Ministerial Responsibility as a Safety Valve for the Constitutional Powers in Great Britain from the Seventeenth Century Onwards

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In this essay, it is argued that ministerial responsibility has functioned as a safety valve for the constitutional powers in Great Britain from the seventeenth century until now. Great Britain is famous for its early establishment of parliament, which began in the Middle Ages. Parliament managed to obtain some rights with respect to the king and country. The primary right was to approve the subsidies. Most other European people looked in amazement at this rebellious institution, because it restricted the royal power and claimed constitutional power of its own. From its beginning parliament functioned as a counterbalance to the might of the king. It is precisely this relationship that I would like to investigate by means of the term ministerial responsibility[1].

What is entailed in the term ministerial responsibility? Today, people tend to have a specific interpretation of this concept. One tends to explain that ministers are solely responsible towards parliament and that the monarch can do no wrong[2]. They define it for example as «the minister's obligation to explain to parliament "what has happened and why" when failures occur»[3]. The many studies about ministerial responsibility — mainly legal in nature — bestow a normative aim to ministerial responsibility. These authors complain that ministerial responsibility often is not acknowledged or even denied in parliament, or they think that its effectiveness has faded away in the last years[4]. The definition of ministerial responsibility as wrongdoings of ministers is also projected onto the past[5]. Ministerial responsibility is thought of as a clear and formal definition, functioning as a rule, which by-passing could have political and legal consequences.

In current literature roughly two points of departure can be distinguished. On the one hand, ministerial responsibility is analysed from the present by means of concepts of morality. These concepts are defined as rules that the political actors ought to feel obliged by, when considering the precedents and reasons correctly. In

this approach ministerial responsibility is considered as a convention by definition. Attention is given to power relationships among state institutions and between those institutions and the people[6]. This is not so much a historical and factual approach, as well as a sociological one. On the other hand, one pleads for analysing the different relationships underlying the executive-legislative relationship. Various groups are distinguished, but only within that relationship and the government itself[7].

Notwithstanding the great merits of those studies, in this article another approach is advocated. As Professor Samuel Edward Finer stated in a famous essay there is a good deal of 'constitutional folk-lore' on this subject. He doubted whether one could consider ministerial responsibility a convention. In fact he even questioned the meaning to be attached to the word 'responsible'[8]. From a historical point of view ministerial responsibility has a much wider significance than liability for failures, whatever is meant by 'failures'. Ministerial responsibility does not only deal with being accountable for policy and the choices made, but functions as a mechanism by which the constitutional powers are held in a relationship. For the purpose of analysing ministerial responsibility from this angle, its meaning has to be constructed throughout the different ages.

It is my main thesis that a final definition of ministerial responsibility is actually impossible because it marks a relationship and not so much a rule. The conventions about ministerial responsibility have always been interpretations and are as such not permanent, but changeable. As ministerial responsibility deals with the balance between the four so-called constitutional powers – crown, cabinet, Commons and constituencies – its character is relational and temporal. These 'four c's' are fundamental to the constitutional system, since ministerial responsibility is related to the inviolability of the monarch, the wielding of executive power by the ministers, the controlling powers of parliament (mainly the House of Commons), and the influence of the constituencies. The relational character of ministerial responsibility explains why it originated in Great Britain, as this country was the first to have a balanced system of constitutional powers. The parliament of Great Britain was the first one to challenge the power of the king and acted by that as a countervailing power. Subsequently, these powers engaged in a struggle for trying to dominate each other.
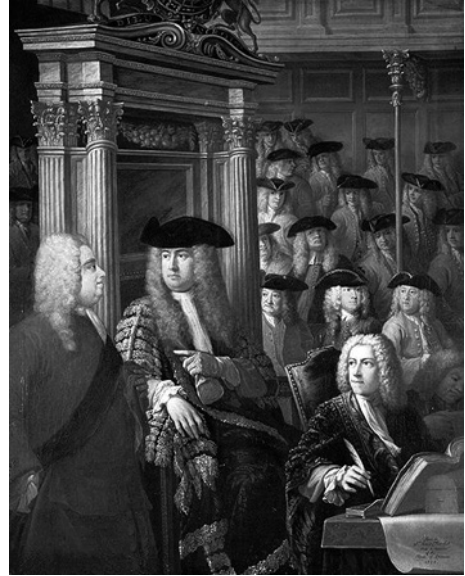
Thus ministerial responsibility while historically defined ever more in conventions, leaves room for power shifts and consequently a division of competencies between the four c's. For a clear understanding, I divide British constitutional history into three phases: one in which the monarchy dominated, the next one which heralded the supremacy of parliament and subsequently a period of public power. More precisely, I advance the proposition that ministerial responsibility nowadays does not function so much towards parliament as towards public opinion. Between 1832 and 1867 the change in the relationships between the constitutional powers was most dynamic in character. Parliament took away the initiative from the monarch, the cabinet was separated from the monarchy and the foundation was laid for the power of the electorate. In fact the framework of a popular constitution was being built. The monarchy faded into the back-

ground which is reflected in the definitions about ministerial responsibility in the current literature.

In the long run, the downfall of the monarchy has been compensated by the rise to power of the Commons and subsequently of the constituencies. Ministerial accountability towards the public became dominant after the Second World War. The heart of constitutional power shifted from parliament towards the constituencies. The people have to be served; otherwise settlement takes place in and by the media, at election time and by the party in question anticipating such events. The public is not interested in politics as such, but demands that its common interests are well arranged. Since World War II public opinion has decided more and more about the fate of individual ministers and the cabinet. Ministers have increasingly to give account to the public. The political nature of ministerial responsibility fits in well with these new developments: as will be shown it has been not a matter of guilt, but a risk based responsibility.

"Speaker Onslow with Sir Robert Walpole", dipinto di James Thornhill, 1730

1. *Phase I: the Battle between Crown and Commons*

In seventeenth-century England the relationships between king, ministers, parliament and nation were a changing. Parliament was anxious to gain influence over government policy. Therefore, the House of Commons started to use numerous impeachments of ministers who did not concern themselves with its opinion. Since the mid-fifteenth century the impeachment against the 1st Duke of Buckingham in 1626

was the first one used. Subsequently, parliament sometimes succeeded to get rid of unpopular ministers, usually court favourites protected by the king. The Earl of Danby was shut up in the Tower of London as a consequence of the impeachment against him in 1678[9]. Nevertheless, ministers tried to resist against revealing the interactions with the king. After several incidents, the Commons acknowledged the value of government secrecy and decided to prosecute ministers solely on 'common fame'[10]. Ministers could be condemned in parliament for a fact of common knowledge, without parliament providing legal proof. So ideas of a political or general ministerial responsibility were beginning to take roots at this time.

Ministerial responsibility was not a logical affair, but concerned an all risk

business. Ministers were prosecuted not only for wrongdoing, but also for political reasons. So even when ministers had taken the trouble to consult parliament, they were sometimes impeached and shut up in the Tower. Gradually understanding arose that ministers of state had a position of their own. As party politics began to play a role too, ministers were also prosecuted because of strife in party politics or in personal matters. In the course of party clashes some awareness of a prime or principal minister was growing. Ministers focussed themselves on their colleague who enjoyed the particular favour of both the king and their party. Such powerful ministers were thought to have a special responsibility.

1.1. *The Monarchy Still in Power*

In the second half of the seventeenth century, the House of Commons developed a new tradition of sending numerous addresses to the king asking to reprimand or remove a minister. Although consensus prevailed about parliament that it only possessed the right to advise and not to command the king, parliament could put pressure on the king because of its right to approve the budget. However, the king was not always influenced by this withholding of supplies. He had revenues in his own right, such as customs, duties and French subsidies. Moreover, many members of the House of Commons still highly respected the royal dignity. In a crisis the king simply prorogued parliament[11].

The Stuart monarchs held onto their prerogatives, but in such a stringent way that they made themselves unpopular with parliament. They were blamed for this personally: 'One had paid the penalty with his head: another with his crown; and their family had been proscribed forever'[12]. However, not only the Stuarts were to blame. As the novelist Jane Austen (1775-1817) wrote about the unfortunate Stuarts: 'A family who were always ill used betrayed or neglected – whose virtues are seldom allowed while their errors are never forgotten'[13]. The tragic destiny of the Stuarts was that they were living in a time of confrontations between politicians and interest groups and that they took no account of the dynamic relationship between the constitutional powers. In that period a tense situation existed between parliament and crown.

With the Glorious Revolution, also called the Revolution of 1688, a union of parliamentarians overthrew the reign of the House of Stuart by an invading army led by the Dutch stadholder William III of Orange (1650-1702). The Bill of Rights of 1689 ensured regular parliaments, made certain that the king did not have any more revenues in his own right and preserved basic rights and liberties to every citizen. It protected the citizens against arbitrary decisions of the king and established independent judges in the law courts. The Bill ensured the powers of parliament with respect to the king and consequently provided for a parliamentary monarchy[14]. The principle that 'the king can do no wrong' in his political capacity because the ministers are responsible, was accepted after the Revolution of 1688: «No English statesmen, since the revolution, can be liable to the slightest suspicion of an aim, or even a wish, to establish absolute monarchy on the ruins of our constitution. Whatever else has

been done, or designed to be done amiss, the rights of parliament have been out of danger»[15]. From that time on, ministerial responsibility functioned as a balance between the different state powers.

