

## ANNEX A

Letter and Note by UK Prime Minister Stanley Baldwin to King Edward VIII, 4 December 1936



10, Downing Street,  
Whitehall,

*copy*

Mr. Baldwin with his humble duty to Your Majesty.  
With reference to the draft of a broadcast which  
by Your Majesty's instructions was placed before the  
Cabinet to-day, Mr. Baldwin submits the following  
observations.

In the case of broadcasting (as in the case of any  
other form of public address) there is a fundamental  
distinction between the position of the King and the  
position of a private person. As long as the King is  
King he can only speak in public in that capacity. If a  
Sovereign takes the formal action which is necessary to  
renounce the Throne, and if he becomes a subject of the  
reigning Sovereign, his claim to broadcast stands on quite  
a different basis. But the suggestion that the King should  
broadcast in the terms proposed is a suggestion that he  
should broadcast as King and while occupying the Throne.

Back/



10, Downing Street,  
Whitehall.

Such a broadcast could only be given on the advice of his Ministers, who would be responsible for every sentence of it. In these circumstances Mr. Baldwin cannot advise that the King should broadcast as proposed.

In order to make the constitutional position quite plain Mr. Baldwin appends a note of certain propositions which are well established and universally accepted by constitutional authorities. He would call particular attention to the paragraph which points out that the King, in present circumstances, could not constitutionally make a broadcast on the topics proposed save on the advice of all his Governments.

(SD.) STANLEY BALDWIN.

4th December, 1936.

113 [unclear]

1. It is a fundamental constitutional principle that the King's Ministers must take responsibility for every public act of the King, for the King himself can do no wrong; and it follows as a necessary corollary that Ministers must have the right to tender advice before the act is done. This principle is the basis of constitutional monarchy and if the King disregarded it, the monarchy would cease to be constitutional.

2. Accordingly, it would be a grave breach of constitutional principle if the Sovereign were to make a public statement on any matter of public interest except on the advice of his Ministers. Whether the medium is the B.B.C. or any other form of address spoken or written makes no difference. This extends even to replies to loyal addresses presented by Municipal bodies -- a fortiori to a world-wide discourse which manifestly might have constitutional consequences.

3. Apparent exceptions to the rule that the King's public utterances must be such as are approved by his Ministers ...

Ministers (such as King George's Christmas message) are not really exceptions at all. In such cases Ministers are willing to give an experienced Monarch who thoroughly understands and has always strictly observed constitutional limitations, a discretion as to what he would say, and are content to take full responsibility knowing well that the Monarch will say nothing of which His Ministers would not approve.

4. The King is bound to accept and act upon the advice of his Ministers in this connection. For the King to broadcast in disregard of that advice would be appealing over the heads of His constitutional advisers.

5. There is a further principle involved. The constitutional duty of the King is not to take sides in any matter of public controversy. If he does so on Ministers' advice, of course they alone are responsible; but if he does so without their advice, or in defiance of it, he ceases to act as a constitutional Monarch and his intervention is calculated to divide His subjects into opposing camps. It is manifest that the King's broadcast must have this result.

6. ...

6. Moreover, a Royal broadcast of the nature contemplated could only be given on the advice of all the King's Governments. Even if there were a change of government in this country, and new Ministers could be found prepared to authorise such a proceeding, this would avail nothing unless all the Dominion Governments also approved the project.

See also: [http://news.bbc.co.uk/2/hi/uk\\_news/2707489.stm](http://news.bbc.co.uk/2/hi/uk_news/2707489.stm)

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Vernon Bogdanor, "The Monarchy and the Constitution", *Parliamentary Affairs*, 1996, 49(3), p414

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*Parliamentary Affairs*

justice' in that the courts are the Queen's courts and dispense her justice throughout the realm. These formalisms, however, have little substantive content in the modern world. For, in a constitutional monarchy, there is a fundamental distinction between the actions of the sovereign in a personal capacity and her actions, taken on the advice of ministers. Thus, although the sovereign is the head of the executive, the vast bulk of the prerogative powers of the Crown—probably over 95% of these powers—are exercised not by the sovereign personally but either by her on the advice of ministers or by ministers directly. The sovereign's judicial functions, too, are exercised entirely on the advice of ministers. Her personal powers arise only in those few situations, at the beginning or the conclusion of a government, where she may or must act without ministerial advice.

