

Modern constitutions in crisis:

A case for constitutional monarchy in the 21st century?



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Abstract

Heads of state are an all too overlooked and forgotten factor when it comes to the analysis of political and constitutional crises in post-war democratic states. Be they executive presidents, ceremonial presidents, or especially constitutional monarchs, their real role and powerful influence on the course of crises is often overlooked and ignored. With the important, if often forgotten role these symbols of the state play, the question arises which of these three systems handles a crisis best and produces the best outcome for constitutional democracy. A range of arguments for executive presidencies, ceremonial presidencies, and constitutional monarchies will be utilised. They will be compared, analysed, and set in a context of real historic cases of crisis, from across the globe, to test their real-world application. The results seem to suggest a deep flaw in the executive presidential model in its concentration of executive and constitutional power in the hands of one individual. The ceremonial presidential system appears also flawed, with misaligned incentives leading to a head of state who serves to empower, rather than guard against, a wayward government. By contrast, constitutional monarchies appear to successfully act politically independent and to fulfil their role as constitutional guardian. As a result, this paper argues that, contrary to what one might inherently think, constitutional monarchy still has an important role to play in modern constitutional democracy as a protective force.

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1. Introduction

In the literature on and analysis of modern constitutional democracy, many scholars put great emphasis on factors such as electoral systems, socioeconomic structures, ideological strength or party-political maturity. An area all too often ignored in the discourse on modern democracy however is the position of the head of state. In the constitutional framework of modern states, all nations, in one form or another, has a head of state; a person whom, theoretically, inhabits the highest representative office in the nation. Most democracies today are republics, where this office is held by an elected official, usually titled President. There remain, however, a not insignificant number of democracies throughout the world which continue to be monarchies and have, as their head of state, a hereditary monarch, with titles such as King, Queen, Prince or Emperor. Democracies, for all their virtues, are not perfect and any democracy will, at one point or another, be faced with a crisis. The important role of heads of state, be they constitutional monarchs, ceremonial presidents, or executive presidents, is all too often overlooked when exploring the course and impact of political and constitutional crises on nations and their democracies.

The modern world is one dominated by republican forms of government. A world where the word royalty to many may conjure up little more than images of Disney princesses, castles, the odd gossip magazine cover or, less charitably, ideas of decadent medieval kings oppressing the peasantry. It might therefore instinctively to be natural to assume that elected heads of state are an obvious extension of, and positive element for, a democratic system. Many surmise that monarchies are at best an irrelevant remnant of ages past or, worse, an active hindrance to democracy. When one looks deeper at the topic however, a different picture may start to emerge. In their 2020 survey of democratic quality in 176 countries, compiled into the university's Democracy Matrix, researchers at the University of Würzburg found that among the top 15 highest rated democracies, 9 were constitutional monarchies (University of Würzburg, 2020). This compared to the fact that only 27 of the 176 countries measured (15.3%) have a monarchic form of government.

To understand the role of heads of state in crises one first needs to understand precisely what a head of state is. The Encyclopaedia Britannica defines a head of state as; "the highest representative of a sovereign state, who may or may not also be its head of government. The role of the head of state is primarily representative, serving to symbolize the unity and integrity of the state at home and abroad" (Munro, 2023). A head of state is, in other words, the person who possesses the highest constitutional position within a state and who serves as

its ultimate symbolic representative, though not necessarily possessing much, if any, day-to-day political power. In many countries across the world the head of state is removed from active governance of the state, which is handled by other authorities: a separate head of government. In many other countries however the head of state is also head of government and as such the active executive.

The exact nature of the role and selection of heads of state varies greatly from country to country, as shall be explored more in depth later. Briefly described however the three forms of government which shall be covered in this paper are executive presidencies, ceremonial presidencies, and constitutional monarchies. Republics with an executive presidency are states in which the elected president fuses both the representative functions and constitutional powers of the head of state, with the executive and political powers of the head of government. A good example of this would be the President of the United States. A republic with a ceremonial presidency on the other hand relegates the position of president to a primarily ceremonial and representative role, with executive and political powers handled by a separate head of government, as exemplified by the Presidents of Germany or Italy. A constitutional monarchy is in many instances very similar to a ceremonial presidency when it comes to the duties and roles of the head of state, with the significant difference being the fact that where the ceremonial president is elected, the constitutional monarch inherits their position by hereditary right. The most prominent example of a constitutional monarch today would be the King of the United Kingdom.

I seek explore which of these three systems of government function the best at handling constitutional crises within a democracy. There are certain elements and peculiarities with constitutional monarchies not found in republics with either ceremonial or executive presidencies which, many constitutional theorists have argued, in fact make constitutional monarchy a positive force in the preservation of modern democracy and constitutional order. In this paper I will be utilising these arguments and comparing them to ones used to justify republican systems with both a ceremonial and executive presidency and draw from a large range of recent cases of political and constitutional crises in a wide range of countries.

Crises come in many forms within a government system; from political crises, where rival parties or political centres of power come into embittered conflict destabilising the political system, to constitutional crises which openly challenge and strain the constitutional order and structure of government institutions. The rationale behind the focus on crises is the fact that

while a constitutional democratic system might function well in regular circumstances, its ability to weather and overcome crisis is, I would argue, a hallmark of its long-term stability and sustainability. A democratic system which crumbles or comes undone during a crisis which tests its otherwise stable institutions is not a system which can reliably sustain itself in the long term. The constitutional structure of a state and subsequently the role of the head of state has historically, as will be seen in the cases presented in this paper, been fundamentally important to the unfolding, escalation or resolution of constitutional crises. As such, constitutional design shows itself to be an incredibly important part of the equation of how a democratic state and its political system and institutions weather an extraordinary crisis.

