Of Queens and Kings: Hereditary Heads of State under the Prism of International Law and Human Rights

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Abstract

The origin of public international law is strongly intertwined with monarchs and royal houses. From a traditional continental perspective, the concept of 'sovereign States' and of 'sovereignty' is traced back to the acquired autonomy and independence gained by kings over other sources of power. Despite this original connection, current international law studies seem to devote little attention to the relationship between monarchies and international law. The present work seeks to fill this gap and will analyse the possible conceptual clashes between the existence of monarchies and fundamental principles of international law, such as the prohibition of discrimination. The right to non-discrimination will be addressed both in light of the

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'external' relations of royal houses, viz 'commoners', and 'internal' relations of the house, contextualising rules on the succession to the throne in the general framework of human rights protection. Furthermore, a juxtaposition of monarchies and the holding of a lifetime position with the principles of immunity will highlight the limits under which royals may enjoy such privileges under international law.

Keywords

Monarchies – International Law – Conditions for Legal Personality in International Law – Immunities – Human Rights

I. The 'Sovereign' in 'Sovereign-ty': Setting the Framework of Human Rights and Royal Households

The foundations of the Westphalian model admittedly rest[1] on the independence (European) kings and kingdoms gained from other powers[2] and it is therefore not surprising that monarchs, at least back then, were inseparable from the concept of sovereignty which today still represents the very essence of statehood in international law. It would be beyond the scope of the present work to investigate the origin[3] and the legal meaning of 'sover-

1 The common idea which traces back the emergence of a new international legal order to the birth of independent States with the Treaties of Westphalia in 1648 has been challenged by scholars who have included in traditional studies over European continental States that of colonial States, thus widening the scope of the contribution of other areas of the world in the evolution of international law. See Lauren Benton, 'From International Law to Imperial Constitutions: The Problem of Quasi Sovereignty, 1870-1900', Law and History Review 26 (2008), 595-619.

2 See Special Arbitration Agreement, 23 January 1925, *Netherlands v. USA, Island of Palmas Case*, 4 April 1928, *Reports of International Arbitral Awards*, 2006, 829, at 838, writing that '*Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.*' For a critical reading of the 1648 Peace of Westphalia, see Derek Croxton, 'The Peace of Westphalia of 1648 and the Origins of Sovereignty', The International History Review 21 (1999), 569-591; Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', IO 55 (2001), 251-287.

3 On the much recent origin of the 'idea' of sovereignty, see Jean D'Aspremont, 'Statehood and Recognition in International Law: A Post-Colonial Invention' in: Giuliana Ziccardi Capaldo (ed.), *The Global Community Yearbook of International Law and Jurisprudence 2018* (Oxford University Press 2019), 139-154.

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eignty',[4] which for our purposes here can generally be understood as '*a synonym for independence*'[5] of a legal system.

International law is not the same as it was when States were at their 'beginnings' and when monarchs such as Louis XIV identified themselves as being the State by saying '*l'État, c'est moi*'. The relationships between monarchies and international law already stem from the etymology of (State) Sovereignty and, as will be seen, often translated into monarchs being above the law.[6] Their contribution to the development of international law is undisputed: jurisdictional immunities may be a case in point.[7] Yet, international law is not the same as it was, and monarchies may be at odds with principles and rights generally considered to be fundamental nowadays.

In this sense, the present work intends to raise the question of whether and to what extent modern international law affects monarchies (and *vice-versa*). More specifically, para. II will address the privileged legal status of royals against the backdrop of the principles of non-discrimination and equal dignity of people in part by looking at discrimination (mainly against women) that can be found in rules on the succession to the throne. A human rights law reading of these rules supports the view that greater compliance with equality principles[8] is still needed and should be better pursued in the future. Para. III explores the relationships between personal immunities and hereditary Heads of State, arguing that, in particular when combined with extended domestic privileges, a *sine die* personal immunity, could be at odds with general understandings of the law of immunities. Para. IV addresses 'the other side of the coin': i. e. possible interferences with royal's human rights just because of their specific status, suggesting that the traditional human-

4 On the difficulties in giving a clear content to the term, see for all Stephane Beaulac, *The Power of Language in the Making of International Law* (Brill 2004), 1 ff.

