's interests by not advising her to act contrary to her will.¹⁰⁵

After a change in Government in Australia, the Hawke Labor Government proved less concerned about the protection of the Queen from embarrassment and more interested in cutting off residual links with the United Kingdom. The possibility of conflicting advice was addressed by reducing the matters upon which the states could directly advise the Queen to the appointment and removal of the state Governor and advice to the Queen on her acts while physically present in a state. It was also proposed that the system of providing informal advice to the Palace first, before informal advice is submitted, would be retained.¹⁰⁶

⁹⁹ Letter by Sir P. Moore, to Mr Walden, Private Secretary to the Foreign Secretary, 4 October 1979: UKG FPA 012/1/79.

¹⁰⁰ Letter by Mr Walden, Private Secretary to the Foreign Secretary, to Sir P. Moore, October 1979: UKG FPA 012/1/79.

¹⁰¹ Letter by Sir P. Moore, to Mr Lyne, 5 November 1979: UKG FPA 012/1/79.

¹⁰² Letter by Lord Carrington to Sir Roden Cutler, 19 November 1979: UKG FPA 012/1/79.

¹⁰³ See a more detailed account of what occurred in: Twomey, *The Chameleon Crown*, 175–190.

¹⁰⁴ Transcript of Premiers' Conference, 24 June 1982, 21.

¹⁰⁵ Record of Meeting between Lord Belstead and Senator Durack, 6 July 1982: UKG FPA 012/1/82 Pt A.

¹⁰⁶ Australia, "Aide-Memoire" provided by Senator Evans to Sir Philip Moore, February 1985: UKG PREM "Australian States: Residual Constitutional Links" 1984-6.

The Queen's Private Secretary, on her behalf, continued to object to the notion of the Queen receiving advice directly from state premiers. He argued that British ministers provided protection to the Queen by refusing to pass on to her objectionable advice,¹⁰⁷ whereas there was no guarantee that Australian state ministers would not make "outlandish proposals" to the Queen.¹⁰⁸ He raised with Australian ministers the risk that the Queen, when in a state, might be advised by a premier to make a speech from the throne that attacked the Commonwealth Government.¹⁰⁹

At the insistence of the Queen's Private Secretary, amendments were made to the draft *Australia Acts*. The word "only" was inserted in s7(2) to make it clear that the Queen could not be asked to exercise a power to override an action of a state governor. Section 7(4) was amended to state that the Queen was "not precluded from" exercising her powers in a state. This was included as code to ensure that if the Queen so wished, she could refuse to act upon the advice of state premiers, particularly if it was the "outlandish advice" she feared. An alternative and more explicit draft, which provided that "Her Majesty shall not be obliged to accept advice [from the state premier while in the state]," was dropped because it was regarded as being too obvious in its offence to the principle of responsible government.¹¹⁰

These changes were still not enough to obtain the Queen's consent to the introduction of the legislation. At a meeting of Commonwealth and state attorneys-general on 2 May 1985, the attorneys were advised that "the Monarch has indicated that when she is in the State she wants to do what she wants to do."¹¹¹ When one state representative expressed scepticism that the Queen was all that concerned with the matter, the Commonwealth attorney responded adamantly that she was personally involved with the issues and that the delay in enacting the *Australia Acts* was due to the "real and personal" difficulties with the bills held by the Queen.¹¹²

The final change that was made was the agreement of a new convention that the Queen would not exercise her functions while present in an Australian state except by prior and mutual agreement. Agreement to this convention was sent by all the States through the British Foreign Office to the Queen¹¹³ and was recorded in the second reading speech in each State.

As the Queen's consent was required for the bills because they affected her powers, this was sought before they were introduced into the Westminster Parliament and the Australian Parliament.¹¹⁴ The Secretary of the Australian Department of the Prime Minister

¹⁰⁷ Letter by Sir P. Moore, to Sir Geoffrey Yeend, Dept Prime Minister and Cabinet, February 1985: UKG FPA 012/1/85 Prt B.