2. What is a crisis

Crises in politics, as in life in general, come in an extremely wide range of ways, expressions, and scenarios. This paper will focus particularly on two prominent types of crises which arise within the political sphere: political crises, and constitutional crises. The terms political and constitutional crisis however are nebulous, vague, and difficult to understand. In fact, within political science there is no firm definition or consensus of exactly what these terms entail (Gerhardt, 2002, p.280). They often overlap and merge, and differentiating between them can often become difficult. It therefore becomes necessary to establish the limits of, and what is meant by, these terms in this paper.

The term political crisis is particularly hard to define. In its most basic understanding, the term can be taken to simply mean any crisis or adverse situation of a political nature. This understanding however is very broad and vague, and as such unhelpful. Michael Gerhardt, in his 2002 paper *Crisis and Constitutionalism*, described a political crisis as something which “arises when political authorities are fighting amongst themselves for supremacy over a particular domain of policymaking” (Gerhardt, 2002, p.285). This is a helpful definition in the scope of this paper. Political crisis can be seen as a term encompassing instances of intense conflict and clashes between factions and actors in the political arena over policy or power. A political crisis might for instance entail a conflict between the executive and legislative branches over the direction of policy, or disagreements between parties within a ruling coalition which threatens to cause the fall of the government. Political crises would therefore, for the purposes of this paper, be seen as severe political disputes with potentially major consequences, but which remain within the framework of the law and constitution. I would argue however that political crises still often have a destabilising aspect to them.

While a political crisis may take place within the framework of the law and legal structures, the potential impacts of it, such as chaos, a sudden change of government or loss of trust in public institutions, can be damaging.

In contrast to the potential broadness of a political crisis, a constitutional crisis, though still a vast subject, is somewhat easier to define more concretely. Gerhardt defines a constitutional crisis as “episodes in which national political leaders recognize the inadequacy of the Constitution [...] instances in which the limits of written constitutionalism are not just reached but also breached” (Gerhardt, 2002, p.282). Constitutional crises can therefore be seen as scenarios in which the very constitutional and legal structures of the state are brought into question, and the legitimacy of actions taken, by government or other state actors, put in doubt. I would define a constitutional crisis as an unprecedented situation which the constitutional framework, as it exists, is not equipped to easily deal with. Constitutional crises can be rooted in a number of fault lines. For instance, it may arise because the situation at hand is not covered by the constitution, the constitutional provisions are unclear or infeasible, certain actors simply refuse to follow the constitution, or in certain cases because of a total breakdown of the institutions. These classifications are supported in the works of American political scientists Julia Azari and Seth Masket (Azari & Masket, 2017). These different roots to a crisis developing shows the multiple facets of a constitutional crisis, but they equally demonstrate a common thread; namely an inability to apply the letter of the constitution to solve the crisis. I would therefore define a constitutional crisis as a situation wherein the constitution is challenged or alone proves inadequate to solve a conflict over the function and government of the state.

Constitutional and political crises are deeply tied together and intertwined, particularly when it comes to the point of formation. A political crisis, if escalated far enough, can become a constitutional crisis in situations where recourse to solve whichever dispute or issue is at hand are not provided for in the constitution. A constitutional crisis could, for instance, arise in cases where a political crisis, such the impeachment of a president, results in the president refusing to leave office despite legal removal. Other instances could be cases where a contentious election results in both sides proclaiming victory and declaring themselves the legitimate government. A constitutional crisis is always a political crisis, though a political crisis is not always a constitutional crisis. One can therefore, in short, view a constitutional crisis as being a political crisis which has escalated to go outside the remits of the

constitution, and as such to have no clear legal resolution. This is of vital importance to understand the differences, and yet similarities, between these two terms.

3. The Executive President

Due to the preponderance of international news coverage of politics in the United States of America, and its relative straightforward simplicity, the executive presidential system is a system many even layman observers of politics may have at least some familiarity with. An executive presidency, in its most simple, basic sense, is a form of government wherein the head of state (the President) acts with executive and political power within the government (Organisation for Economic Co-operation and Development, 2023). The head of state is, in other words, an active political player and policymaker, who plays a direct role in government affairs and politics. The president however, alongside this political role, continues to also perform the ceremonial and constitutional functions of a head of state, such as international representation, attendance at ceremonial events, the opening of the legislature, symbolizing national integrity and unity, signing legislation into law, and command of the armed forces (Munro, 2023). The executive president, therefore, plays a double role as both symbol and political actor.

The exact nature and political power of executive presidencies vary from country to country. In some states with an executive president, such as the United States, the President is the sole executive, combining the ceremonial functions of a head of state with all the executive powers of a head of government, and the position of military commander in chief. This system is usually termed a Presidential system as the head of state is the dominant, indeed exclusive, executive authority. In other cases however, such as that of France, the President's executive power, though significant, is shared with a separate head of government. This head of government is appointed by and subordinate to the president but must simultaneously command the support of a majority in the legislature to remain in office (Organisation for Economic Co-operation and Development, 2023). This is usually termed a Semi-Presidential system. Despite these differences however, both systems are executive presidencies, as the President is an active political and executive player. As such, both are covered in this section and fall under the umbrella term of Executive President.