5 James Crawford, *Brownlie's Principles of Public International Law* (Oxford University Press 2019), 124.

6 See William Blackstone, *Commentaries on the Law of England, Book I, Rights of Persons*, with introductions by Wiflrid Prist and David Lemming (Oxford University Press 2016), 157.

7 See Josh Hughes, '*Rex Non Potest Peccare*: The Unsettled State of Sovereign Immunity and Constitutional Torts', Drake L. Rev. 69 (2021), 949-980, addressing the question of the compatibility of State immunity deriving from English doctrine under the perspective of the US Constitution.

8 From an historical perspective, commenting on the treaties between the United States of America and Hawaii for its annexation, see Henry E. Chambers, *Constitutional History of Hawaii* (The John Hopkins Press 1896), 30 writing that '*At first the efforts of the Hawaiian Commissioners to the United States gave promise of success. Subsequent developments, however, demonstrated the futility of the mission. The friends of Hawaiian royalty were greatly elated in consequence of this failure. It was hard for them to realize that the times no longer tolerated a monarchy of the grotesque or opera-bouffe order in as civilized a society as Hawaii had become, and that the re-establishment of such a monarchy could only be brought about by bloodshed and infractions upon the laws of humanity*.'

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rights law tests seem not to be respected in all circumstances, possibly leading to a breach of human rights.

The present investigation is conducted without focusing exclusively on one specific monarchy but is based on a comparison of different approaches followed in various royal households (albeit many references are to the British Royal Family due to the greater accessibility of its rules, provisions, and customs). It should however be noted that the present work does not address the question of whether international law prohibits monarchies *tout court*. Not only is current State practice an obvious evidence to the contrary, but such a proposition also clashes with the (more traditional) idea that international law does not require any additional element on the government other than being 'effective' on some territory.[9]

A need for the current investigation is grounded on the one hand on the consideration that monarchies are a common object of study in the field of constitutional law,[10] and sociology of law,[11] but not necessarily in public international law. Because international law and the traditional requirements for legal personality do not focus on whether a sovereign State has a parliamentary or monarchical structure, the topic tends to occupy little space in writings (correctly so when the perspective is that of 'Statehood'). The change of perspective adopted here, i. e. investigating possible limits on monarchies imposed by public international law, wishes thus to add to current legal debates. On the other hand, this study seems necessary in light of quantitative and qualitative considerations. Quantitatively, noble houses invested of some pub-

9 On the role of 'democracy' in relation to Statehood, see in the scholarship James Crawford, *The Creation of States in International Law* (Oxford University Press 2007), 150 ff.; Sergio Maria Carbone, 'Caratteristiche e tendenze evolutive della Comunità internazionale', in: Stefania Bariatti et al., *Istituzioni di diritto internazionale* (Giappichelli 2021), 1-44 (12 ff.).

10 In particular where the Crown in constitutional monarchies takes part in the legislative process; see most recently on the British legal system Paul F. Scott, 'The Crown, Consent, and Devolution', The Edinburgh Law Review 28 (2024), 61-85, and in general Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford University Press 1995). Also, for a constitutional law analysis of the *Principauté de Monaco*, see Pasquale Costanzo, *La Costituzione del Principato di Monaco* (Giappichelli 2006). However, noting how the sharing of powers with monarchs in democratic orders has received little attention, see Carsten Anckar, 'Constitutional Monarchies and Semi-Constitutional Monarchies: A Global Historical Study, 1800-2017', Contemporary Politics 27 (2020), 23-40; Robert Hazell and Bob Morris, 'Foreword', in: Robert Hazell, Bob Morris (eds), *The Role of Monarchy in Modern Democracy: European Monarchies Compared* (Hart Publishing 2020), at p. v; Rosalind Dixon, 'Gender and Constitutional Monarchy in Comparative Perspective', Royal Studies Journal 7 (2020), 1-9.