¹⁰⁸ Letter by Mr Appleyard, FCO, to Mr Butler, No 10 Downing St, 8 February 1985, regarding a meeting between the Foreign Secretary, Attorney-General and Sir Philip Moore: UKG FPA 012/1/85 Prt B

¹⁰⁹ Memorandum by Sir J. Leahy, UK High Commission, Canberra, to FCO, 21 February 1985, reporting a conversation with Senator Gareth Evans about a meeting with Sir P. Moore: UKG FPA 012/1/85 Prt B.

¹¹⁰ Telegram by Sir J. Leahy, UK High Commission, Canberra, to Dr D. Wilson, 3 April 1985, recording a meeting with Sir Geoffrey Yeend: UKG FPA 012/1/85 Prt C.

¹¹¹ Australia, Standing Committee of Attorneys-General Meeting, Transcript, 2 May 1985, item 9, 1.

¹¹² Australia, Standing Committee of Attorneys-General Meeting, Transcript, 2 May 1985, item 9, 2.

¹¹³ Letter by Mr Parker QC, WA Solicitor-General (on behalf of all the States) to Sir A Acland, FCO, 16 August 1985, confirming the agreement of all the States.

¹¹⁴ For constitutional reasons, substantively identical legislation was passed by the Parliaments of each Australian State, the Commonwealth of Australia, and the United Kingdom. See further: Anne Twomey, *The Australia Acts 1986: Australia's Statutes of Independence* (Sydney: Federation Press, 2010).

and Cabinet visited the Queen and provided the informal advice to her to consent to the package of bills, noting that it would also be the formal advice of her Australian governments, whether she gave her informal approval or not. The implication was stark: if she continued to object, she would have to reject the formal advice of seven Australian governments. The likely outcome would have been a republic.

In the circumstances, the Queen accepted the informal advice. Her Private Secretary noted that the Queen was “very chary” about doing so, but that she accepted that this was a consequence of the Australian system of federalism.¹¹⁵

The Queen was then formally advised by Prime Minister Hawke to consent to the Commonwealth version of the *Australia Act* on 31 July 1985, which she approved on 7 August 1985. She also received British ministerial advice from Baroness Young, the Minister of State for Foreign Affairs, on 14 August 1985, advising the Queen on behalf of the Australian states, as they were still British dependencies until the *Australia Acts* came into effect. It was in the following form:

The Baroness Young, with her humble duty to The Queen, begs to draw attention to the Advice of Her Majesty’s Government of the United Kingdom that it is in agreement with the proposals contained in the Request and Consent legislation which the Federal Government of Australia intends to introduce in order to sever certain residual constitutional links between Britain and Australia. The Federal and State Governments of Australia are in agreement to remove the links and the Federal Opposition has endorsed the proposals. Would Her Majesty be pleased to accept this Advice?¹¹⁶

Finally, the British Government again advised the Queen, this time in relation to her consent to the enactment of the British version of the *Australia Act*.¹¹⁷ It was only after the Queen had formally given her approval three times that the relevant bills were introduced and enacted, coming into force on 3 March 1986.

The Sovereign’s “Duty”

In 1986, the Queen’s Private Secretary wrote to *The Times* stating that the “Queen has the right—indeed the duty—to counsel, encourage and warn her government.” He added that she is entitled to express her opinions on government policy to her chief minister, but they are to be treated as entirely confidential communications between the Queen and her Prime Minister.¹¹⁸

The notion that the Sovereign has a “duty” to express opinions on policy matters to the government was expanded upon in the freedom of information litigation concerning the release of lobbying letters by the Prince of Wales to British ministers.¹¹⁹ It was argued that such

¹¹⁵ Letter by Sir Philip Moore, Buckingham Palace, to the Australian Prime Minister, Mr Bob Hawke, 19 June 1985.