3.1. Arguments

A key aspect in most states with an executive presidency is the fact that the president, as executive head of state, is elected (directly or indirectly) by the general populace¹. The president, following election, serves out a fixed term of office, with or without the possibility of re-election. This aspect of the office has been central to the conception of an executive presidency since the very inception of the modern executive presidential system during the debates surrounding the writing of the American constitution in the 1780s (Dhamija, 2016). The popular election of the president is a key argument used by many theorists and proponents in favour of an executive presidency. Doctor Shahi Tharoor, a member of the Indian parliament, former government minister and prominent proponent of the country, the world's largest democracy, adopting an executive presidency, argued this in his seminal lecture on the topic in 2017. According to Doctor Tharoor, one of the great strengths of an executive presidency is that it gives the average voter, not an elite of politicians, the right to directly choose and vote for whom should lead the government (Tharoor, 2017). The president would have a direct mandate for their policies from the masses, and the people as a whole would have the ability to directly pass judgement on the executive for its performance. This, he argues, would ensure the most responsibility from the executive, as they are directly accountable to the people. With a direct mandate from the people, the executive would additionally be able to set the policy and legislative agenda.

Another core argument presented by Tharoor and other advocates of an executive presidency is the concept of the separation of powers. The separation of powers is the principle that the branches of government (executive, legislative and judicial) should be kept separate and independent of each other, allowing each to act as a check and balance on the others (Britannica, 2023). Proponents of executive presidencies argue that an executive presidency, where the executive head of state is popularly elected and thus independent of the legislature, is the best guarantee of the separation of powers (Tharoor, 2017). This argument is based on the fact that the executive not requiring the support of the legislative branch to remain in office would avoid executive dominance. The president would not necessarily have a legislative majority, preventing the president from implementing whichever policies they wish (Tharoor, 2017). The President and legislature would, therefore, counterbalance each other, with an independent judiciary acting as a third check on both.

¹ There are a handful of exceptions, such as South Africa and Botswana, where the executive president is elected by the legislature.

3.2. Cases

There have been many political and constitutional crises within executive presidential systems since the Second World War. A recent case is the events surrounding the 2020 Presidential election in the United States, and the subsequent storming of the US Congress by supporters of President Donald Trump on 6 January 2021. The 2020 US presidential election was a tightly fought and contentious election between incumbent President Donald Trump of the Republican Party, and former Vice President Joe Biden of the Democratic Party. The election, which took place on 3 November 2020, resulted in a victory for Democratic candidate Joe Biden over President Trump (Duignan, 2023). President Trump however refused to concede defeat, accusing the opposition Democrats of having rigged the election. The result was a months long dispute, leading up to the planned formal certification of the election results by the US Congress on 6 January 2021 being disrupted by a mob of Trump supporters (Duignan, 2023). Following a rally near the White House on 6 January 2021, where President Trump had encouraged his supporters to “walk down Pennsylvania avenue [to Congress]” and “fight like hell”, thousands of his supporters stormed the Congress building, while Congress was in session certifying the election (Duignan, 2023). The session was suspended, and its members, including Vice President Mike Pence, for whom a gallows had been erected outside the building by Trump supporters, were evacuated (Edmondson, 2022).

Following the breach of the Capitol building by Trump’s supporters, it took 4 hours before troops from the National Guard arrived to restore order (Edmondson, 2022). It was revealed in the aftermath that President Trump, as commander in chief of the armed forces and National Guard, had refused multiple times to deploy troops to regain control of the Capitol building, reportedly being pleased by the events. Instead, officials at the Department of Defence later testified, Vice President Mike Pence had made the order to deploy National Guard troops (Edmondson, 2022). President Trump eventually, supposedly after heavy pressure from staff within the White House, released a statement calling on his supporters to leave the Capitol building. Following the National Guard’s clearing of the building, Congress resumed and formally certified the electoral victory of Joe Biden, who was inaugurated as President on 20 January.

The events on January 6 have since been characterised as a coup attempt, wherein the incumbent executive refused to accept the results of an election, and challenged the constitutional transfer of power (Cline Center, 2022). The storming was incited, if not

directly ordered, by President Trump. Where this case becomes relevant regarding Trump's constitutional position as executive president is his response to the events. Trump, as commander in chief of the armed forces, actively resisted and delayed attempts to deploy the National Guard to the Capitol building. In so doing, he exercised the constitutional powers of the head of state in an effort to prevent the regaining of control over the situation at the Capitol. Though poorly, if at all, planned and executed, the goal of the storming of the Capitol was evidently to overturn Trump's electoral defeat and keep him in office as President. Trump therefore exercising his powers as executive head of state to prevent and delay the putting down of a movement to keep him in office places a major question mark by the concentration of all executive and constitutional powers into the hands of a single executive president, who has a vested political interest in keeping themselves in office.

Another relevant case for study of the actions of an executive president during a crisis, would be the 2021 coup d'état which took place in Tunisia. Since the Tunisian Revolution of 2011 brought down the dictatorship of Ben Ali, Tunisia had generally been regarded as a fledgling democracy and singular success story of the Arab Spring (Arbi & Geri, 2021). Under the 2014 constitution, Tunisia operated under a semi-presidential system, with an executive president, but simultaneously a separate Prime Ministerial head of government, appointed by the president and subordinate to both them and parliament (Lopez, 2022).

The election of Kais Saied as President in 2019 heightened conflict within the Tunisian state, as the president came to increasingly clash with parliament, dominated by the Ennahda party. Amid a worsening economic situation, the Covid-19 pandemic and protests, the conflict intensified into a full political crisis when the president vetoed attempts by Parliament to appoint members of the Constitutional Court to mediate and solve the conflict between president and parliament (Lopez, 2022). Following the escalating deadlock, and suggestions by the president that he may deploy the army against parliament, President Saied initiated a self-coup on 25 July 2021. He granted himself emergency powers prescribed to the head of state in the constitution, dismissed the government and suspended parliament (Lopez, 2022). A further presidential decree in September formally suspended parliament indefinitely, suspended the constitution, and granted the president full executive, legislative and judicial authority.

