

The Title Remains

The Crown as legal order, public attachment, and the difference between compatibility and legitimacy

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Abstract

This essay is an exercise in constitutional public law. It argues that English law identifies the Crown with the legal order rather than with the person who wears it, and that this identification is what must be protected. Bracton, Coke, the Bill of Rights 1689, the Coronation Oath, *Padfield*, *Tameside*, *M v Home Office*, *Jackson* and *Miller* all hold, in different registers, that public power is held on terms. That is the legal relationship to the Crown. There is also a relationship of public attachment: the habit by which a people still take their case to an office rather than to a faction. The two are not the same. Courts can enforce the first. They cannot restore the second once the country has been taught to hear only a family quarrel. The present season of royal “showing,” and a parish protest that answers a Crown development process with toy secession, spend the second relationship while leaving the first intact on paper. That is not a justiciable error. It is a political-constitutional risk to legitimacy. The argument is never against the office. Person and office must be unfused. The Public Office (Accountability) Bill, still in the Lords, may in time bind servants of the Crown; it is not a tool of removal and it is not yet law. No living person is diagnosed.

I. The claim

This essay asks a public-law question: what happens to the rule of law when the country confuses the person who holds the Crown with the Crown itself. The question is not whether members of the House have wounds. They do. The question is what we do with the office while we look at them.

Jesse Norman’s novel *The Winding Stair* takes its title from Bacon and is set at the close of Elizabeth I’s reign. Norman ends the book with two contemporary texts: the Supreme Court’s judgment on the 2019 prorogation, and the accession oath of Charles III. He writes that the resemblance is unlikely to be coincidental. The novel is used here only as an opening illustration, not as authority.

The rhyme with the present is institutional, not mystical. A long queen dies. A male successor who has waited in public for decades takes the office. The efficient part of the constitution turns over. Attachment to the dignified part thins. Into that weather comes a

family quarrel offered as public content. The constitutional problem is the fusion of person and office in that content.

The claim is therefore narrow. We are mistaking the person for the office, and then kicking the office because we are angry at the person. That does not protect the rule of law. It weakens the habit that makes the rule of law a practice of a people rather than a set of reports.

The argument is never against the office. The Crown as the legal order is what must be kept. If person and office have been fused in public hearing, the task is to unfuse them: not to vacate the throne in anger, and not to let a season of display spend the institution until only paper remains.

II. The Crown as the legal order

English public law does not identify the Crown with a man. It identifies the Crown with the legal order itself. That identification is the load-bearing proposition of this essay.

Bracton wrote that the king ought to be under no man, but under God and the law, because the law makes the king. When James I claimed he might adjudge cases in his own person, Coke CJ quoted Bracton back to him. The judges resolved that the King in his own person cannot adjudge any case; judgment belongs to the courts, according to the law and custom of England. Three years later they held that the King has no prerogative but what the law of the land allows him. Those two resolutions remain the common-law core of the office.¹

The Glorious Revolution wrote the same constraint into statute. The Bill of Rights 1689 declared that the pretended power of suspending laws by regal authority without Parliament is illegal, and that levying money for the Crown by pretence of prerogative, without grant of Parliament, is illegal. The long title of the Act is the accurate one: it declares the rights and liberties of the subject and settles the succession of the Crown. The Coronation Oath Act 1688 binds each new occupant to govern according to the statutes agreed in Parliament and the laws and customs of the realm. The person who accepts the Crown accepts those terms. The office continues because the terms are enacted.²

Modern authority applies the same idea to ministers who act in the Crown's name. In *M v Home Office* the House of Lords held that ministers are amenable to the contempt jurisdiction. Lord Templeman warned that treating ministerial obedience as a matter of

¹ Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, fol 5b (*lex facit regem*); confirm against the Thorne edition. *Prohibitions del Roy* (1607) 12 Co Rep 63, 77 ER 1342; *Case of Proclamations* (1610) 12 Co Rep 74, 77 ER 1352.