11 Most recently, advocating for an abolition of monarchies due to their immoral presuppositions, see Christos Kyriacou, 'The Moral Argument Against Monarchy (Absolute or Constitutional)', Res Publica 30 (2024), 171-182. For a reconstruction of different readings on the divisive nature of nobility and monarchies, see Leland B. Yeager, 'A Libertarian Case for Monarchy', Procesos de Mercado: Revista Europea de Economía Política XI (2014), 237-251 (244 f.).

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lic functions are more common than one may imagine. As a simple non-exhaustive example, one could only think of the United Kingdom, Luxembourg, Andorra, Spain, The Netherlands, Belgium, Denmark, Norway, Sweden, Liechtenstein, Monaco, The Vatican City, Malaysia, Japan, Saudi Arabia, The United Arab Emirates, and more. Furthermore, monarchs may have a role in States other than their own, as in the notorious case of King Charles III, King of the United Kingdom and, as such, Head of State of each of the Commonwealth States, i. e. Antigua and Barbuda, Australia, The Bahamas, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, and Tuvalu. From a qualitative perspective, whilst international law might not prohibit monarchies as such, monarchs can assume (or inherit) public roles such as that of Heads of State that are surely relevant for international law. In this sense, monarchs may become major (and lifelong) players in the international arena, and their relationships with the relevant law must be assessed.

II. Privileged Royal Status, Equality and Non-Discrimination

'*All human beings are born free and equal in dignity and rights.*'[12] This is the well-known text of Art. 1 of the 1948 Universal Declaration of Human Rights.[13] It is of course difficult to give content to the principle of equality and dignity which, as noted by scholars, has a certain degree of relativity both in space and in time.[14]

Even more so, according to Art. 7 of the Declaration, '*All are equal before the law […]*'. If these two rules constitute the starting point of the legal analysis, a number of questions arise with regard to constitutional monarchies.

1. Dieu et mon droit

From a historical perspective, some rulers were considered as having a spiritual role and in their functions where thus accorded supremacy given that they were called to act as defenders of religious values; in other words,

12 On equality, dignity, and human rights law, see in the scholarship Pasquale De Sena, 'Dignità umana in senso oggettivo e diritto internazionale', Diritti umani e diritto internazionale 11 (2017), 573-586; Yoram Dinstein, 'Discrimination and International Human Rights', Isr. Y. B. Hum. Rts. 15 (1985), 11-27; Oscar Schachter, 'Human Dignity as a Normative Concept', AJIL 77 (1983), 848-854; John Tasioulas, 'Human Dignity and the Foundations of Human Rights', in: Christopher McCrudden (ed.), *Understanding Human Dignity* (Oxford University Press 2013), 291-312.

13 UNGA Res A/RES/217(III) of 10 December 1948.

14 Christopher McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', EJIL 19 (2008), 655-724.

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monarchs were subject to God only.[15] To this day, the Papacy[16] may still be considered to fall within this group of 'monarchies' that conceptualise the ruler as having primacy over people, and being subject to God only, despite the fact that the 'ascension' to the role is not hereditary, but elective. The Kingdom of Saudi Arabia also adheres to the view that the ruler is called to protect and implement religious values.[17]

In constitutional monarchies, the role of king or queen varies in terms of their autonomy and power: whereas the Japanese Emperor mostly retains ceremonial functions and '*shall not have powers related to government*',[18] in other systems the head of the royal house may have a greater role in the formal promulgation of laws by way of granting a royal assent.[19] One does not even necessarily have to think of far-away places to find royals usually associated with power and great wealth. In the heart of Europe, in 2003, a public referendum in Liechtenstein strengthened the powers of the Princely House despite evident concerns[20] by the Council of Europe's Venice Com-

15 A prime example of this approach can be seen in the Danish Royal Law of 1665, whose section 2 read that the king '*shall from this day forth be revered and considered the most perfect and supreme person on the Earth by all his subjects, standing above all human laws and having no judge above his person, neither in spiritual nor temporal matters, except God alone*' (see David McIlroy, *The End of Law. How Law's Claim Relate to Law's Aim* (Edward Elgar 2019), 118, and for a translated text of the document, Ernst Ekman, 'The Danish Royal Law of 1665', J. Mod. Hist. 29 (1957), 102-107 (105 ff.).