The result has been the promulgation in 2022 of a new constitution which gave the presidency sweeping new executive powers, and relegated the new parliament, now

composed almost entirely of Saied's loyalists, to a secondary role (Abouaoun, Hill & Siebert, 2022). In effect, Tunisia's democratic gains since 2011 have been wiped out, with the institution of a new presidential dictatorship. In this episode, the executive president, when faced with a parliament resistant to his legislative program and a climate of political unrest, in effect engineered a constitutional crisis, which enabled him to seize dictatorial powers. The President as executive actively blocked attempts to form a mediating body and eventually, using his constitutional powers as head of state, rid himself of parliament altogether.

A final case to be covered is the Russian constitutional crisis of 1993. The disintegration of the Soviet Union in 1991 led to the establishment of a nascent democracy in Russia. The 1991 presidential election, won by Boris Yeltsin, though flawed, was generally by observers regarded to have been democratic (Goncharenko, 2018). The Supreme Soviet, Russia's parliament, continued however to be dominated by former members of the Soviet Communist Party, elected in 1990. The constitutional crisis of 1993 had its source in this political difference. Yeltsin's administration, following its election, attempted a range of social, political, and most importantly liberalising economic reforms. These reforms, however, were met with strong resistance in the Supreme Soviet, which repeatedly blocked the Yeltsin government's policies (Goncharenko, 2018). This political crisis blew into a full constitutional crisis on 21 September 1993, when President Yeltsin announced the dissolution of the Supreme Soviet; a power he did not have according to the constitution (Goncharenko, 2018). The result was the Supreme Soviet immediately voting to impeach and remove Yeltsin from office, which Yeltsin refused to recognise.

From this point forward, Russia had 2 rival governments; one headed by Yeltsin, and one by his deputy Alexander Rutskoy, who had been declared President by the Supreme Soviet. This standoff lasted until 4 October when, following the storming of the Moscow Mayoral office by supporters of the Soviet, President Yeltsin exercised his constitutional powers as commander in chief and ordered the Russian army to bombard the parliament building (Goncharenko, 2018). This bombardment led to the surrender of the Supreme Soviet, which was subsequently disbanded. Later that year, a new constitution was issued, significantly strengthening the presidency, and establishing a new legislature (Goncharenko, 2018).

This crisis again exemplifies an instance where the executive head of state, when faced with a legislature resistant to their legislative program, exercised their constitutional position and power as head of state to undermine and remove the legislature. Yeltsin, despite technically

having no such power, used the guise of an executive decree to dissolve the legislature and subsequently used his constitutional position as head of state and commander in chief to quell the legislature's resistance by armed force. The long-term effects of the 1993 constitutional crisis have in the decades since become clear. The strengthened presidency and "guided democracy" created by Yeltsin after the crisis was inherited by Vladimir Putin in 2000 upon Yeltsin's resignation (Goncharenko, 2018). Under the Putin government, the institutions and systems introduced by Yeltsin following the crisis have been used to destroy any real semblance of democracy in Russia, and turn it into an aggressive, authoritarian state.

4. The Ceremonial President

While the power and role of an executive president is often relatively well known among the general public, the role and function of a ceremonial president, as found in countries such as Italy or Germany, is often far less known. Nations with a ceremonial presidency are defined by their parliamentary form of government, wherein the executive is exercised by a cabinet and head of government responsible to the legislature, while a separate head of state, an elected president, serves a primarily symbolic and ceremonial role (Bulmer, 2017a, p. 5). In such systems, the ceremonial president is entrusted with symbolic, representative, and constitutional functions, meant to symbolise stability and national unity. Political and executive authority meanwhile is instead exercised by the separate head of government, who governs based on the confidence of the legislature (Bulmer, 2017a, p. 5). The head of state in this system, therefore, is not an active political or executive player, but rather a symbolic figure, though they often retain some constitutional powers and functions.

The exact roles and mode of election of a ceremonial president varies from state to state. Within some systems, the ceremonial president may have almost no constitutional powers, whereas in others they may fulfil an important constitutional role (Bulmer, 2017a, p. 7). The process of electing a ceremonial president is also varied. In some countries, such as Germany, Italy or India, the ceremonial president is elected via an electoral college consisting of the members of the national and state/regional legislatures. In others, such as Albania, Samoa or Greece, the ceremonial president is elected by the national legislature. A further third model of election, practised in among others Ireland and Finland, is a direct election by the populace (Bulmer, 2017a, p. 14). Typical powers reserved for a ceremonial president is the appointment of the prime minister (depending on who can command the confidence of the legislature), signing bills into law, opening and dissolving the legislature for elections, and

being the commander in chief of the armed forces (Bulmer, 2017a, p. 10). These powers and duties are usually seen as being ceremonial, with the ceremonial president not making active day-to-day decisions in the exercise of these powers.

