

The Role of the British Crown on Security Issues

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Abstract

United Kingdom is a limited parliamentary monarchy, in which state sovereignty is exercised jointly by two basic political institutions: Royal Crown and Parliament. The credit for a successful political co-governance of these institutions, which are simultaneously bearers of popular sovereignty, are usually addressed to the Queen's lack of executive power to exercise power alone and hence all the restraint in the race for primate of governance. It goes even further considering that the Queen is quite weak and has only ceremonial functions, which do not disturb the Parliament. However, a careful researcher may notice that the Queen continues to affect the British Government in general and in particular on defence issues. Declassification of communication between Prince Charles and the Government in 2013, pointed out a continuing impact of the Queen and her son on many political issues, including those of defence and security. Since Britain has no codified constitution in a single document, it is not easy to determine the real power and competences of the Queen. It is even more difficult, because customary law and precedent prevail. Therefore, the real definition of the role of the Queen in general in the British Government, can be done by studying the culture, structure and constitutional practice. On their basis I will try to determine the real impact of the Queen in matters of defence and security, whether through her prerogatives in relation to the Government and Parliament, or through moral and informal influence in relation to the Prime Minister and particular ministers.

Keywords: Crown, Queen, Prerogative, defence and security, Supreme Commander.

Introduction

The form of government in England is the typical form of parliamentary monarchy, in which the executive power is formally under the authority of the King, but practically is exercised by the Government on behalf of the King. It says, "the Queen may rule, but the Prime Minister and ministers govern" (Bradley & Ewing, 2007, 242). The British model of governance is one of the most stable political systems in the world, which has weathered the revolutionary tendencies by occasional sectarian reforms without touching the balance between the traditional legitimacy of the Crown and the representational legitimacy of the Parliament. The originality of the system is rooted in the great compromises after the "Glorious Revolution" (1688), between the representatives of popular sovereignty and those who insist on the sovereignty of the King.

Undoubtedly, in this battle much of the contribution came from Thomas Hobbes' and John Locke's philosophical deliberations, as well as from the French philosophers Jean-Jacques Rousseau and Charles Louis de Montesquieu. Characteristically, the English political culture did not accept entirely any of the theories of the time: neither Hobbes' theory on state absolutism (Hobbes, *Leviathan*, 1651), nor the absolutism of the "general will" of Russo (Rousseau, *Du contrat social*, 1762), and even Locke's

liberalism on the legal limitation of power (Locke, *Second Treatise of Civil Government*, 1690). So the people of England and their political elites proved to be more selective in the selection of political theories creating a specific model of governance, which is based on the great balance between state sovereignty, represented by the King and popular sovereignty, represented by the Parliament.

The British Monarchy represents an example of limited parliamentary monarchy, whose model has been followed by most constitutional monarchies. We call it a limited parliamentary monarchy and not a constitutional monarchy, not for the fact that there no codified constitution in a document, but rather for the fact that the English Parliament is the main body that actually exercises the sovereignty of the people (Goldsworthy, 2010; Barnett Hilaire, 2011, etc.) and which is unlimited in passing laws, therefore, also in the adoption of laws defining the powers of the King. Indeed, the English Parliament is not restricted by any document of constitutional nature, which would limit it to the creation of the right, as is the case with constitutional democracy, in which the rights should be established within the norms and constitutional procedures.

The role of the English Queen is largely symbolic and ceremonial, bringing "dignity and solemnity in government", but there are other tasks on the basis of the reserved rights, which can be crucial to the functioning of democracy and the preservation of the continuity of the Kingdom. So far no one has managed to accurately describe all the tasks that are carried out personally by the Queen, for they are numerous and varied, which are not clearly defined, precisely because the English Kingdom has no written constitution and that the governance to a large extent relies on political tradition. As explained by the private secretary of Queen Elizabeth II: "Many formal acts of the Government seek its participation. Most state documents must be signed personally by the Queen and she must read a large number of reports, even those by ambassadors and suggestions they recommend for the Ministry of Foreign Affairs as well as minutes of meetings of the Government." (Bradley & Ewing, 2007: 245). The fact that the powers of the King / Queen are not clearly defined allows for different interpretations and also for the possibility of influence by the Crown on many political and governance issues.