16 See Dogmatic Constitution on the Church, *Lumen gentium*, Solemnly promulgated by his Holiness Pope Paul VI on 21 November 1964, Chapter I, The mystery of the church, available online, at para. 22, where it can be read that '*The pope's power of primacy over all, both pastors and faithful, remains whole and intact. In virtue of his office, that is as Vicar of Christ and pastor of the whole Church, the Roman Pontiff has full, supreme and universal power over the Church. And he is always free to exercise this power. The order of bishops, which succeeds to the college of apostles and gives this apostolic body continued existence, is also the subject of supreme and full power over the universal Church, provided we understand this body together with its head the Roman Pontiff and never without this head.*'

17 See in the Kingdom of Saudi Arabia, The Basic Law of Governance, Royal Decree No. A/90, Dated 27th Sha'ban 1412 H (1 March 1992), available online at <https://www.wipo.int/wipolex/en/legislation/details/7973>, last access 1 July 2025, Arts 7, 8, 55 ('*The King shall rule the nation according to the Sharia. He shall also supervise the implementation of the Sharia, the general policy of the State, and the defense and protection of the country.*'), and 56 ('*The King is the Prime Minister. Members of the Council of Ministers shall assist him in the performance of his mission according to the provisions of this Law and other laws.*').

18 The Constitution of Japan, Promulgated on 3 November 1946, available online at <https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html>, last access 1 July 2025, Art. 4.

19 See in the UK, Royal Assent Act 1967, 1967 Ch. 23.

20 See Opinion on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein, adopted by the Venice Commission at its 53rd plenary session (Venice, 13-14 December 2002), available online at <https://www.venice.coe.int/webforms/documents/CDL-AD(2002)032-e.aspx>, last access 1 July 2025, reading in its conclusions that '[…]

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mission.[21] This choice was confirmed later in 2012 when a referendum to limit the Prince's powers did not pass.[22]

The exercise of State powers, however extended they may be, based on the person's affiliation to a royal household evidently raises a number of questions related to the principle of non-discrimination.

In the first place, and on a more generalised level, the *ratio* for elevating some members of society may itself be at odds with the general principle of non-discrimination enshrined in Art. 1 of the United Nations (UN) Declaration on Human Rights.[23] To the extent a royal household assumes their role based on God's grace, a first clash with one of the most basic human rights can already be spotted. Although it may nowadays be uncommon for monarchs to argue their divine right to the throne, traces of such an approach can still be seen in the coat of arms of the British Royal House, where the traditional motto *Dieu et mon droit* is still carved in. Though, not all royal households claim or have claimed God's grace to justify their position. A number of northern-European monarchies trace back their right to ancestors who assumedly unified the nation.

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the present proposal from the Princely House would present a decisive shift with respect to the present Constitution. It would not only prevent the further development of constitutional practice in Liechtenstein towards a fully-fledged constitutional monarchy as in other European countries, but even constitute a serious step backward. Its basic logic is not based on a monarch representing the state or nation and thereby being removed from political affiliations or controversies but on a monarch exercising personal discretionary power. This applies in particular to the powers exercised by the Prince Regnant in the legislative and executive field without any democratic control or judicial review. Such a step backwards could lead to an isolation of Liechtenstein within the European community of states and make its membership of the Council of Europe problematic. Even if there is no generally accepted standard of democracy, not even in Europe, both the Council of Europe and the European Union do not allow the "acquis européen" to be diminished.' On the perplexities of the coexistence of instruments for direct democracy and the strong powers still granted to the Prince, see Pascal Mahon, 'La Costituzione del Liechtenstein da un punto di vista svizzero: una relazione difficile tra democrazia diretta e monarchia?', DPCE Online 52 (2022), 869-892; Michele Di Bari, 'Liechtenstein e diritti umani: il punto di vista degli *international monitoring bodies*', DPCE Online 52 (2022), 955-968.