The crucial requirement of constitutional monarchy, that the sovereign must be politically impartial, is achieved, then, through the principle that almost all her public acts are taken on the advice of her ministers. But what is 'advice'? In everyday speech, to offer advice to someone is to offer an opinion or make a suggestion as to how that person should act. The recipient is quite free to accept or to reject it. The term 'advice' used in connection with constitutional monarchy, however, has a quite different meaning. When ministers offer advice to the sovereign, she normally has no option but to accept it. The consequence of rejecting advice would probably be the resignation of the government, and even if the sovereign were able to find another, it would be in office in virtue of the personal choice of the sovereign. The consequence would be a sovereign opposed by one of the great parties of the state. No constitutional monarch can survive for long once seen as partisan.

In the past the doctrine that the sovereign acts on the advice of her ministers was designed to protect Parliament and people from the arbitrary use of royal power. Today, it has a quite different function, that of protecting her from political involvement. For it follows from the doctrine that she speaks and acts on the advice of her responsible ministers, that it is her ministers and not the sovereign who are held responsible by Parliament and by the electorate. Were the sovereign's actions of giving assent to her bills really her own, and were the Queen's Speech to represent her own personal proposals rather than those of her government, they would become matters of controversy and she would have laid herself open to criticism. Thus the principle that the sovereign speaks and acts on the advice of her ministers serves to shield her from responsibility, so that criticism of her government is directed at ministers, and not at the sovereign herself.

The consequences of this fundamental principle were drawn out by the constitutional lawyer, Sir William Anson, in his authoritative work, *The Crown*, Volume II of *The Law and Custom of the Constitution*, first published in 1892, as 'first that she should not take advice from

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## ANNEX C

**Summing-up speech by the President of the Indian Constituent Assembly, Dr Rajendra Prasad, 26 November 1949, from the website of the Parliament of India**

The President of the Republic will be an elected President...

We considered whether we should adopt the American model or the British model where we have a hereditary king who is the fountain of all honour and power, but who does not actually enjoy any power. All the power rests in the Legislature to which the Ministers are responsible. We have had to reconcile the position of an elected President with an elected Legislature and, in doing so, we have adopted more or less the position of the British Monarch for the President...

Then we come to the Ministers. They are of course responsible to the Legislature and tender advice to the President who is bound to act according to that advice. Although there are no specific provisions, so far as I know, in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King acts always on the advice of his Ministers will be established in this country also and, the president, not so much on account of the written word in the Constitution, but as the result of this very healthy convention, will become a Constitutional President in all matters.<sup>1</sup>

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<sup>1</sup>The position in Singapore is different. Our Constitution expressly, through Article 21(1) and 24(2), provides for this.

**Statement by the Minister of Law on the Elected President, 10 June 2011**

1 Recent comments in the media suggest some confusion over what the President can and cannot do. As the Presidential Elections approach, it is important for Singaporeans to understand what the President is elected and empowered to do under the Singapore Constitution. The Attorney General has confirmed that the following is the Constitutional position.

The role of the President

2 Singapore has a Parliamentary system of government, not a Presidential one. The President is the Head of State, not the Head of Government. The Prime Minister is the Head of Government and has the authority and responsibility to govern Singapore.

3 The Constitution clearly defines the role and scope of the President. He has custodial powers, not executive powers. In other words, he can veto or block Government actions in specified areas, but he has no role to advance his own policy agenda. National policies and running the Government are the responsibility of the Prime Minister and Cabinet. This is so for all policies, whether they concern security and defence, immigration and population, or housing and social safety nets. The Prime Minister and Cabinet are accountable to Parliament, where policies are debated and endorsed, and ultimately to voters, who decide every five years who to elect to Parliament and to govern Singapore.

- 4 The President's veto powers over the Government are limited to specific areas:
- a. Protection of past reserves, i.e. reserves accumulated during previous terms of office of Government;
  - b. Appointment of key personnel; and
  - c. ISA detentions, CPIB investigations and any restraining order in connection with the maintenance of religious harmony.

On all other matters, under the Constitution the President must act in accordance with the advice of the Cabinet. In addition, the President is required to consult the Council of Presidential Advisers (CPA) when exercising his veto powers in connection with reserves and appointments.