All the reserved rights or royal prerogatives make up the main basis of the impact of the English Queen on governance and therefore also on foreign policy and security. Prerogatives, according to the prominent lawyer A. V. Dicey, constitute discretionary and arbitrary authority, which lie legally in the hands of the Crown. Any act the Executive performs legally despite parliamentary legislation, only on the basis of special rights (Barnet, 2002: 144). So one is dealing with specific, heritable rights, causing the supreme authority to formally remain with the Crown, i.e. the Queen, although realistically, on behalf of the Queen, it is exercised by the Government. The fact that these are certain rights stemming largely from the common law (*lex non scriptum* or common law), creates difficulties in counting them, and that creates the possibility of expanding or narrowing thereof, depending on the historical circumstances, both political and security ones. Paradoxically, says Hilaire Barnett, in a modern democracy, there is no comprehensive and authoritative catalogue of prerogatives, but it is undeniable. So far, despite the doctrinal efforts only the House

of Commons of the English Parliament has described some of the basic rights that come under the authority of the royal prerogatives, exercised either personally by the Queen, with or without consultation with ministers or which are exercised, on her behalf by the ministers and other government officials. According to the lawyers of the House, the royal prerogatives include the following rights:

- Appointing the Prime Minister;
- Cessation of Parliament and its dissolution;
- Granting consent on discussing laws concerning her prerogatives;
- approving and decreeing laws as passed by the Parliament;
- issuing of rules through decrees in the Royal Council (e.g. special parts of legislation on the civil service);
- granting pardons for prisoners;
- signing treaties;
- declaring war and signing peace, including competences to organize, check and classify armed forces;
- recognition of states;
- granting passports and providing consular services;
- granting honorary titles, awards and nobility titles;
- appointing of committees including royal commissions, etc.

(Office of Parliamentary Council, 2013)

There are a few other rights of educational, cultural, and even economic character, such as the right to trade privileges. However, we confine ourselves only to the powers that enable the influence of the Crown in government policies, or rather security policies.

One of the most prominent scholars of the English governance, Walter Bagehot, summarized all the powers of the Queen in three inalienable rights, which, according to him suffice for governance, if used by the holder. According to him, these rights are the following: the right to be consulted; the right to encourage and the right to warn (Bagehot, 2001: 64). On the basis of these rights the Queen... "expects to be informed and her advice be respected. If the opposite happens it is considered an act of insincerity towards the Crown and it bears political consequences. She expects that especially on foreign matters she should be consulted in advance ..." (Bagehot, 2001: 65). It is precisely thanks to these rights, that the Crown goes beyond what was thought to have been its task. In the English political culture it is taken as granted that the Crown "does more than it appears" (Bagehot, 2001: 55). Its political engagement and influence in all government policies developed within the framework of these rights. A King or Queen that has all the information for all sectors of government up to the reports of ambassadors, along with their recommendations on foreign policy, even minutes of meetings of the government and with whom or to whom the Prime Minister is obliged by custom to meet in weekly audiences, can no doubt can influence greatly on the government policy making. Furthermore, special meetings of Ministers to discuss issues from their domains, or draft laws which they introduce and which require the consent of the Queen, are possibilities for legitimate impact on the basis of the mentioned prerogatives as summarized in the above.

Most connoisseurs of the British political system give the meetings of the Queen with Prime Ministers or ministers individually great importance for the English political decision-making. The head of the Crown with his/her moral authority and the ability of a well-informed speaker, precisely on the basis of the right to be informed and to take advice from, and the right to warn may be an important factor in governance. According to Lord Esher, one of the advisers of King Edward VII and George V, "the Monarch has dual personality. He can express an opinion on the behaviour of the minister and measures taken by him. He may try to affect their work. He may postpone decisions in order to be given more time for reflection. He/she may reject the advice of the Minister to the point when forced to choose between accepting the advice or loss of services of the ministers. If the Sovereign believes that the minister's advice is wrong, he may refuse to accept it, but if his minister consents, the Sovereign is justified. If the minister insists on his opinion, sensing that he has the support of the majority of the representatives of the people the Sovereign must waive" (Bogdanor, 1995: 70).