21 The 'Venice Commission' is how the European Commission for Democracy through Law is generally known. This is an advisory body of the Council of Europe that was established in 1990, right after the fall of the Berlin wall, and is composed by experts on democracy. Whilst it has no legislative power *stricto sensu*, it provides legal advice to its State parties through its opinions, which abide to standards of democracy and human rights protection generally recognised between European States. On the Venice Commission, see Wolfgang Hoffmann-Riem, 'The Venice Commission of the Council of Europe – Standards and Impact', EJIL 25 (2014), 579-597; Bogdan Iancu, '*Quod licet Jovi non licet bovi*?: The Venice Commission as Norm Entrepreneur', Hague Journal on the Rule of Law 11 (2019), 189-221.

22 See the entry voice *Liechtenstein*, in: Tom Lansford (ed.), *Political Handbook of the World 2016-2017*, Vol. I (SAGE 2017), 895-899 (897).

23 Universal Declaration of Human Rights (1948), Proclaimed by the General Assembly, resolution 217 A (III) of 10 December 1948, A/RES/3/217 A.

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In the second place, the circumstance that some people are born into privilege not only has effects in terms of generalised discrimination as the majority of society is not considered to be 'worthy' of ascending to the throne; on an inter-personal level, reserving a State public function to a dynasty may translate into direct discrimination inasmuch as people are simply prevented from assuming that role.[24] Paradoxically, even the Pope, who may be considered as an absolute ruler for having legislative, judicial, and governmental powers, acquires more democratic traits than other royal families, as he is elected by its own community and, provided interested people satisfy the specific requirements, anyone within that community could eventually be chosen to 'ascend to the throne'.

In human rights law terms, this paves the way for the complex question of whether international law and equality rights may tolerate this form of discrimination. The right to access a specific public office is not necessarily included amongst those absolute rights that are never subject to limitations.[25] If this is true, the traditional standards for limiting individual rights should apply: that the limitation is provided for by a rule of law, is necessary to pursue a legitimate State interest and is proportionate.[26] It seems that, the greater the role and power of the monarch, the more difficult it would be for the State to 'defend' its choice to reserve the relevant office to a pre-determined set of persons just because of their birth circumstances.[27] In this sense, there is little surprise that some European monarchies have in time evolved towards predominantly ceremonial roles. This appears to be a normative consequence of democratic and equality principles.[28] Still, where monarchs retain some degree of power, a justification for limiting access to

24 See Wim Roobol, 'Twilight of the European Monarchy', Eu Const. L. Rev. 7 (2011), 272-286 (286), writing that '[…] *the unremitting emphasis on mending the much debated democratic deficit of the Union will sooner or later raise questions about how to fit hereditary heads of states into a constitutional system in which equality of all the citizens – every citizen should in principle be entitled to be head of state – is a core principle.*'

25 On 'absolute' human rights, see for all Michael K. Addo and Nicholas Grief, 'Does Article 3 of The European Convention on Human Rights Enshrine Absolute Rights?', EJIL 9 (1998), 510-524; Martin Borowski, 'Absolute Rights and Proportionality', GYIL 56 (2013), 385-424; Natasa Mavronicola, 'What is an "Absolute Right"? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights', HRLR 12 (2012), 723-758.

26 *Ex multis*, Mohamed E. Badar, 'Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Instruments', International Journal of Human Rights 7 (2003), 63-92.

27 Opinion on the Amendments to the Constitution of Liechtenstein proposed by the Princely House of Liechtenstein, adopted by the Venice Commission at its 53rd plenary session (Venice, 13-14 December 2002), (n. 20).

28 See Jan-Herman Reestman, 'The State of the European Union's Monarchies. An Introduction to the Series', Eu Const. L. Rev. 7 (2011), 267-271 (268).