4.1. Arguments

One of the main arguments used by advocates of a ceremonial presidency over an executive model is the need for a neutral figurehead who can promote unity and national cohesion. A ceremonial presidency seeks to combine the parliamentary system of government, which originally emerged in the context of 18th and 19th century European monarchies, with an elected ceremonial head of state (Bulmer, 2017b, p. 4). The argument for this would be that an executive presidency concentrates too much power in the hands of a single individual, and that a country needs a separation of the executive from the symbolic and constitutional elements of the state (Bulmer, 2017a, p. 3). Additionally, it needs to be an elected position, as hereditary offices are undemocratic and unaccountable (Republic, 2021a). Advocates of a ceremonial presidency, such as Graham Smith, CEO of the British pressure group Republic, argue that a ceremonial president is supposed to act as a unifying force, who is nonpartisan and neutral (Republic, 2021a). A ceremonial president, as described by Irish constitutional scholar Gerard Hogan, is “freed from [...] the divisiveness which political activity would necessarily entail - serves as a personification of the State. From the President the people seek a reflection of their highest values and aspirations” (Hogan, 1997). They are, in other words, a symbol beyond politics.

An argument often used by those in favour of a ceremonial presidency in addition however is that the president must have a role as a political referee and constitutional guardian. Advocates, such as Graham Smith, posit that a ceremonial president, with democratic legitimacy, has the ability to stand up to an elected government and hold them accountable (Republic, 2021a). Smith envisions a nonpartisan ceremonial president acting like an adjudicator and mediator in cases such as an unclear election result, or where the government is acting in breach of the constitution and norms (Republic, 2021a). The ceremonial president, as someone not part of the government and yet still democratically accountable, would, he argues, be able to protect the constitution from government overreach. Simultaneously, they would be democratically accountable and could be removed from office for incorrect behaviour.

4.2. Cases

Africa, despite its history of British colonisation, for whom parliamentary government with a ceremonial head of state was the norm, has remarkably few ceremonial presidents. A particularly interesting case study of a ceremonial presidency in Africa would be Nigeria's short stint as a democratic parliamentary republic between 1963 and 1966. Following Nigeria's independence from Britain in 1960, and its transition from a constitutional monarchy under Queen Elizabeth II to a republic in 1963, the Governor-General (Queen's representative/viceroy), Nnamdi Azikiwe, was elected ceremonial president by parliament (Kumarasingham, 2020, p. 189). Azikiwe had, prior to independence, been the leader of the NCNC political party; one of the 3 main parties in the country, and Premier of East Nigeria State. Despite this political background, he was in 1960 appointed Governor-General of Nigeria by Queen Elizabeth II, who remained the country's head of state. In his role as Governor-General, Azikiwe was praised for his political neutrality and non-partisanship, as was expected of the Viceregal office (Kumarasingham, 2020, p. 184).

An interesting change came however when, in 1963, Azikiwe became the ceremonial president of the new Nigerian republic. With his assumption of the presidency as opposed to the appointed Governor-Generalship, he suddenly and inexplicably abandoned all neutrality, and became a partisan firebrand for his former party. Ahead of parliamentary elections in late 1964, the government coalition between Azikiwe's NCNC and the NPC party of Prime Minister Abubakar Balewa collapsed (Kumarasingham, 2020, p. 190). Azikiwe's most shocking move came after the subsequent election, won by the NPC; in contravention of all customs, President Azikiwe dismissed the NPC's Prime Minister Abubakar, and declared the elections void, intending to appoint an NCNC government (Kumarasingham, 2020, p. 190-191). After a multi-day standoff with the Abubakar government, President Azikiwe ordered the army, of which he was commander in chief, to arrest Abubakar and the leaders of the NPC. The commander of the army refused, instead backing the Abubakar government. Azikiwe subsequently relented, and reappointed Abubakar (Kumarasingham, 2020, p. 192-193). The damage, however, was already done. The instability the President's actions created led to a military coup in 1966, which inaugurated decades of military rule over the country.

The episode is an incredibly curious one. A former politician, who performed the role of ceremonial head of state in exemplary fashion when the viceregal representative of, and as such accountable to, the Queen, became a raucous partisan for his former party after the transformation of his role from ceremonial viceroy to ceremonial president. As ceremonial

president, he actively undermined a democratic election which led to the victory of his political opponents, and instead attempted to form a government consisting of his defeated allies. The conception of a ceremonial president as a nonpartisan symbol was shattered in this episode, and the president not only did not protect the constitution; but was the main force undermining it.

A second, much more recent case to look at is the constitutional crisis which broke out following elections in the Pacific nation of Samoa in 2021. Samoa, a parliamentary republic with a ceremonial head of state² elected by parliament, had since 1982 been dominated by the HRPP party. When elections took place in 2021, a shock electoral result ended with the newly founded opposition FAST party winning 25 seats; equal to the 25 seats won by the HRPP. The balance of power in the 51-strong parliament was held by an independent MP, who announces their support for FAST (Freedom House, 2023). The electoral commission however, citing the constitution stating minimum 10% of parliament must be women (with the election having resulted in a proportion of 9.8%) installed a 26th MP for the HRPP, bringing the two blocks to a tie in terms of seats. Citing this tie, the Head of State, Tuimaleali‘ifano Sualauvi, announced the dissolution of parliament for fresh elections (Freedom House, 2023). Both these decisions however were subsequently struck down by the Supreme Court.

Following these events, it appeared clear that FAST had won a parliamentary majority and should form a government. The HRPP however continued to refuse to concede defeat and the Head of State refused to appoint or swear in a FAST government (Regan, 2021). The Head of State later issued a proclamation indefinitely suspending the sitting of parliament. After the Supreme Court ruled the proclamation illegal, FAST held its own inauguration, without the Head of State, and proclaimed itself the legitimate government (Regan, 2021). Eventually, after a deadlock lasting 15 weeks, the courts firmly ruled that FAST was the legitimate government. Following this final ruling, the Head of State relented, and recognised the FAST government.