¹¹⁶ Advice of Baroness Young to Her Majesty, 14 August 1985: UKG FPA 012/1/85 Prt G.

¹¹⁷ Advice by Sir Geoffrey Howe to Her Majesty, November 1985: UKG FPA 012/1/85 Prt G.

¹¹⁸ Sir William Heseltine, “The Queen and the Constitution,” *The Times*, 28 July 1986, 13. See also: Bogdanor, *The Monarchy and the Constitution*, 71; Rodney Brazier, *Constitutional Practice* 3rd ed. (Oxford: Oxford University Press, 1999), 188–189; and Bradley, Ewing, and Knight, *Constitutional and Administrative Law*, 241.

¹¹⁹ This litigation was instigated before the 2010 amendments preventing such access under the Freedom of Information Act 2000 (UK) came into effect.

advocacy fell within his training to be sovereign. The Upper Tribunal rejected this argument, finding that the lobbying of ministers by the Prince and the advocacy of causes fell outside the traditional rights of the monarch, as described by Bagehot, to be consulted, to encourage, and to warn.¹²⁰

This finding was rejected by the British Attorney-General, who issued a certificate denying access to the documents. He stated in his certificate:

In my view, it is of very considerable practical benefit to The Prince of Wales' preparations for kingship that he should engage in correspondence and engage in dialogue with Ministers about matters falling within the business of their departments, because such correspondence and dialogue will assist him in fulfilling his duties under [Bagehot's] tripartite convention as King. Discussing matters of policy with Ministers, and urging views upon them, falls within the ambit of "advising" or "warning" about the Government's actions. It thus entails actions which would (if done by the Monarch) fall squarely within the tripartite convention. I therefore respectfully disagree with the Tribunal's conclusion that "advocacy correspondence" forms no part of The Prince of Wales' preparations for kingship. I consider that such correspondence enables The Prince of Wales better to understand the business of government; strengthens his relations with Ministers; and enables him to make points which he would have a right (and indeed arguably a duty) to make as Monarch.¹²¹

This depiction of the role of the sovereign, as one that involves a "duty" to urge views upon ministers goes well beyond Bagehot's original description of the sovereign's rights, and certainly exceeds the publicly accepted view of the Sovereign's constitutional role. Yet a British minister was prepared to assert, publicly, that this falls squarely within the sovereign's role. This would seem to suggest that it is accepted practice for the Queen to lobby ministers and urge them to change policy.¹²² If this were truly the case, the Queen's actions would exceed the role that the public accepts should be filled by the sovereign.

Conclusion

The great success of Elizabeth II as monarch has been to keep her considerable exercise of soft power out of the public view so that it is not threatened by public scrutiny. In part, that success may have been supported by the fact that her predominantly male ministers have felt socially obliged to protect her interests and shield her from criticism. The proposition that one shall not "embarrass the Queen" remains strongly entrenched. Whether her male successor, the Prince of Wales, is capable of maintaining the same level of confidentiality and is granted the same level of ministerial protection once he becomes king remains to be seen.¹²³

¹²⁰ *Evans v Information Commissioner* [2012] UKUT 313 (AAC) [105] and [111].

¹²¹ Dominic Grieve, UK Attorney General, "Statement of Reasons under s 53(6) of the Freedom of Information Act," 16 October 2012. A copy is attached as Annex A to *R (Evans) v Attorney General and Information Commissioner* [2013] EWHC 1960 (Admin). The Minister's certificate was later quashed by the Court of Appeal and the Supreme Court: *R (Evans) v Attorney General and Information Commissioner* [2014] 1 QB 855; and *R (Evans) v Attorney General* [2015] AC 1787.

¹²² Most anecdotal reports suggest that the Queen is more subtle—not actively lobbying but leaving it to her staff to make her views known and apply the appropriate pressure.

¹²³ See, for example, the play "King Charles III" (Dramatists Play Service, 2016) by Mike Bartlett, which contemplates the difficulties that he might face in doing so.