5 The President's veto powers are an important check against a profligate government squandering the nation's reserves, or undermining the integrity of the public service. That is why the President is directly elected by the people: to have the mandate to carry out his custodial role, and the moral authority to say no if necessary to the elected government.

Protection of Past Reserves

6 The Constitution protects the past reserves of the Government and key statutory boards and government companies ('5th Schedule' entities) like the CPF Board, MAS, HDB, GIC and Temasek. The reserves include physical assets like land and buildings as well as financial assets like cash, securities and bonds. The Government of the day can only spend past reserves with the approval of the President.

7 However, the President does not direct the operations of these statutory boards and government companies. In particular, he is not empowered to direct the investment strategies of GIC and Temasek. The investment strategies of GIC and Temasek are the responsibility of their respective Boards and managements. The Government's role is to appoint suitable and qualified individuals to the two Boards. The President's role is to approve Board appointments proposed by the Government. The President also receives the audited annual accounts of GIC and Temasek, and has access to any of the information that is available to their boards. This system of governance has allowed the GIC and Temasek to operate professionally and to achieve good returns over time, comparable to other reputable global investors.

#### Appointment of key personnel

8 To safeguard the integrity of the Public Service, the President has the discretion to refuse the appointment of a person to certain key positions in the public service. He can also refuse to concur with the removal of persons from these key positions. These include the Attorney-General, Chairman and members of the Public Service Commission, the Auditor-General, and the chiefs of the Armed Forces and Police. The President has similar veto powers over the appointment of the Chief Justice and Judges, and board members and CEOs of the 5th Schedule entities.

#### ISA detentions, CPIB investigations and restraining orders in connection with the maintenance of religious harmony

9 The President's concurrence is required for further detention under the Internal Security Act (ISA) if Cabinet disagrees with the ISA advisory board's advice that the detainee should be released. His concurrence also allows the Director of the Corrupt Practice Investigation Bureau to continue with investigations even if the Prime Minister has refused permission to conduct the investigations. The President can cancel, vary or confirm any restraining order made under the Maintenance of Religious Harmony Act, if the decision of Cabinet is against the recommendations of the Presidential Council for Religious Harmony.

#### Conclusion

10 The custodial and non-executive nature of the President's role is not new. It was clearly explained by Mr Goh Chok Tong (as First Deputy Prime Minister) when he moved the Constitutional Amendment creating the elected Presidency in 1990, and reiterated by Mr Goh (as Prime Minister) in a statement to Parliament in 1999.

11 This clarification should help Singaporeans better understand the role of the elected President, as set out in the Constitution.

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## ANNEX E

**White Paper on Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services, 29 July 1988, para 18(a)**

The Parliamentary system should be preserved. The Prime Minister and Cabinet should keep the initiative to govern the nation. This system has worked satisfactorily, and radical changes to it are not desirable. Any Constitutional checks and safeguards should be confined to the two stated areas, leaving the Prime Minister and Cabinet full freedom to govern in all other respects.

**Parliamentary statement by First Deputy Prime Minister Goh Chok Tong on the 1988 White Paper, Hansard, volume 51, columns 478-479, 29 July 1988**

The President will not be an Executive President. He will only have a custodial role in two areas – safeguarding of our financial reserves and of the integrity of our public service.

... I wish to draw the attention of Members to the following:

Firstly, the Prime Minister and his Cabinet will continue to govern the nation under the Parliamentary system. But in two areas, the Government will need to get the President's concurrence before it can proceed.

Secondly, while the President will have blocking powers in these two areas, he will not have any powers to initiate policies or to make executive decisions. Except for these two areas, he will have to act on the advice of the Cabinet, as is the case now. In other words, he will not be an Executive President.

**Parliamentary debates on the issues raised by President Ong Teng Cheong at his Press Conference on 16 July 1999, Hansard, volume 70, cols 2038-9, 17 August 1999****Prime Minister Goh Chok Tong**

There should be no confusion. The true Constitutional position is very clear. The President exercises custodial, not executive powers. Only the Government exercises executive powers. Under the Constitution, the Cabinet shall have the general direction and control of the Government. In contrast, the President's custodial powers are reactive and blocking powers. The President does not have any executive power...

This is why the Constitution retained the principle, which existed before we created the custodial President, that the President always acts on the advice of the Government, except where the Constitution explicitly provides otherwise...