The episode exemplifies a major potential problem with a ceremonial presidency. The Head of State, a supposedly neutral and independent arbiter, acted in a clearly biased and partisan manner in favour of the HRPP. The Head of State repeatedly used his constitutional powers to thwart the instalment of a FAST government and keep the HRPP in office. The possible

² The Samoan head of state's title is simply Head of State, not president.

reasons for this become clearer when one looks at the circumstances around the Head of State's election. Sualauvi had been elected Head of State by the HRPP-controlled parliament in 2017, following the sudden removal of the former Head of State, Tui Atua, who supposedly had a tense relationship with the HRPP leader and Prime Minister Tuila'epa Malielegaoi (Feagaimaali'i-Luamanu, 2017). Atua had since, during the election, aligned himself with FAST, and there was speculation FAST intended to replace Sualauvi as Head of State with him. It appears, therefore, that Sualauvi attempted to keep the HRPP in office to ensure his own re-election as Head of State, and to avoid being removed as his predecessor had.

A final case, closer to home, would be the actions of the Italian President in the aftermath of the 2018 parliamentary elections. The 2018 elections were a difficult moment in Italian politics. 3 coalitions/parties achieved significant support: the Centre-Right, M5S, and the defeated Democratic Party government (Garzia, 2019, p. 670). Following weeks of negotiation and failed government formations, the two largest groups in parliament; the Centre-Right coalition, led by the League, and the populist M5S party, came to a coalition agreement. When the list of ministers to be appointed to the cabinet however was presented to Italy's ceremonial president, Sergio Mattarella, he refused to appoint the coalition's candidate for Economy minister, citing his Euroscepticism (Garzia, 2019, p. 678). With the president refusing to appoint their government, the League-M5S coalition withdrew from the formation process. President Mattarella thereafter gave the task of forming a government to Carlo Cottarelli, backed by the Democratic Party (Garzia, 2019, p. 678). Due to the Democrats' weak parliamentary position however, and the outrage from the League and M5S at what they termed a coup by the President, the government formation was unsuccessful. M5S and the League later succeeded in forming a government, with the president appointing the Conte cabinet.

The episode, again, casts questions about the independence of the ceremonial president, especially when put in context of his election. President Mattarella had, prior to his presidency, been a member and one of the founders of the Democratic Party, and it was the Democratic Party government who elected him to the presidency in 2015 (Cedorne, 2015). Considering this, the president's actions; effectively sabotaging the formation of a viable opposition government, and subsequently attempting to install a government consisting of the Democratic Party, which had just lost the election, is eyebrow raising. The ceremonial president exercised his constitutional powers in an attempt to keep the defeated party, of

which he had previously been a founding member, and which had elected him to the presidency, in office.

5. The Constitutional Monarch

The form of government perhaps most overlooked in the literature of liberal democracy is constitutional monarchy. Modern constitutional monarchy, by many political observers and academics, is regarded as little more than a ceremonial rubber stamp, with little actual constitutional function or political relevance. This, however, is an inaccurate view. Most constitutional monarchies in the modern day, broadly, follow the same structural model. Politically, it largely mirrors a republic with a ceremonial presidency; political activity and executive government is handled by a head of government and cabinet responsible to the legislature, while there is a separate ceremonial head of state entrusted with representative functions (Bulmer, 2017b, p. 4). Within constitutional monarchies therefore, as with their ceremonial presidential counterparts, the head of state and head of government are separated, with a line drawn between representative, ceremonial, and constitutional functions on one hand, and executive functions on the other. As Walter Bagehot termed it in his 1867 book *The English Constitution*, the monarch is “the dignified” part of a constitution, while the cabinet and parliament is “the efficient” (Bagehot, 1867, p. 48). The monarch, simply put, serves as the ultimate, dignified embodiment and representative of the state, but is not an executive authority interfering in politics.

Constitutional monarchs however, much like ceremonial presidents, also usually retain important constitutional powers and functions. Usual constitutional powers vested in a constitutional monarch is the authority to appoint and dismiss prime ministers, open and dissolve the legislature for election, sign legislation into law, and be the commander in chief of the armed forces (Bulmer, 2017b, p. 7). As with ceremonial presidents however, these constitutional powers are, usually, regarded as being ceremonial and exercised on the advice of ministers, except for in extraordinary circumstances.

The thing which, of course, crucially separates a constitutional monarchy from a ceremonial presidency is the mode of selection of the head of state. Where ceremonial presidents are elected, in the various manners described earlier, constitutional monarchs inherit their position via hereditary right (Bulmer, 2017b, p. 3). The exact systems may vary, but broadly, the position of monarch is handed down from parent to eldest child, and the position is held for life or until abdication. As such, constitutional monarchs do not have democratic

legitimacy via an electoral process. It can however be argued that modern constitutional monarchies derive democratic legitimacy from their continued existence in the face of the hypothetical possibility of removal by elected representatives.

5.1. Arguments

Many of the arguments for a constitutional monarchy mirror those for a ceremonial presidency. As a head of state not involved in active politics and governance, a constitutional monarch is meant to represent neutrality and non-partisanship, be able to unify people across political divides, embody the state, and guard the constitution (Bulmer, 2017b, p. 7). The argument most usually cited by constitutional monarchists in favour of the system is that of providing a focal point of unity. The monarch, as someone standing beyond and above the political fray and rough and tumble of party politics, is meant to be a symbol behind whom everyone, regardless of party affiliation or political leaning, can rally (Bulmer, 2017b, p. 6). The argument of constitutional monarchists, however, goes deeper than this. Where supporters of a ceremonial presidency see its non-executive nature as enough for it to serve as a unifying symbol, constitutional monarchists would reject this assertion.