Gradually, parliamentary support became more important for the government and ministers appropriated a bigger role in state affairs[16]. William III – King of England, Scotland, and Ireland since 1689 – started regular wars with France. These wars required continually heavy taxation and accordingly meetings of parliament every single year. Ministers had to prepare the requests for annual taxes. In that respect, ministerial responsibility seemed to be more on the fore because of the wars against France, than because of the Glorious Revolution. Ministerial responsibility proved to be a panacea for the crown. Instead of a revolution, one could also do with a change of ministers.

In spite of the new position of ministers and parliament, the king remained very powerful. William III «was truly his own minister, and much better fitted for that office than those who served him»[17]. However, his successors were less able in that respect and more vigorous ministers came to power. After the death of William in 1702, no monarch would retain ministers in office anymore against the will of parliament. Consequently, the House of Commons rarely had to use any impeachment nor had to send a formal address to the king for removing ministers. Instead, a vote of censure was enough. Impeachments were on the decline in the eighteenth century. In 1715 the 1st Earl of Oxford, the Duke of Ormond, the Earl of Strafford and Viscount Bolingbroke, who all participated prominently in the Tory ministry of 1710 to

1714, were impeached as a politically motivated revenge for the years of frustration inflicted on the Whigs. However, the Whigs did not succeed in using this instrument for party politics. After the unsuccessful trial of Henry Dundas, 1st Viscount Melville, in 1806, impeachment fell out of use in Great Britain.

1.2. *The assumption of royal inviolability*

As ministerial responsibility functioned as a relational concept, it did not have a clearly specified meaning. The theory of ministerial responsibility provided for a certain agility in the balance between the constitutional powers. For example, the meaning of the concept of royal inviolability was unclear in that period: did it mean that the monarch himself did not have any powers at all? In 1775 the English lawyer, Sir William Blackstone (1723-1780), published the seventh edition of his masterpiece *Commentaries on the Laws of England*; the final one before his death. In the first part he dealt with the monarchy as a perpetual representative of English society. The ultimate authority in society he considered to be concentrated in the king, who according to him possessed specific prerogatives. In his argument these prerogatives follow from crown sovereignty, as otherwise the king could not be a 'king'. He defined prerogatives as rights and competencies, which the sovereign solely possessed, in contrast to all other persons. One of these prerogatives was the royal perfection which became evident in the royal inviolability. Blackstone deemed inviolability to be so basic that he thought it did not have any history at al. Although he

did not mention cabinets or a prime minister, but only dealt with counsellors or ministers of the king, he nevertheless alleged that the exertion of a prerogative might not be at the expense of the public interest. In that case ministers would be called to account[18].

When George III (1738-1820), King of Great Britain and Ireland from 1760 until the Regency in 1812, accessed to the throne he preferred to govern himself instead of to reign through his ministers. He made improper use of the inadequacies of the constitutional system at that time. The great nobles were still very powerful and parliament did not represent the people evenly. Because of his accession to the throne parliament was dissolved – a customary course in that period – which afforded him the opportunity with the help of Lord Bute to extend his powers. Ministers were recruited from parliament because of their talents to command its confidence. George III did not address himself ever to the people directly. Yet he made appeals to members of parliament without consulting his ministers[19]. With the help of members of parliament and government officials he sometimes even acted in opposition to his principal ministers. In theory, the ministers were responsible and the monarch was inviolable, but that did not restrain George from governing himself as much as possible, and to rid himself of troublesome ministers from time to time. He succeeded in choosing his favourites as prime minister, such as Lord Bute and Lord North. Lord North's administration lasted even for twelve years until 1782.

Still, a strong social current existed which attributed mythic powers to the king. According to the 1822 edition of the Swiss/ English political theorist Jean-Louis de Lolme's *The Constitution of England*: «[…] the king is undoubtedly sovereign, and only needs allege his will when he gives or refuses his assent to the bills presented to him»[20]. Such a theorist as De Lolme represented the king's might as uncontested: «Thus, the king, though he preserves the style of his dignity, never addresses the two houses but in terms of regard and affection; and if at any time he chooses to refuse their bills, he only says that he will consider of them (*le roy s'avisera*); which is certainly a gentler expression than the word *veto*»[21]. This statement of De Lolme was over exaggerated, because after 1708 the royal veto was not used anymore, even not in its gentler expression[22]. In such cases where the monarch disapproved of a policy, he used his influence to defeat bills before these were presented to him for approval.

Nevertheless, also according to De Lolme the king had to obey the laws when exerting his powers. The idea of ministerial responsibility set boundaries to the royal prerogative. The king was dependent upon the representatives of the people to obtain subsidies, and by the nineteenth century parliament gradually acquired other rights in addition. In parliament it was not common to mention the king as such, as De Lolme wrote, and his behaviour was always attributed to his ministers or counsellors. This assumption of royal inviolability in parliament was combined with the assumption that the king possessed some powers on his own. De Lolme considered the balance between the constitutional powers in England as a shining example. He thought the British parliament was unique in its stability because of the combination of the House of Commons with the House of Lords. The

people's representatives in the House of Commons were checked by the House of Lords, which prevented them from limiting the royal power too much.

1.3. *Cabinet Government*

The development towards cabinet government led by a prime minister started with the reign of Queen Anne who as a woman was not taken very seriously, and subsequently with George I of the House of Hanover who as a foreigner was unfamiliar with English political traditions. Already during the reign of William the Third, ministers of state had resigned because the king refused to take their advice or appointed also politicians of another party in the cabinet. Ministers increasingly identified themselves with a party and assumed the confidence of the king only when their party had the ministry under its control. By the year 1714 when George I succeeded to the throne, party government had settled, to the disadvantage of the monarchy that had now to deal with a ministry made up of one party. The ministers however did not always act as a unity and even opposed each other in and out of parliament. Only from the end of the eighteenth century, the principle of collective responsibility or homogeneity of ministers started to take roots, when the monarch left ministers to agree on a policy and expected them to present the results to him for approval.

Often a leading minister among the ministers showed up, such as Sidney Godolphin, 1st Earl of Godolphin, and Robert Harley, 1st Earl of Oxford and Earl Mortimer, under Queen Anne. However, it was not until 1721 that Sir Robert Walpole was acting as England's first Prime Minister. His powers were not only approved by King George I, but also based on a parliamentary majority. He dominated the other ministers, had the ear of the king and could usually get royal approval for appointing or dismissing ministers as he desired. As Prime Minister, Walpole succeeded in putting himself in charge of state affairs, partly by patronage and corruption. He suffered no resistance to his authority from members of his cabinet; he even got rid of his brother-in-law Lord Townshend when he disagreed with him over government policy. Thus his was the first cabinet that showed unity and homogeneity in government. Also in other respects Walpole provided greater stability. His ministry stayed twenty-one years in power: this longevity unparalleled in British history[23].

Since the Glorious Revolution it became clear that the executive disintegrated into two constitutional powers: the king and his ministers. A public debate about ministerial responsibility and the powers of the king after the resignation of William Pitt the Elder in 1761 illustrated these changed relationships. Pitt had not resigned because the support of the king was lacking, but had resigned because he as a leading minister had not been able to influence the other ministers to agree with him. Ministers had obtained their own independence. The debate about his resignation dealt with questions about the relationship between ministers and the king, and among the ministers themselves[24].

Two decades later, in 1784, an important constitutional rule was established when parliament was dissolved because the cabinet headed by William Pitt the Younger – the

son of late William Pitt the Elder followed his father's footsteps – appealed to the electorate – so far very small and privileged – for a workable majority in parliament. What had happened? In December 1783 King George III had intimidated the House of Lords into defeating the India Bill, a major policy of the Fox-North coalition which still had majority support in the House of Commons. George appointed Pitt as Prime Minister, who was, at the age of twenty-four, Great Britain's youngest Prime Minister in history; his opponents composed a jingle about it: «Billy's Too Young to Drive Us»[25]. The new cabinet was immediately on the defensive and confronted with a motion of no confidence. Pitt, however, took the unprecedented step of refusing to resign despite such a defeat. After a long struggle that had drastically reduced the support for the opposition, he asked the king to dissolve parliament, because he assumed the feelings of the legislature to be different from those of the nation. His strategy appeared to be right and the electoral success meant he would continue his administration for seventeen more years. Although he received support from parliament and the voters, most important was that he enjoyed the favour of the king, who still remained the dominant force in government.

From the end of the eighteenth century onwards, the king did not govern himself anymore, but put his trust in the capacities of his chief minister. The king still had much influence, yet constitutional rules were in the making. As Walpole had done, Pitt harmonised the opinions in his cabinet and tried to ensure collective ministerial responsibility. However, it was only after the reign of George III that the principle of political unanimity among the ministers

gradually became an established convention. For Pitt it still took several years to persuade the king to remove Lord Chancellor Thurlow, who opposed his policies, and early in the nineteenth century fellow ministers Canning and Castlereagh even duelled with each other[26].

In the first half of the early nineteenth century ministers and Commons were looking for the natural boundaries of collective responsibility. Ministers gradually became accustomed to avoiding opposing each other on matters of great importance. No longer it was considered as a dishonour, when supporting a cabinet position that was not in line with one's own thinking. Consequently it was argued that a dissident minister could not confine himself anymore to a pro forma offer to resign, but had to resign actually and before voting against the government. Afterwards many examples followed of ministers who resigned because they were not willing to defend a cabinet decision, such as Lord Stanley's resignation from Lord Grey's government in 1834. The principle of collective ministerial responsibility was reinforced by the Reform Act of 1832 as the powers of parliament increased[27].