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public office should be given. There appears to be an evident margin of appreciation for States on the matter, and State practice confirms that, in principle, monarchies are acceptable in terms of limitation to equality rights as long as the monarchical (and hereditary) structure is perceived as being fundamental to ensuring the continuity and neutrality of an 'overseeing office' unentangled by the political constraints of a given moment.[29] This idea, it must be noted, is not exclusive to constitutional monarchies; even legal systems adopting a different model may accept that some offices do have an unlimited term of office so as to ensure the political independence of the respective person.[30]

2. Succession to the Throne and Male Privilege

Equality and non-discrimination principles may also become relevant in other aspects of the monarchical system, namely in terms of possible male preference to the succession to the throne (i. e., to the public office). For quite some time, most monarchies have adopted succession criteria inspired by Salic Law,[31] whereby only male children of the ruler could inherit. Female children were excluded from the succession, up to the point that collateral male relatives of the former king were favoured over the direct female descendants. This is still the case in Japan, for example: according to Art. 1 of The Imperial House Law, '*The Imperial Throne shall be succeeded to by a male offspring in the male line belonging to the Imperial Lineage*.'[32] In other circumstances, even where the monarch is elected, this may be a completely male-driven process, as is the case of the election of the Pope.[33]

29 See Yeager (n. 11), 242 ff. and Douwe Jan Elzinga, 'Monarchy, Political Leadership, and Democracy: On the Importance of Neutral Institutions', in: John Kane, Haig Patapan and Paul 't Hart (eds), *Dispersed Democratic Leadership. Origins, Dynamics, & Implications* (Oxford University Press 2009), 105-117.

30 On the United States of America and the appointment of Justices at the Supreme Court without a final term to ensure their independence from any power, see Vicki C. Jackson, 'Packages of Judicial Independence: The Selection and Tenure of Article III Judges', Geo. L. J. 95 (2007), 965-1040.

31 For a reconstruction of different approaches in various monarchies, see Christine Corcos, 'From Agnatic Succession to Absolute Primogeniture: The Shift to Equal Rights of Succession to Thrones and Titles in the Modern European Constitutional Monarchy', Michigan State Law Review 21 (2012), 1587-1670, and, in historical perspective, Ann Lyon, 'The Place of Women in European Royal Succession in the Middle Ages', Liverpool L. Rev. 27 (2006), 361-393.

32 The Imperial House Law, in Official Gazette English Edition No. 237, 16 January 1947.

33 See in the scholarship, Ejikemeuwa Ndubisi, 'Gender Inequality and Roman Catholic Priesthood: A Philosophical Examination', International Organization of Scientific Research (IOSR) Journal of Humanities and Social Science 21 (2016), 29-33.

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In other cases, younger male heirs are preferred over older female heirs of the same lineage. A female heir, whilst not being excluded *a priori* from the succession line, can effectively inherit the throne only if she has no brothers who would be preferred. Both Spain[34] and Monaco[35] still privilege male heirs over female.

However, it appears that most of the monarchies in Europe have evolved in such a way so as to ensure equal rights in succession matters between female and male heirs, this being for example the case of The Netherlands,[36] the United Kingdom,[37] Sweden,[38] Norway,[39] and Luxembourg.[40] Nonetheless, such an evolution towards equality is not to be taken for granted. Not only does Spain still privilege men over women, the Principality of Liechtenstein still adheres to a pure Salic law and does not allow women to inherit the throne,[41] i. e. the public office of Head of State.

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34 According to Art. 57(1) of the Spanish Constitution: '[…] *Succession to the throne shall follow the regular order of primogeniture and representation, the first line always having preference over subsequent lines; within the same line, the closer grade over the more remote; within the same grade, the male over the female, and in the same sex, the elder over the younger.*'

35 According to Art. 10(1) of the Constitution of the Principality of Monaco: '*La succession au Trône, ouverte par suite de décès ou d'abdication, s'opère dans la descendance directe et légitime du Prince régnant, par ordre de primogéniture avec priorité masculine au même degré de parenté.*'

36 See in the Dutch Constitution, Art. 25 which, on matters of succession makes no distinction at all between female or male heirs ('[…] *the Throne shall pass by hereditary succession to the King's legitimate descendants in order of seniority* […]'). In the scholarship, on the traditional presence of Queens in the Dutch monarchy, see Corcos (n. 31), 1626 f.