In his 1996 book *The Monarchy and the Constitution*, British constitutional scholar Vernon Bogdanor argued that in ceremonial presidencies “in practice the choice of the head of state remains in the hands of the political parties [...] the fact that the head of state has a political history must always make it more difficult to fulfil the symbolic and representative role successfully” (Bogdanor, 1996, p. 63). Where republicans favouring both executive and ceremonial presidencies would decry a monarchy as undemocratic due to it being unelected, constitutional monarchists argue that precisely the monarch’s unelected nature is a core part of why it is able to be a unifying institution. Whereas nearly all ceremonial presidents are former high-ranking politicians and members of a party, a monarch was never given the office by any political faction and has never been a party member. They received their office by right of birth, and as such owe it, and allegiance, to no party or politician.

Beyond simply the common conception of a constitutional monarch as national symbol and unifying figure however, one must not forget that constitutional monarchs are, in most states, vested with important constitutional powers. A constitutional monarch is, after all, the head of state, and enjoys the same rights and authority other heads of state do. Walter Bagehot surmised a monarch’s 3 main constitutional rights in dealing with their government as “the right to be consulted, the right to encourage, and the right to warn” (Bagehot, 1867, p. 85).

The monarch, as such, is a moderating influence; using their long experience in office to advise and caution a government, and to ask it to think again. Multiple Prime Ministers have remarked on how inciteful and helpful advice from Queen Elizabeth II, gained over decades as head of state, was (Kuenssberg, 2022). The monarch, totally untethered from party-political considerations, thus has the ability to mediate and moderate, and due to the life-long nature of their office, gain valuable experience throughout many decades.

Harshan Kumarasingham, in exploring Bagehot's three constitutional rights contends that a monarch has an additional three rights in circumstances of extreme crisis and peril for the constitutional order. Kumarasingham outlines these three rights in a crisis as "the right to rule, the right to uphold, and the right to oblige" (Kumarasingham, 2020, p. 16). As such, he argues, a constitutional monarch has, in a crisis, the right to assert their constitutional authority to rule if all other institutions have failed, the right to uphold the constitution in the face of a threat, and the right to withdraw from a constitutional crisis and allow events to unfold without interference (Kumarasingham, 2020, p. 17, 23 & 30). These powers, again, may be decried by republicans as dangerous due to the monarch's unelected, and therefore unaccountable nature. But constitutional monarchists would again argue that it is precisely because the monarch is unelected, and thus has no ties to or past with any party, that they are the best able to exercise these powers. Additionally, the nature of the office as hereditary incentivises the monarch to tread carefully when exercising these powers, as they have an inherent incentive to ensure political stability and not compromise the monarchic institution, in order to pass it on to their descendants.

5.2. Cases

The list of cases within recent memory of a constitutional monarch playing an important role in constitutional crises is surprisingly long. A very prominent example from close to home would be the Spanish coup d'état attempt of 1981. Spain in the late 1970s and early 80s was emerging out of the 40 year dictatorship of Francisco Franco, who had died in 1975.

Following Franco's death and the accession to the throne of King Juan Carlos, a period of reform and democratisation, spearheaded by the king, began (Powell, 2019). By 1981, the transition had, largely, been complete. It had, however, angered hardliners of the former Franco regime, especially elements within the army. On 23 February 1981, as the Spanish parliament was meeting to hold an investiture vote for a new prime minister following the resignation of Adolfo Suarez, a group of army officers stormed the chamber, taking its members and the government hostage (Valera & Brewis, 2021). Their goal was to oust the

new constitution and return Spain to the Francoist dictatorial model. Crucially, they made no attacks on the constitutional position of the monarchy.

The coup posed an immediate and existential threat to the Spanish constitutional order, as the entirety of parliament and government was now hostage. The King, now the only legal authority not in military custody, rejected suggestions from generals sympathetic to the coup to appoint a military government (Cemlyn-Jones, 1981). Instead, he responded rapidly by invoking, in Kumarasingham's words, his "right to rule". The king ordered loyalist army units onto the streets of Madrid to surround the parliament building and appeared on national television denouncing the coup (Cemlyn-Jones, 1981). Following a tense standoff, the rebel officers in parliament surrendered, and constitutional government was restored.

The attempt offers a fascinating example of a scenario wherein a constitutional monarch in a modern European democracy reacted to the incapacitation of the executive government. Exercising his constitutional power as head of state and commander in chief, the king was able to command the army, within which there was wide sympathy for the coup, to put it down and restore order. The actions of the king were fundamentally instrumental in the failure of the coup and protection of constitutional democracy.

Another, more recent but highly overlooked case of political involvement of a constitutional monarch in a crisis was the constitutional crisis which took place in 2013 in the small pacific island of Tuvalu. Tuvalu is a parliamentary democracy and Commonwealth Realm, meaning its head of state remains the British monarch, represented locally by an appointed Governor-General. In 2013, the small island's constitutional democracy was put to the test when, after losing its parliamentary majority, the government refused to allow parliament to sit, to prevent a vote of no confidence (Kumarasingham, 2020, p. 331). The Governor-General however ordered parliament to convene anyway to facilitate a confidence vote. Further obstruction from the government, including from the government-aligned parliamentary speaker, prevented the sitting despite the Governor-General's orders. A second order from the Governor-General followed, again ordering the convocation of parliament. In response to this, the Prime Minister contacted Queen Elizabeth II, Tuvalu's head of state, and requested that she dismiss the Governor-General (Kumarasingham, 2020, p. 333). The Queen declined to dismiss the Governor-General, acting as an endorsement of her Viceroy's actions (Kumarasingham, 2020, p. 343). The Governor-General subsequently dismissed the Prime

Minister from office, appointing in his stead the leader of the opposition, who was the next day confirmed by parliament.