1.4. *Parliament in a Winning Mood*

In 1739 Walpole had confirmed in the House of Commons that ministers should be accountable to parliament:

This House and Parliament, Sir, is his Majesty's greatest, safest, and best Council. A Seat in this House is equal to any Dignity deriv'd from Posts or Titles, and the Approbation of this House is preferable to all that Power, or even Majesty it-

self, can bestow: Therefore when I speak here as a Minister, I speak as possessing my Powers from his Majesty, but as being answerable to this House for the Exercise of those Powers[28].

Another event which established a precedent with respect to the relations between government and parliament was the resignation of Walpole in deference to the will of the House of Commons, because after the elections of 1742 the parliamentary majority turned against him.

Around 1769 in parliament, the Rockingham party as part of the opposition sought to dominate and unify the opposition to the government. For this case a leading political thinker and writer, Edmund Burke (1729-1797) – later in history the champion of conservatives – wrote a famous pamphlet *Thoughts on the Cause of the Present Discontents* (1770). He blamed the prevalent discontents on the secret influence of a cabal of royal retainers at court, but outside the official cabinet, which resulted in unstable and unconstitutional government. Political stability and constitutional propriety were not compatible with secret advisers at court, so Burke argued. The king must listen to his official ministers for advice, with formal responsibility for government policy, and not to his personal favourites.

Nevertheless, Burke's plea for a unified opposition had little effect because both the allies and the enemies of the Rockingham opposition were unconvinced by his reasoning, which they considered factious and arbitrary[29]. Interestingly enough this pamphlet indicates a development towards an intentional opposition. Parties in the sense of political groups of men with the same kind of ideas and ideals had already existed for some time and also party government, as discussed above, but parties as such were loose groups and not organised formally. Burke's plea for a unified opposition, however, was an attempt to widen the modes of organising political action. At the same time he attempted to tighten ministerial responsibility for deeds of government towards parliament.

At the end of the eighteenth century parliament became more assertive. In 1782 Lord North's ministry was overthrown by the House of Commons because of Britain's defeat in the American War of Independence. Thus, a landmark was achieved, this being the first cabinet in the world to be forced out of office by a motion of no confidence. It was also the first example of a cabinet's collective resignation. Monarchical absolutism was on the wane and in other European countries parliaments were established too. Concerning matters of parliament and participatory government Great Britain was considered to be in the lead. People in France and the Netherlands commonly referred to the British parliamentary system. For example, the Dutch statesman Gijsbert Karel van Hogendorp (1762-1834), co-founder of the Dutch state in 1813, was impressed when visiting the House of Commons in 1784. Reading his memoirs one can see how overwhelmed he was by its critic role opposite government[30].

As from the Glorious Revolution parliament was regarded as a vital link in the balance of constitutional powers. People admired the smooth and beneficial functioning of the British way of government, consisting of a mixture of monarchy, aristocracy and democracy. Sovereign legislation was approved upon by crown, House of Commons and House of Lords. Britain possessed a mixed government and a fair
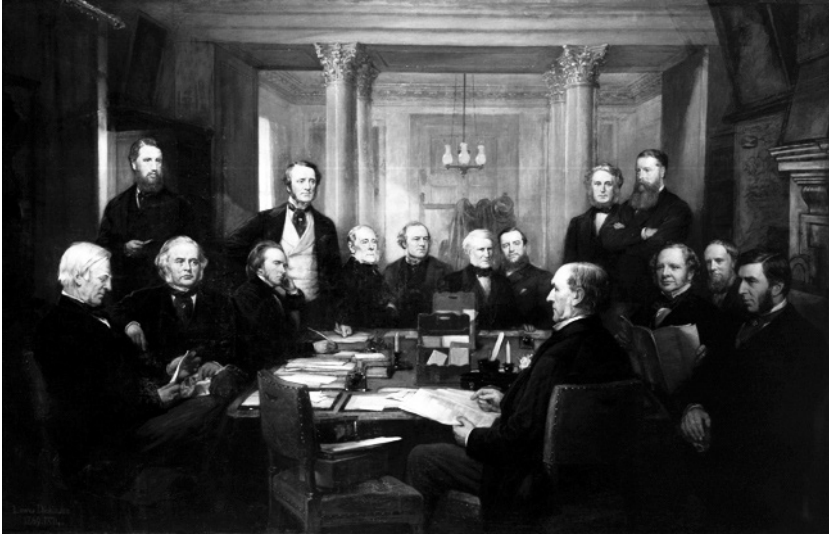
"Gladstone's Cabinet of 1868", dipinto di Lowes Cato Dickinson

balanced constitution[31]. This equilibrium was reflected by a relational concept of ministerial responsibility. The main constitutional powers − crown, cabinet, Commons and constituencies − were in a dynamic relationship with each other. That is the reason why no huge popular uprisings took place in Great Britain in the eighteenth and nineteenth century and the revolutions on the European continent did not trouble it so much.

At the end of the eighteenth century the balance between the constitutional powers was changing, because the dominance shifted from the king to the Commons. Until then, the king had represented state power in general. Ministers had been considered to be his representatives and to act on his orders. However, from the beginning of the eighteenth century constitutional power was transferred to the House of Commons and from 1780's onwards cabinet government under prime ministers became com

mon practice and the ministers gradually were more responsible to parliament than to the king.

The political influence of the monarch diminished. He lost his control over the cabinet and the number of constituencies under his direct influence was reduced significantly[32]. The House of Lords, which rested on inheritance and crown nomination, gradually became less influential, because of the growing power of the electorate. The House of Lords was subordinated to the House of Commons when the Reform Act was passed in 1832. The ministers requested the king to force the Lords to approve of the Reform Act, otherwise additional peers would be created to secure its passage. The House of Commons obtained the main constitutional power. When the conservative Prime Minister Robert Peel resigned in 1835 as he faced a parliamentary defeat on a major issue, he said «that a Government ought not to persist in car

rying on public affairs […] in opposition to the decided opinion of a majority of the House of Commons»[33]. From then on it became axiomatic that cabinet government needed the support of a majority in the House. However, also the House of Lords was important for the balance between the constitutional powers. The lords were not only natural conservatives because of their adherence towards their rank, status and lavish resources, but also motivated by political principles and receptive to an increasingly forceful public voice. Previously, they had an allegiance to the crown, but from the end of the eighteenth century increasingly to political parties of which the Tory party attracted them most[34].

2. *Phase II: a Central Role for the House of Commons*

The Reform Act of 1832 was not revolutionary itself, but it introduced a revolutionary process. As some people newly acquired the vote in 1832, and as it was recognised how privileged they were, pressure grew to extend the vote to more people. The demand for the popular vote had come into existence and continued to grow and further reform bills were passed. In many constituencies before the Reform Act patrons could greatly influence which candidate would be elected to the House of Commons, but when towns enlarged in which voters were too many to control them, constituencies became more important. The ordinary system of nomination was replaced by that of elections in an increasing number of constituencies[35]. As a consequence of these developments political

groups were organised more systematically into political parties.

As parliamentary elections were increasingly democratic, the representatives of the people were recognized as the basis of political society[36]. The balance between crown, cabinet, Commons and constituencies changed in favour of the Commons. The years following 1832 until 1867 confirmed that the House of Commons possessed decisive powers[37]. This period witnessed the downfall of no less than ten cabinets by votes in the House of Commons[38]. While by 1832 20 per cent of all adult males had the vote, already by 1867 the male vote doubled and by 1884 the male vote rose from 40 to 60 per cent. Then by 1918 all men over 21 and women over 30 got the vote. These events meant that the principal power moved towards the electorate or constituencies and their representatives at the House of Commons.

2.1. *A Parliamentary Cabinet*

After a Whig ministry, King William IV (1765-1837) chose a Tory government with Robert Peel as Prime Minister in 1834. In the hope of winning a large majority in the House of Commons, Peel asked the king to dissolve parliament and call for elections. As the new legislature did not give majority support to Peel's cabinet, the king was obliged to ask the Whigs to return to office. In contrast to 1784, the decision for dissolution was not successful, because the Commons did not differ in attitude from the electors. From then on, crown, cabinet, Commons and constituency were in such a relationship that dissolutions were scarcely

acceptable anymore. The ghost of this dissolution haunted Queen Victoria in such a way that she never dared to try ordering one. Since 1834 no dissolutions were ever again decided upon, unless the cabinet decided so and took the responsibility.

Some years afterwards something revolutionary happened when Peel formed a government against the wishes of Queen Victoria. In 1839 the Whigs under Lord Melbourne had lost their majority in the Commons, but Peel declined office because the Queen was not willing to change her Whig supporting Ladies of the Bedchamber. Melbourne was kept in office, but in 1841 Peel initiated a resolution of no-confidence which led subsequently to dissolution, the defeat of the Whigs in the general election, and a no-confidence amendment to the Royal Address. Thereupon Melbourne resigned and Peel as leader of the opposition was the only option for the Queen as her new prime minister[39]. So visibly, the power of the monarchy diminished.

With the desuetude of the right of government to dissolve the House of Commons, the question as to the might of the monarch was brought into prominence. Instead of the earlier mentioned De Lolme who had tried to maintain the royal authority, such a figure as the famous journalist Walter Bagehot (1826-1877) believed some decades later that the House of Commons should be in charge and ministers should be fully and exclusively responsible to it. He wrote the famous phrase: «the sovereign has, under a constitutional monarchy such as ours, three rights – the right to be consulted, the right to encourage, the right to warn»[40].

These renowned words were only cited by later commentators who interpreted them as though Bagehot meant that the monarch did not have any powers anymore: he or she could merely act as a counsellor to government. However, Bagehot had superadded immediately: «And a king of great sense and sagacity would want no others». As he saw it, the king might have some significant powers, but it would be unwise to use them: «A constitutional sovereign must in the common course of government be a man of but common ability. I am afraid, looking to the early acquired feebleness of hereditary dynasties, that we must expect him to be a man of inferior ability. [...] Probably in most cases the greatest wisdom of a constitutional king would show itself in well-considered inaction»[41].

