

HEAD OF THE COMMONWEALTH AND GOVERNORS GENERAL.

The intervention in Grenada has highlighted the role of the Governor General of those states within the Commonwealth which remain monarchies with the Queen as head of state. (Malaysia and Tonga have their own monarchies) It has been clear from as long ago as 1926 that the Governor General of what was then referred to as a "dominion" does not answer to the British Government. It was interesting that at the time of the Grenada crisis, it did not seem to be fully appreciated in some circles in London that the Governor General of Grenada was not an agent of the British Government. Elsewhere in this issue it will be noted that the United States has relied particularly on the authority of the Governor General in relation to his power to invite the intervention. In Australia, at the time of the constitutional crisis in 1975, it eventually seemed to be not an issue as to whether the Governor General had power to act, but whether he properly exercised his power. In addition, some questions arose immediately after the dismissal concerning the extent of the Governor General's powers as Commander in Chief. There were some suggestions that civil disorder might follow but such disorder did not eventuate. What did become clear was that the Queen has no functions in a Commonwealth country when she has appointed a Governor General and she is outside the country. When Sir John Kerr revoked Mr. Gough Whitlam's commission as Prime Minister, Mr. Whitlam could no longer advise the Queen. The position of State governors in Australia remains anomalous. Recommendations on their appointment pass from State Governments through the Foreign and Commonwealth Office in London and British Ministers continue to advise the Queen on these questions. It does not seem that the British wish to retain this power; rather that the States and Commonwealth cannot agree on an alternative solution. Some of the States no doubt fear that should such matters be transferred to Canberra there will be a loss of some autonomy. The role of the British ministers was the subject of some controversy when the term of Sir Colin Hannah as Governor of Queensland expired.

The Queen's position as Head of the Commonwealth has also been the subject of some public comment recently. The Economist of 28 January 1984 at 25 notes that Mr. Enoch Powell criticised the internationalist tenor of some recent royal speeches. The Economist concluded that his main target was the Queen's Christmas broadcast to the Commonwealth. According to the journal he made three errors. First that the Queen always speaks according to her Ministers' advice. The Economist said that it would be improper for the Queen, when speaking as Head of the Commonwealth, to follow the advice of any one government. Second, Mr. Powell complained that her remarks had shown undue concern for other countries in other continents. The journal then posed the rhetorical question: "Can anybody argue seriously that she ought to talk only about British affairs when broadcasting to a world-girdling Commonwealth?"

His third error was that "the Crown rules by consent and the institutions of consent never have been or could be extended beyond the national bounds which were those of these islands". In fact, the Queen rules by consent in a number of countries—including Australia, New Zealand, Fiji and Papua new Guinea.

The controversy raises interesting questions. As late as 1919, the Privy Council asserted the indivisibility of the Crown: Theodore v Duncan [1919] AC 706. Certainly by the post war era the divisibility of the Crown had been established. It was however as late as 19 October 1973 that the Queen received the title of Queen of Australia. The emphasis on the title Head of the Commonwealth probably dates from the Commonwealth conference of 1949 which pronounced on the consequences of the adoption by India of republican status. India continued to accept the King as symbol of the free association of independent states of the Commonwealth and as head of the Commonwealth. Prime Minister Nehru specified in a radio speech of 10 May 1949 that the King had no specific function attached to his office as Head of the Commonwealth, that he had no place in the constitution structure of India, and that that state did not owe him allegiance.

With the acceptance of the new doctrine of the divisibility of the Crown, the office of Head of the Commonwealth may perhaps also be seen as separate from the office of Monarch. Given its acceptance over a large number of countries, some status under international law may attach to the office. The fact that the office holder has no state territory need not necessarily be a barrier. The Pope between 1870 and the creation of the Vatican city State in 1929 also had no territory, but exercised activities appropriate to a head of state: eg, exchange of diplomatic representation, conclusion of international treaties or concordat. The Head of the Commonwealth does neither, but notwithstanding Prime Minister Nehru's statement still performs international functions. She is normally present in the city where a Commonwealth Conference is held; when she visits a member state of the Commonwealth which is a republic she is received as Head of the Commonwealth, and she addresses the Commonwealth each year in her Christmas broadcast.

The Queen's visits to various countries may cause anomalies. When she visits a state of which she is the sovereign, it would seem that she comes as Queen of that country, and there acts on the advice of her ministers in that country. When she visits a member state of the Commonwealth which is a republic, she presumably comes as head of the Commonwealth and as such, presumably does not restrict her sources of advice to the ministers of one country. The Queen's visits to foreign countries seem to involve an anomaly. Her visit to Jordan in March 1984 is a case in point. In the course of a speech, references were made by the Queen to the problem of the Palestinian people. That part of the speech was widely interpreted as an expression of sympathy to the Arab cause in the Middle East. The speech was said to have been written by the British Foreign Office. Therefore, the Queen must have visited Jordan as the Queen of the United Kingdom, and not, for example, the Queen of Canada. The Australian, in its editorial of 29 March 1984, pointed out that there may be problems when the Queen on a royal visit makes foreign policy statement which are those of the British governments. The newspaper concluded:

"The Monarchical institution has many conspicuous virtues. It would be unfortunate if they were to be discarded because of an undue emphasis on the monarch's connection with Britain at the expense of those other nations which acknowledge her as their Queen."