

The State of the European Union's Monarchies

AN INTRODUCTION TO THE SERIES

Seven of the member states of the European Union are monarchies. They are, in alphabetical order, Belgium, Denmark, Luxembourg, The Netherlands, Spain, Sweden and the United Kingdom. It is to these European monarchies that the *European Constitutional Law Review* dedicates a series of articles. Its aim is to find answers to questions regarding their current organization and legitimation, the (remaining) monarchical competences or powers and the republican 'opposition'. The overriding aim is to see what the Union means for them and how monarchies can survive constitutionally in the European Union (if at all).¹

Before focusing on the individual states, the series offers two general contributions. The historical opening essay by W.H. Roobol, published in this issue and entitled *Twilight of the European Monarchy*, shows how over the last two centuries the European continent has become preponderantly republican. While in 1815 more than 99% percent of its inhabitants was subject to a monarch, this percentage has shrunk to 20 by 2008. The second general contribution, to be published in the next issue, is by Ulli Jessurun d'Oliveira. In his essay *The EU and Its Monarchies: Influences and Frictions*, he analyses the impact of Union membership on the monarchies and their compatibility with the values of the Union.

Let us shortly introduce the series and a few of its themes.

Continuing democratic encapsulation

The European Union monarchies are at the crossroads of history and modernity. Most of them are insolubly linked to their states' formation and very old, sometimes even rooted in the Middle Ages. The states concerned are, at least formally, also a species of the *regimen mixtum* so dear to Montesquieu and many other political thinkers: they are not only monarchies, but democracies as well. The ensuing ten-

¹The series is an offspring of the international conference 'The EU and the Monarchies' at the University of Leiden in October 2007. The conference was organized by Ulli Jessurun d'Oliveira, Pierre Vinken and Wim Voermans, who also contributed to organizing the series.

sion between the democratic and the monarchical element can only be absorbed by adaptation of either of the two.

Sometimes the democratic principle gives sway. In democracies all citizens are in principle eligible for all offices, but in the monarchies, the office of head of state is exempted. Most often, however, it is the monarchical element that has to bow its head, as the recent history of these states shows. In fact, the monarchies can only survive in democratic environment by constant adaptation. In Sweden, where the monarch is stripped of all competences and only fulfills symbolic and ceremonial functions, this process seems to have reached its terminus – short, of course, of the introduction of the republican form of government. In the other six countries, however, the monarchs formally still are invested with many of their traditional competences. An out of context reading of the Danish or Dutch constitutions would give the impression that the Dutch and Danish monarchs continue to play a central role in the constitutional system. But they too, as the well-known maxim goes, reign but do not rule.

The introduction of ministerial responsibility for acts of the monarch, who himself is politically irresponsible, has been a catalyst for this. The concept of ministerial responsibility in itself in no way precludes the monarch from playing a prominent political role – it simply demands that ministers are responsible towards parliament for the monarch's actions. But the combined efforts of the logic of responsibility – a person who is responsible wants control – and the democratic principle have driven the monarchs to the outskirts of the political system. Ministerial responsibility not only accentuated the already existing split in the executive *office*, but also provided the foundation for the split in executive *functions*. The ministers do the real political work; the monarch symbolizes and represents the unity and continuity of the state and has, in the famous words of nineteenth century political analyst Walter Bagehot, only the rights to be consulted, to encourage and to warn.²

But when it comes to monarchical powers, there is certainly more beneath the surface than that. At least in some states, some 'reserve powers' are attached to the ceremonial and representative functions, powers to be exercised by the monarchs in extraordinary situations. It is for instance suggested that the British monarch should disregard ministerial advice and act at his or her own discretion if this is necessary 'to ensure that the values which lie at the foundation of a constitutional system are preserved.'³ In addition, the role the monarchs play in more ordinary circumstances seems to be subject to variety. At least my impression is that the Belgian monarch has considerably more political room to manoeuvre than his counterparts in the other EU monarchies – surely the centrifugal powers op-

²Walter Bagehot, *The English Constitution*, 1st edn. 1867 (Fontana Press 1993).

³Vernon Bogdanor, *The Monarchy and the Constitution* (Clarendon Press 1995) p. 65.

erating in Belgium are not unrelated to this. Also, it is not ruled out that monarchs occasionally determine individual government decisions, as in the Netherlands both corroborated facts and persistent rumours have it.

On the other hand, the monarchical design is still not static: the democratic principle continues to demand sacrifices, as the following examples may testify.

- On 7 June 2009 Danish voters approved an amendment of the Act of Accession, giving men and women equal rights to succession to the crown. In the United Kingdom a similar change is being contemplated.⁴
- Luxembourg Grand Duke Henri in 2008 made use of one of his constitutional rights and refused to give ‘royal consent’ to a parliamentary act legalizing euthanasia. He thereby followed in the footsteps of his uncle, King Baudouin of Belgium, who refused to give royal assent to an act liberalizing abortion in 1990.⁵ Unlike the competences of the Belgian kings, those of the Luxembourg grand dukes did not survive unscathed. The Constitution immediately was amended to turn the discretionary power of the Grand Duke into an obligation. As of 12 March 2009, Article 34 of the Luxembourg Constitution reads that ‘Le Grand-Duc promulgue les lois dans les trois mois du vote de la Chambre.’
- With this amendment Luxembourg took a firm step in the direction of the Swedish model. This model for the first time in its history rallies considerable political support in the Netherlands. Two parties in the *Tweede Kamer*, the directly elected chamber of the Dutch parliament, are in fact preparing private member’s bills for a constitutional amendment evicting the Dutch Queen from the government, to which she belongs according to the Dutch constitution (Article 42(1)). However, the chances of the bills becoming law are slim.

