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# The Prince of Wales at 70 and the Survival of the Monarchy

ROBERT BLACKBURN

2018 was a successful year for The Firm, as the Royal Family are said to refer to themselves. The heir to the throne Prince Charles turned 70, which was commemorated in a series of events including "an humble Address" in the House of Commons<sup>1</sup> and a BBC interview that conveyed his thoughts on his position as Prince of Wales and future role as King Charles III.<sup>2</sup> Prince Harry married an American television star and divorcee, Meghan Markel, and prior to their popular tour of Australia announced they were expecting their first baby. The Duke and Duchess of Cambridge, our future King William V and Queen Katharine, next in line to the throne after Charles, consistently came next after Queen Elizabeth II in approval ratings of the Royal Family, with Katharine additionally voted best-dressed royal for her understated "best of British" style.

It is a common misconception that the Monarchy has little or no political relevance today and that the place of the Royal Family in our public life is largely confined to ceremonies, the glamour and celebrity of its younger members, and promoting goodwill at home and in relations abroad. The Monarchy may not participate in government policy and decision-making any more, but the continuing existence of the Crown together with its legal attributes known as the Royal Prerogative remain of immense political importance in underpinning Britain's existing constitutional arrangements. It is this political fact that makes Prince Charles's latest utterances on the role of a modern Monarch of considerable interest.

The survival of the Crown is of vital importance to the political elite and governing class in Britain, very much more so than for the Monarch, heir apparent, and Royal Family themselves. Recently Prince Harry in a US magazine interview<sup>3</sup> stated what has become self-evidently true, that while those in the front line of royal succession are for the time being prepared to do their duty to serve the country as Head of State or leading member of the Royal Family, this should not be misunderstood as being their preferred choice over living a life of private pursuits outside the glare of a grossly intrusive mass media, one that would enable them to enjoy alternative occupations more closely attuned to their individual talents and personal interests.

The executive powers bestowed on ministers and officials in the name of the Crown are ancient and of common law in origin, not conferred by any Act of Parliament or a written constitution.<sup>4</sup> They permit Ministers far greater flexibility and control in their exercise and use than would be the case if provided for and regulated in a documentary constitution as in the US or France. These prerogative powers embrace virtually all the basic acts of state such as treaty-making, major public appointments, and the deployment of armed forces. The Crown is the residual authority in the state and we are formally its subjects: Her Majesty's Government rules, the Royal Courts administer justice, and Acts of Parliament require Royal Assent.

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<sup>1</sup> *Commons Hansard*, 14 November 2018, cols. 327-338.

<sup>2</sup> BBC, "Prince, Son and Heir: Charles at 70", broadcast 8th November 2018.

<sup>3</sup> *Newsweek* (USA), 21st June 2017.

<sup>4</sup> Maurice Sunkin and Sebastian Payne (eds.), *The Nature of the Crown: A Legal and Political Analysis* (Oxford University Press, 1999).

So the Prince of Wales's interpretation in his BBC interview of his role as King Charles III is of great concern to senior government officials and politicians, most of whom will be aware of the intrinsic fragility of the Monarchy as an institution if its holder does not conform to the well-established conventions of required royal conduct. As public lawyers are well acquainted, the nature of these conventions is that they operate entirely in the political arena, serving as customs and understandings, lacking the clarity and enforceability of written constitutional law.<sup>5</sup>

Most fundamental of these of course is the doctrine of ministerial responsibility, that a Monarch is bound by prime ministerial advice - in other words, instruction - on all matters. King Edward VIII in 1936 even had to accept Stanley Baldwin's advice that he must abdicate the Throne if he wished to pursue his intention to marry Wallis Simpson, which Edward proceeded to do.<sup>6</sup> Every syllable of the Queen's or King's Speech read by the Monarch at the State Opening of Parliament each annual session is prepared by 10 Downing Street, perfectly symbolising the automatic political nature of Monarchy today. The two most politically potent powers exercised personally by the Monarchy today, prime ministerial appointment and Royal Assent to legislation, are carefully circumscribed by convention as duties to be performed in line with House of Commons majorities with no residual scope for royal discretion.<sup>7</sup>

So what are the political issues arising from Prince Charles's so-called "meddling" in matters of public policy that have aroused so much discussion and controversy?<sup>8</sup> On one matter there is universal agreement, that in no circumstances can or should a Monarch overtly take sides between the political parties. On subjects that largely transcend party politics, the Prince of Wales has often given vent to his views through public speeches or indirect briefings to the media through "friends", and he has advocated policies or actions in his letters to ministers.<sup>9</sup> These opinions have embraced issues relating to the environment, architecture and education, and objects of criticism have included among others genetically modified crops, the ban on fox hunting, and the Human Rights Act.

It is these interventions on matters of public policy that are sensitive or troubling because they can and do arouse division and controversy in public life. Those who disagree with his views are likely to claim that this form of political engagement is outside or contrary to the unifying national role of Monarchy, or alternatively that it is an abuse of his privileged position in having easy access to government ministers. This then all too easily spills over to resentment at the institution of Monarchy itself, feeding republican sentiment.