Accordingly, most of the king's prerogatives are exercised jointly with the Prime Minister and ministers due to mutual consultations and this has led the British government to be special, as compared to other constitutional monarchies. Communication with the Queen, and also with the Prince is also a privilege, as in the English political culture a cult has been created on the sanctity of the Royal Crown, and therefore it is not easy to ignore its ideas issued under the veil of secrecy. As of late (2013), after the declassification of some of the letters of Prince Charles, through which he communicated with some of Tony Blair's Government ministers, both the British public and comparative policy researchers were able to understand more about the impact that the Royal Court may have in the British political life, including matters of security. In one of these letters, the Prince wrote to the Prime Minister Tony Blair himself expressing his personal concern about the state of the British troops in Iraq. He even expressly requested the replacement of military helicopters Lynx, which faced difficulties in operating at high temperatures. For more, the Prince drew "**attention** for his fears if the military forces will be able to carry out their mission in the absence of necessary resources" ("*The Guardian*", 05/13/2015).

II. Queen's prerogatives on matters of security

The rights reserved for the Queen on national security fall within the powers or prerogatives that are reserved for the Queen, but which are exercised by the Prime Minister and ministers of the respective sectors of defence, interior affairs and foreign affairs. ... In decision-making on security issues, prerogatives are not personal, but rather exercised in consultation with the Government. As mentioned above, there is still no unified register of powers for the Queen, but rather different documents from different institutions, trying to describe them and have an impact on the British constitutional practice. In this regard, the British Ministry of Justice has prepared a report with a description of some of these rights, which fall within the royal prerogatives. These rights are the following:

- The right to declare war and make peace, or to start an urgent war hostility;
- The rights associated with the armed forces over war and related emergency circumstances;
- Sending armed forces abroad;
- Maintenance of British Royal Navy;
- The use of armed forces within the country in support of the police in order to maintain peace and order, as well as support for other civil authorities in order to ensure the functioning of the main institutions of the country;
- The direction and command of the armed forces under Her Majesty's authority;
- Organization, control and disposition of the armed forces;
- The use of private, commercial and other boats for emergency needs of the country;
- Regulating trade with the enemy;
- The rights of use and destruction of private property in cases of national emergencies. (Ministry of Justice, Final Report, SN / PC / 03861.2009: 32);

The right to a declaration of war and peace is a right reserved solely for the Queen who uses it based on the advice of ministers. Perhaps this is the main right, which still continues to have broad popular support in relation to other rights, which are part of the debate for their eventual change, namely the transfer of powers to the British Parliament. The Queen, in her position as Supreme Commanders of the Armed Forces, is determined to be near her soldiers, performing in peace and war service under her name. She meets regularly with the Chief of Staff of the Armed Forces and makes frequent visits to military barracks in both England and in member countries of the United Kingdom.

That the Queen has a significant impact on defence and security issues is shown by a fact, which however formal, can have a decisive effect on the commitment of members of the security sector to achieve the objectives of their defence mission. Suffice it to read the two texts of the oath to members of the Armed Forces and members of the police, in which they vow to serve the Queen with dedication. Yet, while policemen solemnly swear (i.e. not before God) that they will serve the Queen, soldiers swear on "Lord Almighty that they would defend Her Majesty along with Heirs and Successors, and will observe and obey all orders of Her Majesty..."¹ Perhaps the fact that similar oaths are taken by members of Parliament and a number of other state officials make any other formal loyalty commitment to seem quite formal. But a politician's swearing the oath is not the same as a soldier's one. While a politician's oath may be but a political issue that has to do with legitimacy, a soldier's oath may become a legality issue, and of dignity of course. After all, cases of a politician sacrificing on behalf of the oath are rare, while for a soldier it is a mission. Therefore,

¹ I... swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors, and that I will, as in duty bound, honestly and faithfully defend Her Majesty, Her Heirs and successors, in Person, Crown and Dignity against all enemies, and will observe and obey all orders of Her Majesty, Her Heirs and Successors, and of the generals and officers set over me. (Army Act, 1955, c18).

'I.....of.....do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people; and that I will, to the best of my power, cause the peace to be kept and preserved and prevent all offences against people and property; and that while I continue to hold the said office I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law.' (Police Reform Act 2002, section 83).

this fact should be taken into account whenever one talks about the impact of the Queen on the defence and security of the country, for as long as her soldiers fight and give their lives under the oath.