37 See Perth Agreement of 28 October 2011, concluded at the bi-annual Commonwealth Heads of Government Meeting, in Report by the House of Commons Political and Constitutional Reform Committee, 11th report (2010-2012): Rules of Royal Succession (HC 1615), Annex I (writing that '*All countries wish to see change in two areas. First, they wish to end the system of male preference primogeniture under which a younger son can displace an elder daughter in the line of succession. Second, they wish to remove the legal provision that anyone who marries a Roman Catholic shall be ineligible to succeed to the Crown. There are no other restrictions in the rules about the religion of the spouse of a person in the line of succession and the Prime Ministers felt that this unique barrier could no longer be justified.*'), and Succession to the Crown Act 2013, Ch. 20, S. 1 ('*In determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person's descendants, precedence over any other person (whenever born).*').

38 See Successionsordning (1810:0926) / SFS 1979:935, Art. 1.

39 The Constitution of the Kingdom of Norway, LOV-1814-05-17, whose Art. 6 (amended in 1990) now reads that '*For those born before the year 1990 it shall nevertheless be the case that a male shall take precedence over a female.*'

40 Grand Ducal decree of 16 September 2010 introducing equality between males and females with respect to the succession to the throne, in: Journal officiel du Grand-Duché de Luxembourg, B – No. 55, 2011, 720 (23 June 2011).

41 Hausgesetz des Fürstlichen Hauses Liechtenstein vom 26. Oktober 1993, in: Liechtensteinisches Landesgesetzblatt, Jahrgang 1993, Nr. 100 (Art. 12: '*1) Für die Thronfolge gilt gemäss diesem Hausgesetz der Grundsatz der Primogenitur. Danach ist stets der Erstgeborene der ältesten Linie zur Thronfolge berufen. Das Alter einer Linie wird nach ihrer Abstammung*

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Possible discrimination between men and women in the succession to the throne have also influenced international law; the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[42] still coexists with a number of reservations whose aim is to ensure the non-interference of the treaty with succession rules.[43] Even the UN Human Rights Committee expressed doubts on similar rules to succession, arguing – in the context of Liechtenstein's own report – that

> '*While noting the numerous measures taken by the State party to address the problem of inequality between men and women, the Committee notes the persistence of a passive attitude in society towards the role of women in many areas, especially in public affairs. The Committee is also concerned about the compatibility with the Covenant of laws governing the succession to the throne.*'[44]

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vom Fürsten Johann I. von Liechtenstein (1760 bis 1836) beurteilt. Der Rang der männlichen Mitglieder des Fürstlichen Hauses richtet sich nach dem Rang ihres Thronfolgerechtes. Die sich daraus ergebende Rangordnung ist bei der Matrikenführung festzuhalten (Art. 4 Abs. 2). 2) Die weiblichen Mitglieder des Fürstlichen Hauses haben anstelle eines Ranges ein Vortrittsrecht. Dieses richtet sich bei den weiblichen Mitgliedern kraft Geburt (Art. 1 Abs. 2) nach ihrem Geburtsdatum innerhalb der in Abs. 1 näher bezeichneten Linien. Bei den weiblichen Mitgliedern kraft Eheschliessung (Art. 1 Abs. 3) bestimmt sich das Vortrittsrecht nach dem Rang des Ehegatten im Rahmen der Thronfolgeordnung.').

42 Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 13.