No article of the Constitution gives the President any power to initiate any action, or to appoint, promote, transfer, remove or dismiss any officer, or to spend money, or recommend that the reserves be spent. That right is with the Government and the Public Service Commission. It is not the President's task to set policy or run the Government.

... the executive power remains with the elected Government. Singapore has always had a Parliamentary system of government, not a presidential one. The Constitution provides for a directly elected President

with custodial, not executive, power. Singapore does not have an executive President, because Parliament did not create one.

**Parliamentary debates on the issues raised by President Ong Teng Cheong at his Press Conference on 16 July 1999, Hansard, volume 70, cols 2064, 17 August 1999 Senior Minister Lee Kuan Yew**

In the context of the Q&A, I pointed out that those who were hoping that the President could act as a counter-force to the Government, they were wrong, because all he can do is to protect the reserves and protect the integrity of appointments. If you want a counter to the Government, a check against the Government, you must have them in the Opposition, and the Opposition to be an effective counter must offer a credible alternative...

**Parliamentary debates on the issues raised by President Ong Teng Cheong at his Press Conference on 16 July 1999, Hansard, volume 70, cols 2067, 17 August 1999 Senior Minister Lee Kuan Yew**

\*In response to a question on whether the EP amounted to “clipping (the) wings” of the Prime Minister+ If I had delivered that speech, I would not have used those words because “clipping one’s wings” would evoke in my mind the swans we have at Botanic Gardens. They are there because they cannot fly away. And I would not have used that metaphor because I would not want a Prime Minister who cannot get up on his feet and do what he wants.

...

... in no Article or sub-Article of the Constitution is the President given executive power. He has a certain veto, a certain blocking power. Partly because I was, by training, a lawyer, so as the principal provisions were enacted, I took some care to make quite sure that this mechanism we were putting in place would not obstruct a government from doing what it legitimately should be able to do.

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Excerpt of Draft Note by UK Prime Minister Stanley Baldwin to King Edward VIII, 4 December 1936

1. [Rider A]

BROADCAST

Accordingly, it would be a grave breach of constitutional principle if the Sovereign were to make any public statement on any matter of public interest except on the advice of his Ministers. Whether the medium is the B.B.C. or any other form of address spoken or written makes no difference. This extends even to replies to loyal addresses presented by Municipal bodies — a fortiori to a world-wide discourse which manifestly might have constitutional consequences.

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2. The Sovereign can make no public statement on any matter of public interest except on the advice of his Ministers. Whether the medium is the B.B.C. or any other form of address spoken or written makes no difference. This extends even to replies to loyal addresses presented by Municipal bodies — a fortiori to a world-wide discourse which manifestly might have constitutional consequences.

2. The reason for the above rule is that "the King can do no wrong". Consequently, the King's Ministers must take responsibility for every public act of the King. This is the basis of constitutional monarchy. If the King disregarded it, constitutional monarchy would cease to exist.

[such as his own] are approved by

3. Apparent exceptions to the rule that the King's public utterances must be authorized by his Ministers (such as King George's Christmas message) are not really exceptions at all. In such cases Ministers are willing to give an experienced monarch who thoroughly understands and always strictly observed constitutional limitations, a discretion as to what he would say, and were prepared to take full responsibility for the consequences.

have content knowing that the monarch will say anything of which his ministers would not approve.

The King is bound to accept and act upon the advice of his Ministers in this connection. For the King to broadcast in disregard of that advice would be appealing over the heads of His constitutional advisers. [The last time when this happened in English history was when Charles I raised His Standard at the beginning of the Civil War on August 22nd, 1642.]

Note - 1932. King thought that in cases of a foreign e.g. in Spain 1931

5. There is a further principle involved. The constitutional duty of the King is to take no public action which is calculated to divide his subjects into opposing camps. It is manifest that the King's broadcast must have this result.

Moreover, <sup>approval of the nature contemplated</sup> for a Royal broadcast in present circumstances could only be forthcoming on the advice of all the King's Governments. Even if there were a change of government in this country, and new Ministers could be found prepared to authorize such a proceeding, this would avail nothing unless all the Dominion Governments also approved the project.

not to take any matter of public interest if he does so on Ministers' advice. If they alone are responsible, but if he does so on their advice...