In various places of his argument Bagehot maintained that a king of great sense was hardly ever to be found: «The only fit material for a constitutional king is a prince who begins early to reign – who in his youth is superior to pleasure – who in his youth is willing to labour – who has by nature a genius for discretion. Such kings are among God's greatest gifts, but they are also among His rarest»[42]. According to Bagehot, history proved that hereditary succession produced no series of useful monarchs and even dangerous lunatics. Instead of the royal form of cabinet government, one could better do with a cabinet functioning on behalf of parliament[43]. With an ordinary king the royal form would have about the same results as the non-royal one. He argued that the royal form could do a lot more harm to state affairs than the non-royal one, because the king simply was there, not chosen according to any selection criteria.

Bagehot considered the monarchy as the «dignified part» of the constitution while making great impact on the public, but without real power. On the other hand, the

cabinet and the House of Commons were the «efficient parts» which embodied the secret machinery of decision-taking. In his view the efficient parts were secret, because the constitutional monarchy drew its public support from the illusion that the monarch was the centre of power. Since 1832 the British constitution actually was a «disguised republic». He considered the cabinet as a committee, chosen by the House of Commons, which united the legislative and executive functions of the state[44].

In three ways the theory of Bagehot depicted the actual situation about royal powers and about ministerial responsibility inadequately. First, the king had possessed those rights of being consulted, advising and warning all along. Second, even after 1832 the cabinet was never chosen by the House of Commons. It was composed of the leaders of the party that had won majority control in the Commons, usually after a general election. Third, Bagehot presented a theory or an ideal vision, but not a governmental practice. He was interested in political philosophy and not so much in politics from an historical or actual point of view. Bagehot was a representative of those classes who were gradually admitted to the upper class from the beginning of the nineteenth century. His vision on politics was dominated by the mentality of these new professional elites[45].

2.2. *A Monarch with Power on the Wane*

In contrast with Bagehot's ideas, Queen Victoria (1819-1901) − whose reign lasted from 1837 until her death − had considerable influence in politics, partly because the concept of ministerial responsibility and the powers of the monarchy were not obvious and clearly defined. She interfered in state affairs and with nominating ministers[46]. When the liberal statesman William Gladstone (1809-1898) resigned as prime minister in 1894 because of ill-health, the queen did not ask for advice about his successor, but made her own choice[47]. As homogeneity within the cabinet was not always the case, she could use the discord among ministers to her own advantage. For example she had asked Prime Minister Lord John Russell and eventually the whole cabinet to correct the Foreign Secretary Lord Palmerston on the foreign policy towards Portugal. The queen even succeeded in asking to send her all Foreign Office drafts for prior approval, meaning about twenty-eight thousand despatches a year.

Nevertheless, Queen Victoria's reign witnessed the gradual establishment of a modern constitutional monarchy. Even the traditional relationship between the monarchy and the army was changing. In 1870 the War Office Act was passed by which the civil and military departments of the army were placed under the supervision of a minister; from then on ministerial responsibility also was applied to the army[48]. With the rise of parliament, the monarchy acquired a different role. The queen asked of her ministers, so she wrote to her prime minister, «to place before her the grounds and reasons upon which their advice may be founded, to enable her to judge whether she can give her assent to that advice or not»[49]. In this way she was taking care of a sound and qualitative decision-taking process and by that she modelled a new role for the monarchy as a guard for constitutional rules. Her Dutch counterpart Queen Emma,

who strived for an independent position as a monarch because of her new fundamental role as representing all the people in the Netherlands, did in fact the same[50].

Many papers and letters were written by ministers and advisers about ministerial responsibility and the role of the monarchy. Liberals tended to prefer an absolute interpretation of ministerial responsibility – the monarch had no alternative but to swallow the advice of the ministers – while conservatives attributed powers to the monarchy to influence the decision-making process. The political influence of the monarch was changed to a more formal and symbolic role. Victoria's reign created the concept of a 'family monarchy' with which the people could identify. The monarchy took part in national ceremonies and festivities. New traditions were invented, such as national celebrations and memorial days. In this way the monarchy remained a centre of unity and solidarity of the nation. Queen Victoria was seen as the archetypical mother figure of the British Empire and even of Europe.

At the same time the responsibility of ministers for their department and civil servants became a hot topic. Ministerial departments increased in size and complexity and consequently these were organized more centrally. From 1867 till the Second World War the balance between the four constitutional powers was changing a lot. The power of the monarchy diminished and altered, while the power of the electorate was rising steadily and surpassed that of the Commons after that war. The power of the cabinet became more and more independent but subservient to the control of the Commons.

2.3. *The Machinery of Political Parties*

At the end of the nineteenth century new developments were taking place in society. Gradually government assumed other tasks as well as guarding the safety of its inhabitants. With the social measures also the character of political parties changed and party machinery prevailed. The Reform Act of 1867 especially led to the growth of party organizations by which party leaders got more and more power at the expense of the individual members of parliament[51]. Party machinery enforced the tendency of ministers to act collectively and of party organization within the Commons. As a consequence it became essential for the cabinet to have a majority in parliament. Such a majority did not always exist, which caused weak and short governments. The House of Commons transformed from an assembly of individual politicians into one dominated by disciplined and hierarchical parties.

At a Manchester meeting in 1872 the Conservative Benjamin Disraeli (1804-1881) remarked on the new phenomenon of organized political parties and constitutional relationships:

> Gentlemen, I am a party man. I believe that, without party, Parliamentary government is impossible. […] Yet, gentlemen, I am not blind to the faults of party government. It has one great defect. Party has a tendency to warp the intelligence, and there is no minister, however resolved he may be in treating a great public question, who does not find some difficulty in emancipating himself from the traditionary prejudice on which he has long acted. It is, therefore, a great merit in our Constitution that before a Minister introduces a measure to Parliament, he must submit to an intelligence superior [i.e. the monarch – *author*] to all party, and entirely free from influences of that character[52].

Disraeli saw the monarch as a neutral power, which would counterbalance the negative influence of party government. The British constitution did not preclude the possibility of that neutral power by the monarch, so he argued. He implied that the four constitutional powers were balancing each other.

With the new social role of the monarchy, its public exposure became very important. After the death of her husband, Victoria was criticized for dwelling on her estates instead of being visible for the public. Because of the public exposure, the impartiality of the monarchy was stressed ever more. The monarchy should not represent sectional interests. The monarch drew her powers from her neutrality and balancing role, not from playing an active part in politics. From now on, the monarchy had to be popular with the general public. When Victoria's son Edward (1841-1910) became king in 1901, one of his first deeds was to open parliament in a full ceremony. His latest innovative act was his lying in state at Westminster Hall for the people to bid him farewell. After this event, also the death of the royal consort resulted in ceremonies, such as lying in state and a grand funeral. Besides, the weddings of royal children and anniversaries of the royal accession, such as the golden jubilee of Victoria's reign, were invented as public ceremonies. The monarchy had to be accountable to the electorate.

2.4. *Fighting the Conservative Stronghold*

In 1885 the then famous constitutional commentator A.V. Dicey published his *The Law of the Constitution* which became a standard work for academia ever since. In his legal treatise he wrote that «The sovereignty of Parliament is (from a legal point of view) the dominant characteristic of our political institutions»[53]. According to Dicey, the electorate was the true political sovereign of the state. It was represented by the House of Commons which had to give effect to its will. Since ministers were responsible to parliament for all actions of government, their responsibility indirectly applied to the electorate. Like Bagehot, Dicey even thought of the executive as a committee of parliament. In the same period William Anson published his influential legal treatise *The Law and Custom of the Constitution*, in which he emphasized the idea, that government had to be based on a majority in parliament and ministers could only be dismissed together. In his eyes all ministers had to represent the same policy. This idea he referred to as «collective ministerial responsibility» which he thought to be a new principle, while in fact it was an old principle applied to new circumstances[54].

Due to the power of parliament, collective ministerial responsibility was very dominant at the end of the nineteenth century. Anson's argument illustrates the plea of liberal authors at that time for a central place of parliamentary democracy. As A.H. Birch argued, Dicey and other liberal authors – Birch did not mention Bagehot – were idealizing reality[55]. They assumed that political power only flowed in one direction, from voters towards representatives and subsequently towards government, and did not reckon with the independent powers of parties, monarchy and Lords. Liberal journalists and scholars tended to present an idiosyncratic view on the constitution and ministerial responsibility. They mixed

reality with liberal romantic notions of how state affairs could or ought to be arranged. In this view parliamentary sovereignty was the central principle of the constitution, while the power of the House of Lords – a body to check popular will and not resulting from general elections – was its most serious shortcoming. These liberal ideas, in which parliament and the electorate functioned as core assets of the political game, were opposed vigorously by conservatives.

2.5. *Homogeneity & Solidarity*

The year 1911 witnessed the passage of the Parliament Act by which the supremacy of the House of Commons became a well established fact in the British constitutional system. Henceforth the ministers were deemed to be exclusively and fully responsible to this House. Ironically, King George V helped the act to succeed. The House of Lords rejected it because of its implications. The king however was willing to create hundreds of peers to overcome the negative majority in the House of Lords. In the end the Lords gave way. The primary function of the House of Commons changed from controlling government to a legislative machine as well[56]. The reason for that was the growing need for social welfare legislation. At the same time, the electorate rose as a controlling power over parliament. All adult males aged 21 and over, and women aged 30 and over, were enfranchised in 1918 and female suffrage at age 21 and over, was attained in 1928. The monarchy took a back seat, while the cabinet of ministers was at the wheel, guided by the House of Commons and monitored by the electorate.