This episode offers an interesting example of an instance where the elected government attempted to actively prevent the convocation of the legislature in order to continue to rule despite having lost confidence. The actions of the Governor-General as the Queen's representative was a classic example of Kumarasingham's "right to uphold", as the actions taken were explicitly to preserve constitutional government by ensuring the prime minister still had parliamentary confidence. The Queen's refusal to dismiss the Governor-General offers a secondary example of this. The government had no recourse to remove or influence either the head of state or her representative, allowing them both to act independently.

A final relevant example is the prolonged political crisis which engulfed Malaysia between 2020 and 2022. The 2018 election, which saw the end of decades of electoral dominance by the National Front coalition, brought about an unstable new coalition government of opposition parties (Freedom House, 2021). In early 2020, following a string of defections from the government, the government collapsed. Following a week of mediation and interviews of party leaders by the King, a new but unstable coalition government was formed under Prime Minister Muhyiddin (Medina, 2021). Faced with the COVID-19 pandemic, this new government, already formed with a thin majority, came under pressure. In October 2020, the opposition leader alleged that he had secured majority support in parliament to oust the government. Prime Minister Muhyiddin, citing the pandemic, requested that the king declare a state of emergency (Sipalan & Latiff, 2020). Such a declaration would have suspended parliament, and prevented any vote of confidence from taking place. The King however, refused such a request (Sipalan & Latiff, 2020). The threatened confidence vote did not materialise however, and the Muhyiddin government survived another year.

The long-term political instability required royal intervention multiple times, both to mediate the formation of a new government, and in the events of October 2020, to prevent the government from using emergency provisions to avoid a vote of confidence. The king was roundly praised in the aftermath of the events (Ananthalakshmi & Latiff, 2020). The king's political independence from the government being attributed as an important factor.

5.3. Analysis

These nine cases, three from each form of government, give an interesting insight into the operation in reality of these systems. In the cases of the executive presidencies; the United

States, Tunisia and Russia, it appears that the concentration of executive power and the constitutional powers of a head of state in the hands of a single person can create a very dominant office. The separation of powers, the principle upon which an executive presidency is based and expected to be controlled by, seem to be overcomable by an executive president during crisis scenarios. Executive presidents appear to have a tendency of using their dual role to perpetuate their position in office and ridding themselves of recalcitrant legislatures.

Where ceremonial presidencies have solved the issue of a concentration of power in the hands of a single individual, with the creation of a ceremonial president who is, at least nominally, supposed to hold the role of a constitutional guardian and arbiter to hold government to account, the cases analysed indicate that, despite a theoretically sound model, it in practise suffers from a fundamental issue. This issue being the incentive structures inherent in an electoral model. Ceremonial presidents are usually creatures of politics; former high ranking politicians and party members. Their position in office is dependent, by their elected nature, on the support of the party and government which put them there, and they will often feel a loyalty to it. This leads to cases such as those analysed in Italy, Samoa and Nigeria, where the ceremonial president, in total break with their expected roles as constitutional guardians and nonpartisan figureheads, actively attempted to perpetuate their political allies in office, and prevent political rivals, who could threaten their position as head of state, from forming a government.

Considering this, the system which perhaps paradoxically appears to be best able to perpetuate constitutional democracy in a crisis is constitutional monarchy. The question of why constitutional monarchy appears to work in practice rather than just theory, unlike a ceremonial presidency, appears to be answered by their main separating factor; election vs hereditary succession. While an intrinsic republican argument that an unelected head of state is undemocratic and wrong in principle may hold some water, the instrumentalist argument for their effectiveness appears sound. While we saw ceremonial presidents, due to their elected nature and the inherent incentive structures connected to it, use their position to actively undermine constitutional government to keep their allies in power, the same trend was not seen among the monarchies. The constitutional monarch, due to the fact they are totally independent and do not owe their position to any party or politician, and that they do not need to consider re-election, appear much more willing and able to stand up to wayward governments and protect the constitution than either of the two other models; as evidenced by the events analysed in Spain, Malaysia, and Tuvalu.

6. Conclusion

Having analysed and compared the nine cases presented in this paper, with arguments for each form of government, the conclusion to be drawn would be that constitutional monarchy appears to be, of the three, the more efficient and reliable system for upholding democracy and constitutional government in political and constitutional crises. Executive presidents appear distressingly able to concentrate enough power in their hands, as both head of state and government, to at least attempt to overwhelm the separation of powers designed to keep them in check, allowing them to be the instigator and main perpetrator in the erosion of constitutional democracy during crises. Ceremonial presidents on the other hand, while not necessarily using their power to directly empower themselves, appear to tend use their position and authority to sometimes try to keep their political allies and benefactors in government. They thereby fail in their role as a constitutional guardian, instead undermining it. The theoretical arguments for each system, therefore, struggle to hold up to the reality of the world of politics. Constitutional monarchy we have seen on the other hand, fares better; acting successfully to curtail governments in a crisis, as posited by the theoretical arguments. Their independence and neutrality seem to be more robust than that of their elected counterparts. As such, though sometimes regarded as a relic of a bygone age, constitutional monarchy may yet have a valuable role to play in 21st century democracies.

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