² Bill of Rights 1689, arts 1 and 4; long title. Coronation Oath Act 1688, s 3.

grace rather than necessity would reverse the result of the Civil War. The King is not the contemnor. The servant who uses the Crown's name is.³

Two further cases do, in administrative law, what a transplanted "fiduciary Crown" is sometimes asked to do, and they do it without leaving England. *Padfield* holds that a statutory discretion must be exercised to promote the policy and objects of the Act, not the convenience of the holder. *Tameside* asks whether the decision-maker directed himself properly: whether he asked the right question and took reasonable steps to acquaint himself with the relevant information. Power is held on terms. The holder must inquire. This essay does not revive a fiduciary doctrine of the Crown. It relies on those terms.⁴

The Supreme Court has stated the controlling idea in the language of the rule of law. Lord Hope in *Jackson* called the rule of law enforced by the courts the ultimate controlling factor on which the constitution rests. *UNISON* held that access to the courts is inherent in that principle; without it, laws become a dead letter. In *Miller (No 2)* advice to prorogue Parliament, given in the Crown's name, was held unlawful where it frustrated Parliament's constitutional functions without reasonable justification. The prorogation was void. The dignified form had been used by the efficient part in a way that would have sidelined the place where the country is heard. The law, in the King's courts, restored the terms.⁵

None of this depends on the character of the monarch, on descent, or on a trust imported from elsewhere. It depends on the terms on which the power was conferred. That is the legal relationship to the Crown.

The same terms are being written toward the efficient part. They are not yet law. The Public Office (Accountability) Bill, known as the Hillsborough Law, passed the Commons on 14 July 2026, had its Lords second reading on 1 September 2026, and is listed for Lords committee on 12 October 2026. Royal Assent has not been given. The government has spoken of commencement by April 2027. Until then clause 11 is a draft: a public official would commit an offence by acting, in that capacity, with intent or recklessness to mislead the public, knowing or ought to know that the act is seriously improper; on indictment the maximum would be two years. Private service of the Crown and the holding of an honour

³ *M v Home Office* [1994] 1 AC 377 (HL) 395 (Lord Templeman) (page to be confirmed against the Appeal Cases). Also reported as *Re M*.

⁴ *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 (HL) 1030 (Lord Reid); *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 (HL) 1065 (Lord Diplock) (Diplock page to be confirmed against the Appeal Cases).

⁵ *Jackson v Attorney General* [2005] UKHL 56, [2006] 1 AC 262 [107] (Lord Hope); *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869 [66]–[68]; *R (Miller) v Prime Minister*; *Cherry v Advocate General for Scotland* [2019] UKSC 41, [2020] AC 373 [50], [69]–[70].

are carved out. The King personally is not a defendant. Confusing a Bill in the Lords with a charging decision spends the legal order before it has been made.⁶

An older grammar says the same thing and is cited only as lineage. Deuteronomy 17 requires the king to write a copy of the law and read it all his days. Fortescue read a kindred constraint into *dominium politicum et regale*. Those texts explain why the English authorities above are the right ones. They are not themselves English authority.

III. Attachment is not a ground of review

Walter Bagehot divided the constitution into a dignified part, which commands loyalty and continuity, and an efficient part, which governs. The point of the division, for present purposes, is modest. Those who wield power should not also claim to embody the nation. Identity, in that account, lives in the dignified part so that no party owns the country's name. Bagehot is an essay, not a ratio. He is used here as the best-known description of why the Crown's name must not become factional property.⁷

Loyalty of that kind is not a legal duty. It is a relationship of address. People take their case to an office because they still believe someone from the king will hear them. When they cease to believe it, they take the case to whoever stands at the gate. Scripture's name for that move is Absalom: he tells every man that his claim is good and that no one from the king will hear him, and so he steals the hearts of Israel. The passage is illustration, not a source of law.⁸

Magna Carta's promise that right and justice will be neither sold, denied nor delayed is the legal answer to that speech. *UNISON* and *Miller (No 2)* are the modern answers. They can stop a prorogation. They cannot, by themselves, stop a people being taught that the office is only a family. The limit of the cases is the beginning of the risk this essay names.

The risk should not be dressed as a fiduciary duty of the Crown. English law does not need a general Crown-as-trustee doctrine to say that power is held on terms. What can be said, as political-constitutional description rather than as ratio, is that a fiduciary-like attachment has been placed on the persons of the Household. The country was long invited to read a family on the throne as a sample household. That is not a trust. It is a template. When the template breaks, the mind does not quietly update. It holds two propositions at

⁶ Public Office (Accountability) Bill HL Bill 42 (2026–27), cl 11 and cl 19 (Crown application); Commons third reading 14 July 2026; Lords second reading 1 September 2026; Lords committee listed for 12 October 2026. Not in force. House of Commons Library, *Public Office (Accountability) Bill 2024–26: Progress of the bill* (CBP 10424); House of Lords Library, *Public Office (Accountability) Bill: HL Bill 42 of 2026–27* (LLN 2026/0048).

⁷ W Bagehot, *The English Constitution* (Chapman and Hall 1867).

⁸ 2 Samuel 15:2–6.

once: they are the family, and the family has failed. The cheap repair is to punish the persons, or to demand another performance of care. The need then moves onto ministers and public services, which cannot be the nation's parents either. That misplacement is the harm. It is not justiciable. It is how legitimacy thins while the law reports remain intact.