With the powers of parliament increasing, also the powers of the cabinet became more substantial and strategically relevant. The cabinet itself became more independent of the monarch and therefore ministers felt the need for homogeneity and solidarity between each other. As the different ministers of the cabinet all had their own opinion, someone had to lead the discussions and to force decisions to be taken, to plan the strategy in parliament and to consult the monarch. Consequently, the position of the prime minister and the collective ministerial responsibility were developed as cornerstones of cabinet government. In the accountability to the outside world the secrecy of inner events and the collective responsibility were felt as hot items. This stress on the outside unity of the cabinet was in a sense fictional because a minister could not be denied his own opinion. As ministers could not always accept the collective position they started to leak secretly to the press: the so-called unattributed leak[57].

The more formal position of the cabinet required a more professional organization. In 1916 the Cabinet Office was created as a secretariat. From then on the cabinet meetings were organized more systematically. The number of the meetings and the items on the agenda increased in such a way that committees were created to do all the work. Alongside, the growth of the ministerial departments and the rise of the civil service took place. Since the second half of the nineteenth century, ministerial responsibility was identified with the ministerial department concerned and its civil servants[58]. Before World War I it seemed possible for ministers to know nearly everything that happened in their department, but

thereafter, the civil service became a power of its own and a minister was the man on the top who was only aware of the complex or political sensible issues. In this time gradually the question arose to what extent a minister could be responsible for behavior of his civil servants.

The monarch was still having power, but now with the aim, as Queen Victoria articulated, of keeping guard over the constitutional process. This role as defined by Victoria has been pursued by her successors up to this day. It was the reason that in 1923 King George V asked Stanley Baldwin instead of Lord Curzon to form a government. Lord Curzon as a peer had his place in the House of Lords. Besides the king appointing the prime minister and demonstrating by this his remaining royal power, this decision set the convention that a prime minister has to be chosen from the House of Commons. Partly because of the Parliament Act of 1911 the balance was now in favor of the representatives of the constituencies[59]. In this way the balance of powers in the parliamentary system was directed towards the electorate and its representatives.

3. *Phase III: Seeking Public Approval*

Even during the Second World War ministerial responsibility was practised emphatically towards the House of Commons. Prime Minister Churchill decided with his colleagues in cabinet and asked for the support of the Commons[60]. During the Battle of Britain in 1940 Sir Ivor Jennings wrote *The British Constitution*, dealing with all aspects of central government, democracy and party politics. The book soon caught on and in the 1940's was reprinted almost every year. Jennings contended that the government is usually formed by the majority in parliament and that if the majority does not support the government, they will play into the opposition's hands. At the same time, the cabinet need not so much reckon with parliament, as with public opinion, because at the next election public opinion will decide which party wins and may help produce a new prime minister and cabinet: «Accordingly, the decision of the Cabinet to support a minister is really based not on possible parliamentary consequences, but on the effect which the decision may have on public opinion»[61].

After the World War, attention shifted definitively towards constituency government in stead of parliamentary government. With Jennings' book in mind one could argue that ministerial responsibility transformed from parliamentary accountability to public exposure. Ministers felt themselves dependent primarily on public opinion, and secondarily on their prime minister and party politics. More and more they tended to reckon with public opinion and the decisions they would have to take to be in its favour. Ministerial responsibility changed into the seeking of public approval.

3.1. *Prime Ministers Bounded by Collective Ministerial Responsibility*

Although in the aftermath of the Second World War a more prime minister oriented government developed and important decisions on occasion were taken by the prime minister and his counsellors outside the cabinet, the principle of collective respon-

sibility of ministers was not undermined. Thus, the role of the prime minister became not as dominant as to disrupt the unity and equality of the members of cabinet and to make the way for an authoritarian style government[62]. Nevertheless such a Prime Minister as Mrs Thatcher showed how to exert the available power to the full by acting in a leadership role rather than striving for consensus; but that behaviour eventually also led to her downfall when she did not have a secure political base anymore. The resignations of Thatcher and Neville Chamberlain, who lost power to Churchill in 1940, are examples of a governing party dropping a prime minister.

When ministers disagreed with each other the cabinet functioned as the court of appeal. Then the prime minister might act as arbitrator and co-ordinator. From the account of Jennings one perceives how the prime minister acquired a vital function in British politics, not only because he was in charge of the cabinet, but also because he was the leader of the party and as a member of parliament headed its majority there. The prime minister might put together his cabinet; but his free choice was bound by the lobbying of party members, the criticisms of parliament and the public opinion. Although nearly all recent developments have tended to increase the central authority of the prime minister, as Jennings already concluded in 1961, the prime minister still has to act within the relationship among the constitutional powers. In other West-European countries the same kind of development took place. For example in the Netherlands the position of prime minister was formalised after the Second World War[63].

In the twentieth century the principle of homogeneity of the cabinet was a matter of course, but not always applied. Both in 1932 and in 1975 ministers agreed to differ openly on a main issue of government policy. In fact, the agreement to differ was not a new constitutional item. In former times it was denoted with the term 'open question'. In such cases ministers might vote as they liked, without offence to their colleagues[64]. In 1932 they differed in opinion on tariff protection, while in 1975 some ministers could not approve of the membership of the European Community, especially where it meant joining the Common Market[65]. In both cases, the prime ministers allowed the ministers concerned to express their dissent openly so as to preserve the unity of the cabinet and the nation as a whole. More in general, it was allowed for ministers to have different views on a decision as long as they conformed to the decision itself. In parliament, ministers avoided making too much criticism of cabinet's decisions, because otherwise its position would become impossible. However, the agreements to differ were an exception to the rule. Collective ministerial responsibility had become a durable characteristic of the British constitution[66].

3.2. *A Power Manqué of Parliament*

Does individual responsibility of ministers exist? The lawyer S.E. Finer argued in an influential article in 1956 that individual ministerial responsibility was severely hindered by the counter-convention of collective responsibility of the cabinet. From many recent cases he examined to see what light these threw on the working of minis-

terial responsibility. It appeared that the governing party was unwilling to defeat the government because they themselves would be affected too: «Practically all cases of incompetence tend to be treated thus, and so the House is not called on to adjudicate on the merits of a Minister but is challenged to overthrow the Government»[67]. In Finer's view, collective solidarity of the cabinet is invoked to protect individual responsibility so long as the cabinet is still in power: «Nevertheless, ministerial resignations do take place; they are the exception, not the rule, but there are clearly occasions where the collective weight of the Ministry is *not* thrown into the scale»[68].

Finer seemed to ignore a bit the capricious nature of politics itself. As long as British parliament exists, party politics and cabal have always thwarted both individual and collective ministerial responsibility. Ministerial responsibility possessed a political content from its inception. In principle, ministers will always be protected by their friends or affiliated representatives in parliament. Even before tight party discipline, cabinets were backed up by associated persons and groups in parliament. Moreover, during the second half of the twentieth century, especially after Finer's publication, individual ministerial responsibility became a well-known phenomenon. The advantage of individual responsibility for the cabinet and its corresponding party appeared to be that it prevented the accountability of the cabinet as a whole. Individual ministerial responsibility was applied to avoid collective ministerial responsibility. In that sense there seemed to be a move from collective towards individual ministerial responsibility, just the opposite of Finer's argument.

Nevertheless, Finer was right in pointing out that party discipline and majority government made it very difficult for the opposition to remove a cabinet[69]. Only at election time collective responsibility could lead to a change of cabinet. In this respect, the function of parliament has been taken over by the electorate.

3.3. *The Cabinet Still at the Wheel*

A typical constitutional feature of a minister is his position as head of a department, usually referred to as secretary of state. Since the Second World War, the governmental departments have increased in size substantially. Laissez faire politics were abandoned and a vast welfare state emerged with new public tasks. The increasing complexity of life and the growth of governmental services in the second part of the twentieth century led to a shift from cabinet to departmental government, because many decisions were taken by the ministers themselves or in their departments rather than in the cabinet or its committees. Because of this, a department often consisted of additional ministers, who could also take part in the cabinet. The tasks and responsibilities of those ministers have not been laid down in rules, but have varied depending on the particular circumstances. Besides, the minister in charge of the department – often one would find several subordinate ministers – ministers of state or parliamentary secretaries – appointed by the prime minister in consultation with the departmental minister[70].

According to the general perception about ministerial responsibility since the

second half of the twentieth century a minister is responsible for carrying out laws and policy efficiently and rightly as well as for the choices to be made. However, civil servants have been much involved in decision-making and been able to influence even strong ministers. In that respect, ministerial responsibility was undermined. In the famous British television shows 'Yes, Minister' of the 1980's, civil servants were shown to embody the real power because a minister only functioned for a short term and could not make himself familiar with all knowledge and actions of the department. Although civil servants were sometimes considered as a secret state power, such as in these series, their actions were bound by the political framework of crown, cabinet, Commons and constituencies. Moreover, they were subservient to their minister, in the same way as the royal court to the monarch, and clerks and other supportive staffs to parliament. Therefore the principle was applied that civil servants up to the highest rank were only responsible internally, but not towards parliament otherwise than indirectly through their minister. In such way, the neutral, advisory and subservient role of the civil service was maintained[71]. This is the reason why the relationship between minister and civil service plays in fact no role of importance with respect to ministerial responsibility.