The right of sending armed forces abroad is another prerogative of the Queen, which she exercises in consultation with the Government, regardless of Parliament. It is also a right that stems from the political legacy of monarchy and the common law. This prerogative is one of the most contested by the Parliament, which demands that the decision to engage the English Army abroad should obtain the Parliament's consent. The defence and security prerogatives also include taking measures in cases of emergency. This defence sector is primarily managed by secondary legislation, which is prepared and approved by the Queen in Her Royal Council. (Contingencies Act, 2004, Section 20)

III. Queen's impact through the legislative function

According to A. Dicey, the notion of Parliament in the English understanding includes the King, the House of Lords and the House of Commons. "These three bodies can be described as the "Crown in the House," (Dicey, 1982: 15).

The role of the Queen in the British Parliament, although formal and ceremonial, is very important, because it is of a constitutive character. The Queen convenes the first parliament session after the elections and opens the proceedings of each parliamentary session. Particularly influential is her speech, which although written and approved in the Government Cabinet represents country's main political orientations. In fact, the speech is an expression of a summarized program of the Cabinet of the parliamentary majority, and therefore represents the consenting views of the Crown, the cabinet and parliamentary majority. When it comes to the speech we will pause shortly to analyze one of the usual speeches of this character to highlight the primacy of the Crown in terms of representing the unity and national dignity, and also of the government on Her name, but on behalf of the Parliament. In Her last speech of 2015, in which the Queen opened the proceedings of the 59th Legislature and presented the government program, in no item of the program, did she forget pointing out that it comes to Her Government. In almost every new paragraph, she started with "My Government or My Ministers" expressing commitments to security, economic development and active international relationships, including commitment to the NATO mission, etc. Perhaps it seems too formal, but the British kids listen to the speech and grow with respect and trust on her political supremacy. And it really cannot be otherwise as there is no legal action whatsoever to deny her political patronage over the executive. In addition to this role, which with all its importance is mostly ceremonial and formal, the Queen, thanks to her prerogatives, can play a crucial role in the law-making process and their adoption through Her definite veto. The veto can be expressed through two institutions associated with the Queen's political and legal initiatives regarding the completion of the legislative process...

There are two political institutions of customary law (Common Law), through which the Queen may have an essential impact on the law-making process.

The first institute is the common institution on the enactment of laws passed by the

Parliament, which ends the procedure in the introduction of a law. It is called the Institute of Consent (Accent in English) and applied at the end of the legislative process. In these cases the Queen has three options: 1) to enact the law; 2) to veto it; or 3) to postpone its enactment. Cases of the use of veto are rare, but still exist as an important prerogative of the English Monarchy.

The second institute is the one giving consent for commencing the legislative procedure for issues of particular interest for the Crown. This institute is not used for any law, but rather for laws that affect the rights or prerogatives reserved for the Queen, as well as laws concerning the property interests of the Crown. (Office of the Parliamentary Counsel Report, July, 2015: 2.) Queen's or Prince's consent for a law means to permit the Parliament to debate on the law and does not affect the right of the Monarch not to give consent to the adoption of the law.

While the right of veto over laws has not been used in the last centenary that of giving consent to debate on certain laws has been used on several cases, even in the last decade. (Bentley, 2013). A most typical case to serve our paper is the rejection in 1999 of the law on military action against Iraq, as proposed by Labour MP Tam Dalyell. The law stipulated that military intervention abroad was not permitted without the consent of the Parliament. Article 1 of the bill said literally: "No Minister of the Crown or other person who acts or who purports to act on behalf of the Crown shall instruct, urge or incite any member of Her Majesty's armed forces to take military action against the territory, possessions or people of the Republic of Iraq without the prior approval of the House of Commons." The approval should come through Resolution, (Military Action against Iraq Bill, January 1999). The bill went as far as the first reading, as it never obtained the Queen's consent to continue proceedings in the second reading, while the consent was necessary since the provisions of the draft affect directly the prerogatives of the Queen to authorize sending English troops abroad.

IV. Parliament's attempts to limit the royal prerogatives

In addition to adopting the budget, which is a potent mechanism of parliamentary control of the executive, the British Parliament has another possibility of direct impact on issues of defence, through the adoption of the law on the Armed Forces. Since the Bill on Rights (1688), in order to have organized military forces in times of peace renewing the legal basis every five years through the adoption of the law on the armed forces is required, defining the powers, organization and functioning and discipline of the military.