IV. Showing is not presence

Three episodes show the field at work. They are offered as constitutional narrative, not as findings of fact against any person.

The wedding of July 1981 was a tonic in a country of recession, riot, and a war that had already entered the family. It was also a public script. Two people were fitted to a picture of continuity. A fairytale, in this sense, is not a blessing. It is a device used to close a question a community cannot bear to leave open. Empathy requires saying that without a verdict on either person.

The death of 31 August 1997 was a family disaster and, within hours, a political event. The then Prime Minister named a "people's princess" and later wrote that his task that week was to protect the monarchy and channel anger before it became rage. The Queen's first instinct was the older one: Balmoral, two grandsons, a family death kept off the Mall. The press wrote "Show us you care." Alastair Campbell's diary for 4 September 1997 records a call in which the Prime Minister told her she had to show she was vulnerable, and also that he felt for her. On 5 September she spoke live from Buckingham Palace: "as your Queen and as a grandmother." Two offices in one sentence. Opinion turned. The speech did not prove that the push was right or that the wait was wrong. It proved that a house which will not come to the door will be told the door is already someone else's.⁹

Earl Spencer's memoir *Swan Song*, serialised in September 2026, has returned that week as a product. He writes that the then Prince of Wales sounded "giddily elated" on the telephone. Buckingham Palace has answered that grief can colour memory. Neither statement is a judgment of this essay. A dawn call, twenty-nine years later, sold the week before a book, is not *Prohibitions del Roy*. It is also grief. Trauma that is honoured stays with the person who carries it. Trauma that is staged becomes a speech at the gate.

The two years must be distinguished. In 1997 the demand was "show us you care," and a single broadcast closed the week. Attachment, bruised, returned to the office. What is happening now is showing without end: a serialised call, a Palace line about memory, a duke home and not at work, commentary as scorecard. That showing does not restore the Mall. It trains the country to hear the office as a quarrel.

⁹ Alastair Campbell, *The Alastair Campbell Diaries*, vol 2, *Power and the People*, 1997–1999 (Hutchinson 2011) entries for 4–5 September 1997 (paginate against the edition used); Elizabeth II, Broadcast address (Buckingham Palace, 5 September 1997).

Polling records a slide that began before this serialisation. Ipsos reported in June 2026 that support for the monarchy as an institution had fallen to a thirty-three-year low in its series, even while satisfaction with the King and the Prince of Wales remained higher than most political ratings. The fieldwork predates the present memoir. The poll cannot be hung on one book. It can be read as a pre-existing drain of loyalty from the office while the persons still poll. This week's showing continues that drain. It does not originate it.¹⁰

On 15 September 2026 the Duke of Sussex marked a birthday in the United Kingdom after moving back with his family; the Prince of Wales carried out a solo engagement. The Duke keeps his title and his place in the succession. What he appears to have lost is belonging. When he challenged the change to his protective security, the courts heard him and he lost. That is the legal relationship working: a hearing, reasons, an unwelcome outcome. Whether the institution met him is a different question. This essay does not decide it.¹¹

Coke, after the first Elizabeth as after the second, is not a costume for a living politician. He is the habit of the common law standing up inside the King's own courts. Those who kick the family in the papers are not doing that work. *Miller (No 2)* was attack in the right place. A season of memoir is attack in the wrong place.

V. Compatibility and legitimacy

We used to worry about the wrong kind of clash, and we named it clearly. While the United Kingdom was in the European Union, the fear was compatibility.

By the European Communities Act 1972 Parliament told the courts to give European law effect. In *Factortame (No 2)* those courts disapplied parts of a later Act where the two orders collided. The political word was sovereignty. The legal word was hierarchy: whose text sits on top. In *Miller (No 1)* the Supreme Court held that leaving the arrangement was so large that ministers could not begin it by prerogative. Parliament had to speak. The question throughout was formal. Does this statute survive contact with that order?¹²

We answered the formal question by leaving. The 1972 Act was repealed by the European Union (Withdrawal) Act 2018. On paper, statute is supreme again. No British court now

¹⁰ Ipsos, '55% of Britons still prefer a monarchy, but this has fallen to 33 year low as young people become more republican' (19 June 2026) <https://www.ipsos.com/en-uk/55-britons-still-prefer-monarchy-has-fallen-33-year-low-young-people-become-more-republican> accessed 18 September 2026.

¹¹ *R (Duke of Sussex) v Secretary of State for the Home Department* [2025] EWCA Civ 548, [2025] 4 WLR 66, affirming [2024] EWHC 418 (Admin).