Gradually the idea has originated that ministers are only responsible for events in their ministry which involve their own decisions and risks. They have to be responsible to parliament and to intervene if something gets out of hand. Ministers are not to blame for matters of which they know nothing and could be expected to know nothing[72]. The concept of ministerial responsi-

bility however remains indefinite, because of its relational character. The question what a minister could be expected to know is a subjective one. Besides, in reality party politics and emotional aspects of politics undermine the content and effectiveness of ministerial responsibility. For example, Lord Carrington resigned as Foreign Secretary over the Falklands crisis, even though it was doubtful that he could have known that Argentina would invade them. As from the beginning in the seventeenth century when ministers were still impeached and shut up in the Tower, ministerial responsibility has been a risk based mechanism by which the constitutional powers have hold each other in balance.

A recent development is to make a distinction between responsibility and accountability, or to put responsibility on a par with actual control[73]. Responsibility is said to relate to the job one is charged with, while accountability is said to be the duty to explain what has been done. In this view ministers are *accountable* to parliament and the electorate, even concerning matters for which they are not personally responsible. For example, ministers are also accountable for the operational performance of agencies which have independent decision-making and chief executives primarily responsible. Some commentators believe that the growth in agencies from the eighties on, altered the concept of ministerial responsibility, partly because the loyalty of those chief executives should be no longer solely to their minister[74]. However, when deeming ministers responsible for the policy framework of agencies, one could argue that they have to evaluate the operational performance and, if necessary, revise their policy framework. From that perspective, a

distinction between responsibility and accountability seems rather artificial.

As openness and transparency of government and freedom of information have become important themes from the 1980's on, this has brought along more openness of conduct of ministers. The cabinet's code of conduct for ministers was first published in 1992 under the title *Questions of Procedure for Ministers* and was subsequently revised in 1997 and 2010 as *Ministerial Code*. In this code of conduct the already well-known principles of ministerial responsibility were written down: decisions reached by the cabinet are binding on all members of the government (collectively) and ministers are accountable to parliament for actions of their departments and agencies (individually). It also states that ministers can only remain in office for so long as they retain the prime minister's confidence[75]. This last statement was a new one, because until then the position of the prime minister never was arranged for officially. Before, Prime Minister Margaret Thatcher had to fight a lot before her minister Michael Heseltine was willing to resign. Defence Secretary Heseltine differed in opinion with her about selling the so-called Westland helicopter company to a European consortium or an American group[76]. Perhaps she had the power to dismiss him, but then she would anger a lot of the members of her party and perhaps many of the public, and so she preferred to get him to resign.

3.4. *Party Politics and Electoral Policies*

Characteristic of the twentieth century is a close relationship between governmental policy and party politics. No doubt a reason why in the eyes of the general public ministerial responsibility has lost much of its credibility. In the nineteenth and twentieth centuries there were always several parties in the Commons, but in fact a two-party system developed because of the electoral system. In the nineteenth century either the Liberal or Conservative party formed the government. After the First World War the Liberals were replaced by the Labour party as a leading party in the House of Commons. The First and Second World Wars, and the great depression of the 1930's did produce coalition governments to unify the nation in desperate circumstances, but these were exceptions to the general rule of one-party government. Even when there has been a hung parliament with no party having an overall majority, no coalition was made, and single-party government continued.

The two main parties had little interest in letting a third party into power, and the electoral system, where a majority of one vote can give a candidate victory, did not favour a multiple-party system[77]. Consequently, democratic influence on the development of parties, on party organisation, on nominating the representatives in the Commons and on nominating the prime minister and other ministers was minimal. In that sense ministerial responsibility has been determined by party politics since the end of World War II. Recently though, in the wake of the Great Recession around the end of the first decade of the 21st century, a coalition government between Conservatives and Liberal Democrats was created under the First Cameron ministry (2010-2015). However, that does not seem to be a signal of change, as the conservatives took subsequently the opportunity to return solely to power.

Since the late twentieth century there has been growing criticism of the British constitution and many constitutional reforms have been proposed. On the one hand, the European Union has increasingly become more important for the United Kingdom and threatens to push the British constitution aside. Second, Scotland, Wales and Northern Ireland achieved a degree of home rule and their local legislatures are now voted by proportional representation and so coalitions are much more common there. The competences of European and local authorities limit those of the British cabinet and as a consequence the ability of British parliament to call cabinet ministers to account. The democratic legitimacy of the House of Lords has also become a discussion item[78]. Until now the mechanism of ministerial responsibility has been able to absorb all the battles between the constitutional powers because of its inherent strive towards a constitutional balance.

Conclusion

Interestingly enough in Great Britain almost no comparisons have been made with developments elsewhere; only recently it occurs now and then. British parliament and its practice of ministerial responsibility were the first in the world. The British constitution attracted a lot of attention from Europe, as already illustrated by the case of the eighteenth century Swiss political theorist De Lolme, who even became a British subject. It is not surprising then that in former books and articles all eyes were on the British constitutional system.

As sketched in this article, ministerial responsibility has a long and solid history in Great Britain. The responsibility of a minister as a departmental head and the collective responsibility of the cabinet – meaning that ministers ought to enjoy the confidence of parliament and that the cabinet should make up a unity – did not arise suddenly, but had a long previous history. With respect to ministerial responsibility and the relationship between the constitutional powers, which are aspects of the present-day constitution, a great continuity exists with the past. The constitutional system originated in the seventeenth century and even before, and from then on crown, cabinet, Commons and constituencies were in a dynamic relationship with each other. As the history of ministerial responsibility shows, the four powers were not only dependent on the constitution, but they reshaped it in their struggle for power. Those powers framed the rules, conventions and practices of ministerial responsibility in their dealing with each other, and the same mechanism applies until today.

A lesson from this article may be that ministerial responsibility continually comes to the fore, because it concerns a relationship and not a hard and fast rule. Already in the seventeenth century, parliament experimented with the control of government, ministers played with party politics and the king tried to hold on to his prerogatives. Criticisms on the powers of the king almost seem an eternal theme throughout history. The immunity of the king was not a redundant doctrine. Ministerial responsibility was a political instrument to define the relationships between crown, cabinet, Commons and constituency. The principle of ministerial respon-

sibility involves a certain ambiguity and confusion, because it always has to deal with shifting balances of power and therefore is of political nature.

The notion of collective ministerial responsibility took shape over the eighteenth and nineteenth centuries, and was applied in the sense of homogeneity of the cabinet. Throughout the eighteenth century ministers could individually be replaced by the king. The growth of the electorate and the rise of parties in the nineteenth century gave way to general elections to decide who was in power and who was out of power; because the votes of the people decided which party had majority support in the House of Commons. The rise of party government also strengthened the homogeneity of the cabinet. Collective responsibility marked the importance of the electorate and its representatives in the Commons. It also meant a more modest role for the monarch and the House of Lords.

As contended in the introduction, ministerial responsibility developed in several phases in which the constitutional powers settled into a new equilibrium. As it turns out, before the nineteenth century ministerial responsibility was dominated by the power of the monarch. In the nineteenth century the power of the monarch transferred to parliament and ministerial responsibility had its focal point in the House of Commons. After the Reform Act of 1867 the electorate rose to power and from the Second War on, ministerial responsibility has been aimed more and more to public opinion. Public opinion as appearing in the media was giving content to ministerial responsibility. The opinions of the public became of significant importance for the question whether ministers or the cabinets

had to leave. Media were taking ministers and Commons their measure.

Queen Victoria invented a new position for the monarchy in trying to play a balancing role as a constitutional Cerberus. Although it is now almost universally acknowledged that the monarch should only act on ministerial advice, it remains a supposition or a convention which could end. Since Victoria, monarchs have sometimes acted on their own initiative. Thus, Edward VII visited Paris in 1903 without informing his government, in 1923 George V, as mentioned, chose Baldwin as Prime Minister and not Lord Curzon, and Queen Elisabeth was personally involved in the selection of prime ministers in 1957 and 1963[79]. As their actions were reasonable and self-evident, these actions did not provoke any constitutional crisis, though they did produce much press attention and public discussion. The reason for this seems to be that ministerial responsibility in essence is not a convention or a rule, but concerns a relationship. As a system of checks and balances between the 'four c's' ministerial responsibility deals with the governance of politics.

In Great Britain the history of ministerial responsibility shows how royal governance with an elementary parliamentary representation has developed and transformed through parliamentary hegemony into mass politics. Not only do the cabinet, parliament and the monarch have influence over the fate of an individual minister, but a minister can also be forced to resign by his constituency, his party or the media. The monarch is for his acting dependent on the public; he has been criticised constantly in the media. However, without the media his influence would have been minimal. For

the cabinet the same mechanism applies. The fate of ministers is dominated by public opinion. A minister with a bad reputation is hardly convincing for parliament. Moreover, at the next elections he will be anything but a vote magnet. Also members of parliament are wholly dependent on public opinion and the media for their re-election.

Crown, cabinet and Commons are pleasing the constituencies and trying to make remarks and proposals which meet the convenience of the general public. By this new settlement in the balance between the constitutional powers, the constitutional system changed from a parliamentary monarchy into a media-democracy. However, against the significant influence of the public opinion nowadays, the other constitutional powers may rally, such as a sensible role of the monarch, a critical role of the House of Commons and a dynamic role of the cabinet and the prime minister. So, it appears that ministerial responsibility as a principle indeed has been discussed and refined over a very long time, but it, be-

ing a division of competencies, nevertheless leaves room for power shifts between the different constitutional powers.

As the relationship between the constitutional powers changes over centuries, so the character of ministerial responsibility is a conditional one. This means that the British constitution contains a perpetual uncertainty. Even a state or constitution is not a static principle as shown by the creation and its process of a European union. The history of ministerial responsibility shows the contingency of the constitutional powers, a parliamentary constitution and a state itself.