But these mechanisms are not sufficient for parliamentary control of commitment of the armed forces abroad, whether within the country or abroad, in support of police forces in case of the need to preserve the rule of law and restoration of public order. Therefore there has been a continuous effort by the decision-making authority of the House of Commons, in cases when the engagement of the armed forces is required. After the failure of legislation introduced by the Laburiste Tam Dalyell in 2003 an important development occurred with an impact lasting to this day. For his first time, without being obliged, but for reasons of political legitimacy, the government of Tony Blair seek Parliament's consent to engage armed forces in the Iraq war. For the first

time and without being obliged, but rather for reasons of political legitimacy, Tony Blair's Government asked for Parliament's consent for engaging the armed forces in the Iraq war. The Parliament through a resolution authorized strikes against Iraq and this made the parliamentary precedent in cases involving the dispatch of armed forces abroad. However, this precedent never turned into a rule to be followed in the future. The Labour Government in 2007 announced a package of constitutional reforms, in the framework of which it suggested a proposal that a resolution of the House be passed giving Parliament the right to approve military engagements of "significant importance of non-routine deployments... without prejudicing the Government's ability to act to protect national security or without undermining operational safety or effectiveness". They are allowed only through the special parliamentary resolution. (House of commons, briefing paper, 7166: 3). Then the Conservative Government pledged itself to reforms through which it would transfer the prerogative over to the Parliament, but so far no approval of any legal act to formalize it as a parliamentary right occurred. Since that time until today, there have been some more cases where parliamentary approval is required for military commitment abroad and there were times when consent was not given.

Thus, in 2013 the Government filed a motion to authorize intervention in Syria against the Assad regime due to allegations that Assad had used chemical weapons against civilians. Debate on the motion failed to convince MPs, therefore, they voted against the authorization. The Government pledged to respect the will of the Parliament, although it was not obliged to do so. The approval of the Crown will suffice for the Government, for it is a royal prerogative. There have been other cases as the one of deployment in Mali, the fight against ISIS in Iraq, and finally the authorization for air strikes against ISIS in Syria, where the government has sought authorization of the Parliament and which was authorized.

Regardless of the cases treated here, one may conclude that the parliamentary commitment authorization of armed forces for war rather a need of Government's broad political support and division of responsibilities in the Parliament than a determination of the Parliament for greater parliamentary control on security issues. Therefore, although the debate and voting on these issues has become common, even today the Government has a mandate under the prerogatives of the Queen that despite the Parliament to decide on the use of armed forces within or outside the country.

Conclusions

From the above analysis of the role of the Queen in the British Government, especially in defence and security issues one may draw some conclusions:

First, the United Kingdom of Great Britain is a limited parliamentary monarchy, in which sovereignty truly belongs to the people, and the state or legal sovereignty is exercised jointly by the representatives of the people - the Queen and members of Parliament. Paradoxically, for the last four centuries coexisted two types of sovereignty: one of the Queen and one of the people, as they continue to have legitimacy.

Secondly, the Queen and her court have an impact on the English political life on the

basis of the prerogatives or powers reserved. Beyond that, the power of the Queen is exercised on the basis of the common law (Common Law) and constitutional practice, recognizing the fact that the Queen is entitled to be informed about everything she requests, and the right to be consulted, warn and encourage government policies. These rights in the context of the British culture and constitutional practice make the Queen "to do more than it appears".

Third, defence and security issues, as well as foreign affairs, continue to remain under the authority of the Queen, though exercised by the Prime Minister and ministers of the English Government. The Queen in her position as head of state is also Commander in Chief of the armed forces and therefore the armed forces cannot be used without her consent, neither inside nor outside the country. ... The national security strategy, although prepared by the Government, should result from consultation with the Royal Court and then approved by the Queen. Any military activity is done under her authority, despite the fact that most of the strategic orders are delegated to her political and administrative subordinates.

Finally, her impact on national policy is likely to be exercised through legislative power, part of which she is (Queen in the Parliament). Aside from the ceremonial opening of the legislature, she continues to have the final seal to the end of the legislative process. So, laws passed in Parliament cannot be published without a royal decree. Furthermore, the draft laws affecting her reserved rights cannot even be considered without her consent.

Finally, one may conclude that the Queen of the Great Britain has constitutional rights and capabilities to influence British politics in general, and defence and security policies in particular. Furthermore she has also responsibilities. Another issue is whether she can entrust a part of Her obligations to the Government thus making them accountable for the outcome.

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