In this context, the impact of the European Union on the status and functioning of the monarchies must also be mentioned. The subject is touched upon by Roo-bol in his opening essay and will be extensively discussed by Jessurun d’Oliveira in the next issue. Let me just add a minor example. It regards the rules on membership of the European Council.

Before the Treaty of Lisbon, Article 4 of the Union Treaty held that ‘The European Council shall bring together the Heads of State or Government of the Member States.’ As the choice to be made was to the discretion of the member states and the monarchs are heads of state, it was, at least theoretically, possible for a member state to be represented in the European Council by its monarch.

⁴ Anne Twomey, ‘Changing the Rules of Succession to the Throne’, *Public Law* (2011) p. 378.

⁵ See on this Lucas Prakke, ‘Swamping the Lords, Packing the Court, Sacking the King’, *EuConst* (2006) p. 116 at p. 141-145.

Since 1 December 2009, the date of the entry into force of the Treaty of Lisbon, this is excluded by Article 10(2) of the Union Treaty. That Article states that the 'Member States are represented in the European Council by their Heads of State or Government (...) themselves democratically accountable either to their national Parliaments, or to their citizens.' As the EU-monarchs are not accountable, neither to their country's parliament nor to their citizens, at least not in any current meaning of the concept, Article 10(2) bars their access to the European Council.

The sunset of the European monarchies?

The continuing democratic encapsulation of the monarchies can be regarded as circumstantial evidence for Roobol's rather cautious prediction in his opening essay that 'it is almost certain that the once brilliant sun of the European monarchy at some point will sink below the horizon.' Indeed, the big question is whether monarchies which are totally reduced to their ceremonial and symbolic functions are viable in the long run. One might seriously doubt whether, in the end, monarchical form without substance is an attractive prospect for both the represented societies and the reigning families. From the monarchical point of view, it is therefore wise that the Dutch Queen Beatrix and her son Crown Prince Willem-Alexander tenaciously cling to their (future) constitutional prerogatives.

But as Roobol also notes, 'the tricks of history, also of constitutional history, are inexhaustible.' And indeed, for the time being not all signs point in the same direction.

Royal marriages are a case in point. They continue to be of vital interest for the monarchies, although differently than before. Historically they were a means for establishing alliances with other reigning houses and maintaining (or altering) the balance of power between the states. These days they are popularity boosters – witness the marriage of British Prince William and his Kate on 29 April 2011. Nevertheless, the modern custom of the royals to marry persons of non-royal and even non-noble blood is not without danger: 'if princesses are not created by an accident of birth but can be contracted into the royal family from the ranks of the middle classes, why are they royal at all?', asked *The Economist's* columnist with the pseudonym Bagehot.⁶ Roobol makes the same point.

There is yet another sign of the times. The marriage of William and his Kate attracted a massive television audience everywhere – including in France. Reflecting on that fact in a column entitled *Les Anglais, les Français et l'identité nationale*,⁷

⁶ Bagehot's notebook, 'Britain's Royal Family. Puzzlement Will Kill the Monarchy before Hostility', 18 november 2010, at <www.economist.com/blogs/bagehot/2010/11/britains_royal_family>, visited 26 June 2011.

⁷ In *Libération*, 5 May 2011.

the French political journalist and writer Alain Duhamel ventilated envy towards the United Kingdom. He notes that while the United Kingdom and France have approximately similar international, military and economic performances and living standards, and it is better to be old, sick or poor in France than in the United Kingdom, the British collectively fare far better psychologically than the French. The British have confidence in themselves and in their future, while the French grumble, fear and scold and fight each other incessantly in 'village fights'. To explain the difference, Duhamel points to among other things the lack in France of symbols and rites of unity, which the United Kingdom finds in its monarchy: the Queen is only a banner, but a very useful one.

Now certainly Duhamel is overestimating the sense of national unity in the United Kingdom – in the general elections for the Scottish Parliament on 5 May 2011, the Scottish National Party obtained an absolute majority of 69 out of 129 seats. But even so, in these days in which a chilly nationalist wind is blowing over Europe and in which for many the search for national identity has become paramount, again, I would not be surprised if Duhamel's feelings on the suitability of the monarchy as an object promoting sentiments of national identity were shared increasingly in the European Union's monarchies. This seems even to be case in political movements traditionally opposed to the monarchy. In 2010 an MP for the Dutch Socialist Party, always fiercely republican and nationalist, co-authored and tabled a motion for a resolution asking the government for a memorandum 'with a new vision on modern kingship' – code words for asking the government to explore the possibilities of stripping the Dutch monarch of his remaining competences and introducing the Swedish model. In the resolution, the authors simultaneously emphasized the huge importance of 'the royal house as a symbol of the unity and continuity of our country, as head of state for all Dutch people and as a figurehead for the Netherlands abroad.'⁸ Even if this concerns only strategic manoeuvring of the Socialist Party, and not a fundamental change of view, it is telling. Whether this reflects a more general European development is an issue which certainly will be addressed in the contributions on the individual EU monarchies.

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⁸ [*Kamerstukken*] Parliamentary papers 32 500 I, nr. 4.