[1] For this article the author is indebted for commentary towards prof. dr. H. te Velde (University of Leiden), em. prof. dr. Harry Dickinson (University of Edinburgh) and an anonymous peer reviewer.

[2] Cf. N. Johnson, *In Search of the Constitution: Reflections on State and Society in Britain*, Oxford, Pergamon, 1977, pp. 83-84.

[3] E.g. C. Turpin, *Ministerial Responsibility*, in J. Jowell, D. Oliver (eds.), *The Changing Constitution*, Oxford, Oxford University Press, 1994[3], pp. 109-151, there p. 109.

[4] E.g. N. Johnson, *Reshaping the British Constitution. Essays in Po-litical Interpretation*, Basingstoke, Palgrave Macmillan, 2004, pp. 87-88, 226-227; D. Judge, *The Parliamentary State*, London, Sage, 1993, pp. 136-138.

[5] E.g. C. Roberts, *The Growth of Ministerial Responsibility to Parliament in later Stuart England*, in «The Journal of Modern History», n. 3, 1956, pp. 215-233, there p. 216. Roberts starts from ministerial responsibility for criminal acts, but does not relate it to the right to approve the budget and the control authority of parliament.

[6] E.g. Judge, *The Parliamentary State* cit., pp. 138-139.

[7] E.g. A. King, *Modes of Executive-Legislative Relations: Great Britain, France, and West Germany*, in «Legislative Studies Quarterly», n. 1, 1976, pp. 11-36.

[8] S.E. Finer, *The Individual Responsibility of Ministers*, in «Public Administration», n. 34, 1956, pp. 377-396, there p. 377.

[9] Cf. D. Baranger, *Parlementarisme des origines. Essai sur les conditions de formation d'un exécutif responsable en Angleterre (des années 1740 au début de l'âge victorien)*, Paris, PUF, 1999, pp. 254, 258, 262, 267, 273; A.H. Birch, *Responsibility in British Politics*, in G. Marshall (ed.), *Ministerial Responsibility*, Oxford, Oxford University Press,

1989, pp. 25-29, there pp. 26-27; A.H. Birch, *Representative and Responsible Government. An Essay on the British Constitution*, London, Allen and Unwin, 1964, p. 132.

[10] Roberts, *The Growth of Ministerial Responsibility* cit., pp. 221-226. Impeachments were seldom executed because they were used by the House of Commons as a political weapon. Besides, the House of Lords frustrated any attempts to do so. The principal ministers were usually peers and their fellows in the House of Lords defended them.

[11] Ivi, pp. 227-229.

[12] T. Erskine May, *The Constitutional History of England since the Accession of George the Third (1760-1860)*, London, Longmans, Green, and co., 1861, vol. I, p. 6. Erskine May (1815-1886) worked his way up to Clerk of the House of Commons and wrote an influential book on British parliamentary practice.

[13] J. Austen, *The History of England: from the Reign of Henry the 4th to the Death of Charles the 1st*, Chapel Hill, Algonquin Books of Chapel Hill, 1993, p. VII, see also p. 34.

[14] V. Bogdanor, *The Monarchy and the Constitution*, Oxford, Oxford University Press, 1995, p. 5.

[15] H. Hallam, *The Constitutional History of England from the Accession of Henry VII to the Death of George II*, Paris, Baudry, 1841[5], vol. III, p. 140.

[16] H. Cox, *The Institutions of the English Government*, London, Sweet, 1863, pp. 247-248.

[17] Hallam, *The Constitutional History of England* cit., p. 211.

[18] W. Blackstone, *Commentaries on the Laws of England. In four books*, Oxford, Clarendon, 1775[7], vol. I, pp. 239, 250-252, 271-272.

[19] Erskine May, *The Constitutional History of England* cit., especially pp. 11-16, 31, 39-40, 89; cf. P. Jupp, *The Governing of Britain, 1688-1848. The executive, Parliament and the people*, London, Routledge, 2006, pp. 9, 11-13, 31-32, 110, 120-121, 263.

[20] J.L. de Lolme, *The Constitution of England*, London, Dove, 1822, p. 40; this version is the same as the French original one in 1771.

[21] Ivi, p. 306.

[22] W.R. Anson, *The Law and Custom of the Constitution*, ed. by M.L. Gwyer, Oxford, Clarendon, 1922[5], vol. I, pp. 335-337: the words «La reine s'avisera» were used for the last time by Queen Anne when she exercised the veto in 1708.

[23] E. Wicks, *The Evolution of a Constitution. Eight Key Moments in British Constitutional History*, Oxford, Hart, 2006, pp. 53-59; P. Langford, *Prime Ministers and Parliaments: the Long View, Walpole to Blair*, in «Parliamentary History», n. 3, 2006, pp. 382-394, there p. 386.

[24] M. Peters, *Pitt as a Foil to Bute: the Public Debate over Ministerial Responsibility and the Powers of the Crown*, in K.W. Schweizer (ed.), *Lord Bute: Essays in Re-interpretation*, Leicester, Pinter, 1988, pp. 99-115.

[25] W. Hague, *William Pitt the Younger*, London, Harper Perennial, 2004, p. 152.

[26] The duel was not only about political rivalry, but also about army policy, and mutual trust and sharing information within the cabinet: J. Bew, *Castlereagh: a life*, Oxford, Oxford University Press, 2012, pp. 257-269.

[27] Cox, *The Institutions of the English Government* cit., pp. 247-258; cf. Id., *The Development of Collective Responsibility in the United Kingdom*, in «Parliamentary History», n. 13, 1994, pp. 32-47. The convention that ministers had to support government policy or resign is dated by Gary Cox in the beginning of the 1830's, without relating it to the Reform Act.

[28] *Second Parliament of George II: Fifth session (1 of 4, begins 1/2/1739)*, in *The History and Proceedings of the House of Commons. Volume 10: 1737-1739* (1742), pp. 339-358, <http://www.british-history.ac.uk/report.aspx?compid=37806; see also W.C. Costin, J. Steven Watson,

The Law and Working of the Constitution: Documents 1660-1914, Vol. I: 1660-1783, London, A. and C. Black, 1952, pp. 217-218; cf. Birch, *Responsibility in British Politics* cit., p. 27; Birch, *Representative and Responsible Government* cit., p. 133.

[29] J. Brewer, *Party and the Double Cabinet: two Facets of Burke's Thoughts*, in «The Historical Journal», n. 3, 1971, pp. 479-501. Brewer shows magnificently how Burke's pamphlet was misinterpreted by later commentators who claimed that its advocacy of party government was novel and its contemporary influence considerable. Some of these historians even contended that Burke presented here the first argument in Britain for party government and anticipated therefore the constitutional development from statesmanship to party government in the nineteenth century. Brewer however demonstrates that Burke only pleaded for a solidly unified opposition under leadership of Rockingham, and that his plea in this respect was challenged fiercely by the remaining of the opposition and pro-ministerial supporters. The pamphlet was written for a political purpose – with the intention to unify parliamentary opposition – and not philosophical in nature.

[30] Letter of 1 July 1784 in London from Gijsbert Karel to his father (in French), in F. van Hogendorp (ed.), *Brieven en Gedenkschriften van Gijsbert Karel van Hogendorp Part I, 1762-1786*, The Hague, M. Nijhoff, 1866, pp. 373-375, there p. 374. Gijsbert Karel however was critical of the parliamentary system in England. In two private essays (pp. 375-379) he confronted the idealized picture of an independent representative with the practice of ambitious and interests-driven persons and groups, making a good show with eloquence and appearance. Therefore, he rejected a cabinet composed of members of parliament on the basis of their majori-

ty in the House.

[31] H.T. Dickinson, *The British Constitution*, in Id. (ed.), *A Companion to Eighteenth-Century Britain*, Oxford, Blackwell, 2002, pp. 3-18, there pp. 6-7, 12-15.

[32] Cf. J.P. Mackintosh, *The British Cabinet*, London, Stevens & Sons, 1981[3], pp. 119-121.

[33] House of Commons Debates, 8 April 1835, volume 27, pp. 980-985, there p. 985, <http://hansard.millbanksystems.com/commons/1835/apr/08/resignation-of-ministers>; cf. Birch, *Representative and Responsible Government* cit., p. 135.

[34] M.W. McCahill, *The House of Lords in the Age of George III (1760-1811)*, Chichester, Wiley-Blackwell, 2009, pp. 3-4, 6, 387-389; Jupp, *The Governing of Britain* cit., pp. 11-12.

[35] Boroughs with the smallest number of votes – often under supervision of the lord of the manor – lost their MPs to new large towns like Manchester, Birmingham, Sheffield, Leeds, etc. which previously had no MPs. So the number of MPs dependent on gaining open support of electors increased in 1832, and more so by later reform acts in 1867, 1884, 1918, etc.

[36] G.H.L. Le May, *The Victorian Constitution. Conventions, Usages and Contingencies*, London, Duckworth, 1979, p. 21.

[37] In the same period a battle was fought in the Netherlands between liberals and conservatives for power of government, which eventually was decided in favour of the liberals who dominated parliament: D. Slijkerman, *Het geheim van de ministeriële verantwoordelijkheid. De relatie tussen koning, Kamer, kabinet en kiezer, 1848-1905*, Amsterdam, Prometheus, 2011, pp. 155-322.

[38] Birch, *Responsibility in British Politics* cit., p. 28; Birch, *Representative and Responsible Government* cit., p. 135.