¹² European Communities Act 1972 (repealed); *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603 (HL); *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61; European Union (Withdrawal) Act 2018.

sets aside an Act because another court in Europe said so. Formal compatibility with that external order is no longer the daily test.

That did not restore legitimacy. Compatibility is whether two laws can stand together. Legitimacy is whether people still take their case to the office those laws name. What is being spent now is the second thing.

The Crown is treated as a story. Person and office are fused. Then the office is kicked because the person is resented. That is not 1689. The Bill of Rights bound regal authority so the office could last. It did not turn the office into a magazine. Leaving the European Union did not make the Household fair game.

The same failure of address appeared this week in another register. Residents of Piddington, a village of some three hundred and fifty in Oxfordshire, held a parish poll on 15 September 2026. The poll had no legal force. Of three hundred and twelve votes, two hundred and eighty-five backed a symbolic secession. The occasion was a Home Office plan to house up to one thousand two hundred and fifty-six adult men seeking asylum at MoD Bicester, a former military site half a mile from the village, using the urgent Crown development process that can bypass ordinary local planning. Ministers say hotels must close and that there is no imaginary place for claimants who cannot support themselves while a decision is made. Villagers say they have not been heard. The people proposed for the site are asylum seekers with claims in process, not persons already granted leave.¹³

The merits of that site are for planning law and for the asylum statutes. They are not decided here. The constitutional fact is the form of the protest. A parish that stages independence because it believes no one from the centre will hear it is Absalom's sentence in a village hall. Power is being moved in the Crown's name. The dignified part is too thin to make "the country" feel like a common name. So the gate is taken locally, in toy form.

That does not repeal the Bill of Rights. It shows what display and bypass together do to the habit of taking a case to an office rather than to a faction. Using "we took back control" as a licence to spend the form through which power must speak, or to answer placement with secession theatre, is not control. It is spending what was taken back.

The impact on the rule of law is therefore this. *Padfield* has not been repealed. The risk is that the people for whom *Padfield* was written cease to know where the hearing is. A law that still sits in the books, and is no longer the place to which a village or a family takes its case, is the legal order without the attachment that makes it usable. That is the difference between compatibility and legitimacy.

¹³ 'Piddington in Oxfordshire votes to leave UK over asylum plans' *BBC News* (16 September 2026); 'English village votes to leave UK in protest over migrant housing plan' *The Guardian* (16 September 2026).

VI. Never the office

The argument of this essay is protective. It is not a brief for vacancy.

Person, office and institution are not the same. The person can be wounded, blamed, pitied, or, in the extreme and lawful cases, removed from the work of the Crown or from the throne itself. Those are the law's doors, not this week's demand. The office cannot be the price of the quarrel. The law makes the king. It does not make the king disposable by memoir.

The only lawful ways in which the person parts from the office, short of death, are his own abdication given force by statute, which is the 1936 precedent, or a Regency, which does not vacate the Crown at all. In 1688-89 the Convention Parliament treated the throne as vacant after James II's flight and then filled it on terms enacted in the Bill of Rights. That is not a weekly remedy. A season of showing is not a settlement.

Nor is the Public Office (Accountability) Bill a tool of removal. As drafted it may bind the Crown and it will not try the King. Servants and ministers who act in the Crown's name may, once the Bill is law, be held to candour. Private service of the Crown is carved out. An honour is not a public office. Candour is a duty of those who govern in the Crown's name. It is not a duty of the dignified part to perform grief until the office is incredible.

Republicans will say the Crown does not restrain politicians but lends them cover, and that *Miller (No 2)* shows the safeguard was the Court, not the monarch. The point is fair. The Crown's protective role was never personal intervention. It is to hold the identity of the country in a place no party can own, and to lend its name only to power exercised under law. That role depends on trust. Trust depends on presence. Polls are not prerogative. They are how one sees whether attachment is still there.

If attachment is collapsing onto one man, the constitutional interest is still the office. Unfuse them. Do not abolish the place to which the case is brought because the occupant is hard to hear. Protect the Crown as the rule of law. Never the other way round.

VII. Conclusion

Justice asks two questions. The first is what a person did and what is owed for it. The second is where a person now is, and who will come to meet them there. The law answers the first. A constitution that answers only the first can keep every title and still be uninhabited.

The legal relationship to the Crown can still be enforced. The relationship of attachment cannot be restored by a court once the country has been taught to hear only the family. We are damaging the second and calling it truth-telling. The first will survive on paper longer than the second survives in the mind.

Presence is owed to the wounded. Restraint is owed to the institution. The title remains. Whether the standing remains is a public choice, and we should know what we are spending.