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<sup>5</sup> Geoffrey Marshall, *Constitutional Conventions* (Oxford University Press, 1984).

<sup>6</sup> Robert Blackburn, "The Abdication of Edward VIII: Legal and Constitutional Perspectives", chapter 7 in Matthew Glencross et al (eds.), *The Windsor Dynasty, 1910 to the Present* (London: Palgrave, 2016), pp.159-194.

<sup>7</sup> See Robert Blackburn, "Monarchy and the Personal Prerogatives", *Public Law* (London: Sweet & Maxwell, 2004), pp.546-563, for the detailed conventions on these matters, also addressing the view of some that there remains some residual, reserve or personal discretion by the Monarch in the exercise of these powers: see especially Ivor Jennings, *Cabinet Government* (Cambridge University Press, 1936; 3rd ed. 1959) and Rodney Brazier, *Constitutional Practice* (Oxford University Press 1988; 3rd ed. 1999).

<sup>8</sup> For example Catherine Meyer in her recent biography, *Charles: The Heart of a King* (London: Penguin 2015), characterises the common view: "He's a dabbler, straying into areas of expertise that are not his own. He's a meddler, ignoring constitutional proprieties to intervene in the political process" (p.25).

<sup>9</sup> See the letters of the Prince of Wales to ministers released as documentary evidence in *R (on the application of Evans) v Attorney General* [2015] UKSC 21; [2014] EWCA Civ 254.

Of even greater concern has been his protests on matters of foreign affairs, a well-known flashpoint being relations with China, whose occupation of Tibet and suppression of religious freedoms the Prince fiercely opposes.<sup>10</sup> His absence from Chinese state visits to London in 1999 and 2005 were viewed by many as operating outside convention, since a core function of our contemporary Monarchy is the soft diplomacy and personal goodwill that is generated by a politically neutral Monarch and Royal Family at ceremonial state visits.

In his BBC interview Prince Charles declared that the two positions of Monarch and heir apparent were in constitutional terms "completely different". This proposition is difficult to sustain, since the Monarchy is clearly a collective business performed by the Monarch and senior members of the Royal Family acting together. Even the official website of the Monarchy is now called "The Royal Family". The distinction drawn by Charles is certainly at odds with the view of Lloyd George as Prime Minister who, at a meeting at 10 Downing Street with the Prince of Wales at that time, Edward (later Edward VIII), to resolve a dispute over who should be in charge of the tour programme and relations with the press on the Prince's forthcoming visit to Australia, said, "If you are one day to be a constitutional King, you must first be a constitutional Prince of Wales".<sup>11</sup>

However other statements from the heir apparent indicate he may have mellowed or shifted position on earlier proposals for a more "active Monarchy" when he succeeds to the Throne. In 2009 the Prince's friend and biographer Jonathan Dimbleby published a prominent article in the press saying, "There are discreet moves afoot to redefine the future role of the sovereign so that it would allow King Charles III to speak out on matters of national and international importance in ways that at the moment would be unthinkable... The role that the "active" monarchists appear to have in mind for King Charles III would be akin to that performed by the presidents of Ireland or Germany."<sup>12</sup> But now by contrast in his BBC interview, the Prince in response to a question whether his public campaigning will continue, retorted, "No, it won't. I am not that stupid... clearly I won't be able to do the same things as I have done as heir".

If a constitutional system retains a Monarchy it must try to accommodate whatever quirks of nature and personality the hereditary principle throws up. The real question in the next reign will be the degree of tolerance shown by ministers towards any impulsive interventions made by King Charles III, an issue that has never had to be faced by any of the Prime Ministers, all 13 of them from Winston Churchill to Theresa May, during the long reign of Elizabeth II.<sup>13</sup> Prime Ministers have permitted some latitude to Charles so far, and where necessary they are able to exert some influence via the Queen in discussions at the weekly Audience. On the next accession, which all including the Prince hope is still many years ahead, a bargain will have to be struck between the King and his Prime Minister on any new latitude and flexibility sought by Charles that might enable his expressions of personal opinion on public affairs, particularly those of a divisive and controversial nature.

The political establishment will do all it can to sustain the Monarchy, for the Crown remains central to its executive power in Britain's unwritten constitutional settlement.

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<sup>10</sup> See Mark Bolland witness statement, 18 January 2006: *HRH The Prince of Wales v. Associated Newspapers* [2006] EWHC 522.

<sup>11</sup> Philip Ziegler, *King Edward VIII: The Official Biography* (London: Collins, 1990), p. 124.

<sup>12</sup> "Crown Me King Meddle", *The Sunday Times*, 16th November 16, 2008.

<sup>13</sup> Robert Blackburn, "Queen Elizabeth II and the Evolution of the Monarchy", chapter 10 in Matt Qvortrup (ed.), *The British Constitution: Continuity and Change* (Oxford: Hart Publishing, 2013), pp.165-177

However, should conventions break down and implacable divisions arise between Sovereign and Prime Minister, the consequences would almost certainly be a Royal Abdication as with Edward VIII in 1936 or the collapse of the Monarchy altogether leading to a republican Written Constitution.

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