[39] J. Harvey, L. Bather, *The British Constitution*, London, Macmillan,

1965, pp. 233-234; cf. P. Norton, *Government Defeats in the House of Commons: Myth and Reality*, in Marshall, *Ministerial Responsibility* cit., pp. 33-45, there pp. 36-39.

[40] W. Bagehot, *The English Constitution, with an Introduction by R.H.S. Crossman*, London, Watt, 1964, p. 111; this book contains the first print of 1867.

[41] Ivi, p. 108.

[42] Ivi, p. 119, see also pp. 105-106, 108, 115-119.

[43] Ivi, pp. 98-120.

[44] Ivi, pp. 61, 64-67, 97; see also R. Crossman's introduction (pp. 15-16).

[45] Cf. *ibidem*. Crossman neglects the influence of Bagehot's social descent on his political philosophy: besides his writing activities, for some years Bagehot was involved in the family bank and then he became financially independent.

[46] L.S. Amery, *Thoughts on the Constitution*, London, Oxford University Press, 1964[2], pp. 13-14, 21-28 argued contra Bagehot that different state powers existed which balanced each other and that the cabinet was not just a committee of parliament; D. Cannadine, *The Context, Performance and Meaning of Ritual: the British Monarchy and the "Invention of Tradition", c. 1820-1977*, in E. Hobsbawm, T. Ranger (eds.), *The Invention of Tradition*, Cambridge, CUP, 1988, pp. 101-164, there p. 107 considers Bagehot's method prescriptive instead of a description; for the constitutional powers of Victoria, see Le May, *The Victorian Constitution* cit., pp. 59-61, 65-75 and H.R.G. Greaves, *The British Constitution*, London, Allen & Unwin, 1965[8], p. 79, and for her considerable influence on appointments, see I. Jennings, *Cabinet Government*, Cambridge, CUP, 1969[3], pp. 62-66.

[47] Harvey, Bather, *The British Constitution* cit., p. 196.

[48] Greaves, *The British Constitution* cit., pp. 170-171.

[49] Le May, *The Victorian Constitution* cit., p. 74.

[50] Slijkerman, *Het geheim van de ministeriële verantwoordelijkheid* cit., pp. 371-373.

[51] Cf. H. te Velde, *The Three Phases of the Constitutional Monarchy; the Dutch Monarchy in a European Context*, in D.J. Elzinga (ed.), *The Dutch Constitutional Monarchy in a Changing Europe*, Alphen aan den Rijn, Kluwer, 2007, pp. 109-121, there p. 112. According to Te Velde at the end of the nineteenth century voters were the deciding factor because they had organised themselves in political parties; A. Hawkins, *"Parliamentary Government" and Victorian Political Parties, c. 1830 - c. 1880*, in «The English Historical Review», n. 410, 1989, pp. 638-669, there pp. 640-641, 664-668. Hawkins describes how parties were organized systematically after the second Reform Act of 1867.

[52] W.C. Costin, J. Steven Watson, *The Law and Working of the Constitution: Documents 1660-1914. Volume II, 1784-1914*, London, Black, 1952, p. 428.

[53] A.V. Dicey, *Lectures Introductory to the Study of the Law of the Constitution*, London, Macmillan, 1885, p. 35. See further pp. 345-363, especially pp. 353-356. The 10th edition of 1959 was reprinted in 1964 and 1979; the 8th edition of 1915 was reprinted in 1982.

[54] Anson, *The Law and Custom of the Constitution* cit., pp. 43-44. The wording of the 1922 edition is nearly the same as the original one of 1886. According to Anson, individual responsibility would only be relevant when the general character or policy of the government was not involved (p. 403).

[55] Birch, *Representative and Responsible Government* cit., pp. 73-74.

[56] D. Woodhouse, *Ministers and Parliament. Accountability in Theory and Practice*, Oxford, Clarendon, 1994, p. 15.

[57] P.G. Walker, *The cabinet. Political authority in Britain*, New York, Basic Books, 1970, pp. 32-35. Walker considered the unattributed leak as the mechanism by which

the doctrine of collective responsibility would be reconciled with political reality. I do not see why the unattributed leak should be a (necessary) consequence of collective responsibility; press leaking has always taken place (e.g. see the passage before on Edmund Burke).

58 Finer, *The Individual Responsibility of Ministers* cit., pp. 380-383; M. Flinders, *The Politics of Accountability in the Modern State*, Aldershot, Ashgate, 2005, pp. 2-4; cf. M. Flinders, A. Gamble, C. Hay and M. Kenny (eds.), *The Oxford Handbook of British Politics*, Oxford, Oxford University Press, 2009, pp. 311-312.

59 Mackintosh, *The British Cabinet* cit., p. 20; J. Jaconelli, *Continuity and Change in Constitutional Conventions*, in M. Qvortrup (ed.), *The British Constitution: Continuity and Change. A Festschrift for Vernon Bogdanor*, Oxford, Hart, 2013, pp. 121-139, there pp. 124-126.

60 Jennings, *Cabinet Government* cit., pp. 195-198; R. Jenkins, *Churchill*, London, Pan Books, 2002, pp. 551-800.

61 I. Jennings, *The British Constitution*, Cambridge, CUP, 1961⁴, p. 146.

62 D.L. Ellis, *Collective Ministerial Responsibility and Collective Solidarity*, in Marshall, *Ministerial responsibility* cit., pp. 46-56, there pp. 49-52. Ellis does not seem to be very consistent as he first stresses issues which were fatal to collective responsibility and subsequently argues these ones were the only exception to being it still a valid principle.

63 D. Slijkerman, *De minister-president: concurrent of dienaar van de monarch?*, in «Liberaal Reveil», n. 2, 2013, pp. 82-88, there pp. 86-87.

64 Cf. Cox, *Collective Responsibility* cit., pp. 36-37.

65 A. Silkin, *The "Agreement to Differ" of 1975*, in Marshall, *Ministerial Responsibility* cit., pp. 57-67; Jennings, *Cabinet Government* cit., pp. 279-281; C. Turpin, A. Tomkins, *British Government and the Constitution. Text and Materials*, Cambridge, Cambridge University Press, 2007⁶, pp. 380-382.

66 Cf. R. Brazier, *Constitutional Practice. The Foundations of British Government*, Oxford, Oxford University Press, 1999³, pp. 147-149. Brazier would like governments to be more inclined to stimulate majority decisions and to suspend obligations of collective responsibility, as he thinks it will result in a more visible reality of political life and in an increase of public debate.

67 Finer, *The Individual Responsibility of Ministers* cit., pp. 377-396, there p. 386. See also S.E. Finer, *The Individual Responsibility of Ministers*, in Marshall, *Ministerial Responsibility* cit., pp. 115-126, there pp. 120-125.

68 Ivi, p. 390.

69 See mentioned cases of Chamberlain and Thatcher who nevertheless lost their power; cf. Woodhouse, *Ministers and Parliament* cit., p. 24.

70 Turpin, *Ministerial Responsibility* cit., pp. 118-120.

71 Ivi, pp. 120-127.

72 D. Woodhouse, *Ministerial Responsibility*, in V. Bogdanor (ed.), *The British Constitution in the Twentieth Century*, Oxford, Oxford University Press, 2005, pp. 281-332, there pp. 310, 316.

73 G. Drewry, *The Executive: Towards Accountable Government and Effective Governance?*, in J. Jowell, D. Oliver (eds.), *The Changing Constitution*, Oxford, Oxford University Press, 2007⁶, pp. 185-206, there pp. 199-201; D. Oliver, *Ministerial Accountability: What and Where are the Parameters?*, in D. Butler, V. Bogdanor, R. Summers (eds.), *The Law, Politics, and the Constitution. Essays in Honour of Geoffrey Marshall*, Oxford, Oxford University Press, 1999, pp. 78-101, there p. 79. This discussion about forms and levels of accountability started in the 1980's.

74 A. King, *The British Constitution*, Oxford, Oxford University Press, 2007, p. 248, see also pp. 361-362; M. Flinders, *Democratic Drift. Majoritarian Modification and Democratic Anomie in the United Kingdom*, Oxford, Oxford University Press, 2010, pp. 261-264; Judge, *The Parliamentary State* cit., pp. 146-152, especially pp. 150-151; cf. D. Judge, *Political Institutions in the United Kingdom*, Oxford, Oxford University Press, 2005, pp. 121-122, 124.

75 Oliver, *Ministerial Accountability* cit., pp. 86-87 and 92; R. Brazier, *Ministers of the Crown*, Oxford, Oxford University Press, 1997, pp. 264-265; Johnson, *Reshaping the British Constitution* cit., pp. 85-87; <https://www.gov.uk/government/publi cations/ministerial-code> [seen on June 7, 2015].

76 Cf. P. Hennessy, *Cabinet*, Oxford, Wiley-Blackwell, 1986, pp. 105-111; Hennessy does not really seem to be a supporter of Thatcher.

77 Bogdanor, *The Monarchy and the Constitution* cit., pp. 152-154.

78 H.T. Dickinson, *Modern Constitutional Ideas and Developments and the Challenge Posed to the British Constitution*, in «Euramerica», n. 1, 2008, pp. 31-64, there pp. 31-32, 34, 39-40, 47-48, 52-53; King, *The British Constitution* cit., pp. 112-114, 361-362.

79 R. Brazier, *The Monarchy*, in Bogdanor, *The British Constitution* cit., pp. 69-95, there pp. 71-72; Turpin, Tomkins, *British Government and the Constitution* cit., pp. 356, 366; cf. Baranger, *Parlementarisme des origins* cit., pp. 290, 382, 386.