43 All reservations, in force in summer 2025, can be accessed online on the UN webpage at <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=_en>, last access 1 July 2025. Amongst the reservations relevant for the matter at hand are those of Lesotho ('*The Government of the Kingdom of Lesotho declares that it does not consider itself bound by article 2 to the extent that it conflicts with Lesotho's constitutional stipulations relative to succession to the throne of the Kingdom of Lesotho and law relating to succession to chieftainship.*'); Monaco ('*The ratification of the Convention by the Principality of Monaco shall have no effect on the constitutional provisions governing the succession to the throne.*'); Morocco ('*The Government of the Kingdom of Morocco express its readiness to apply the provisions of this article provided that: – They are without prejudice to the constitutional requirement that regulate the rules of succession to the throne of the Kingdom of Morocco* […].'); United Kingdom ('*In the light of the definition contained in Article 1, the United Kingdom's ratification is subject to the understanding that none of its obligations under the Convention shall be treated as extending to the succession to, or possession and enjoyment of, the Throne, the peerage, titles of honour, social precedence or armorial bearings, or as extending to the affairs of religious denominations or orders or any act done for the purpose of ensuring the combat effectiveness of the Armed Forces of the Crown*'), and Liechtenstein ('*In the light of the definition given in article 1 of the Convention, the Principality of Liechtenstein reserves the right to apply, with respect to all the obligations of the Convention, article 3 of the Liechtenstein Constitution*').

44 Report of the Human Rights Committee, Volume I, Seventy-ninth session (20 October-7 November 2003); Eightieth session (15 March-2 April 2004); Eighty-first session (5-30 July 2004); A/59/40 (Vol. I), 62, also writing '*While noting Liechtenstein's interpretive declaration concerning article 3 of the Covenant, the State party may wish to consider the compatibility of the State party's exclusion of women from succession to the throne with articles 25 and 26 of the Covenant.*'

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Art. 28(2) CEDAW does allow reservations, if these are not incompatible with the purpose and object of the treaty. It could be questioned whether rules that discriminate against women in terms of acquiring a public role just because of their sex meet the requirements generally followed in international law when it comes to reservations to treaties in general,[45] and to human rights law treaties in particular.[46] The UN Human Rights Committee evidently adopts the view that similar rules are – at the very best – at odds with human rights law, and State practice also shows that the justification requirement can hardly be met, hence a general shift in European monarchies towards equality. However, it should also be noted that there appear to be no objections raised by States against the reservations to CEDAW. Likewise, the European Court of Human Rights did not take the opportunity to rule on possible discriminations caused by the male inheritance of nobility titles in Spain on some occasions. At times, the Court argued that nobility titles do not fall within the scope of application of the Convention and that they are not 'possessions' in terms of the treaty.[47]

Assuming that a stronger or weaker male preference in the succession to the throne mainly finds its justification in anachronistic traditions and can hardly be justified unless no real or valid reason is given, Liechtenstein's[48] position is of particular interest. Rules concerning the succession to the throne (and to the office of Head of State), which exclude women, are not

45 See ICJ, *Reservations to the Convention on Genocide*, advisory opinion, 28 May 1951, ICJ Reports 1951, 15. See also ILC, *Guide to Practice on Reservations to Treaties 2011*, ILCYB 2011, Vol. II, Part Two, 26 ff.

46 Specifically, see A/CN.4/477, Second Report on Reservations to Treaties, by Mr. Alain Pellet, Special Rapporteur, ILCYB 1996, Vol. II (1), 37 ff., and A/52/10, Report of the International Law Commission on the Work of Its Forty-Ninth Session, 12 May-18 July 1997, in ILCYB 1997, Vol. II (2), 1, in part at 46 ff. See for all, Alain Pellet, 'The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur', EJIL 24 (2013), 1061-1097.

47 ECtHR, *De la Ciera y Osorio de Mosoco and Others v. Spain* (dec.) – appl. nos. 45726/99, 41127/98, 41503/98 et al., decision of 28 October 1999. The Spanish Parliament has partly settled the matter adopting a law in 2006 which ensures equal rights in the succession to nobility titles (Ley 33/2006, de 30 de octubre, sobre igualdad del hombre y la mujer en el orden de sucesión de los títulos nobiliarios, BOE núm. 260, 31 October 2006, 37742), but it is not necessarily clear whether the law also applies to the succession to the throne, as Art. 57 of Constitution still contains a male preference. In the scholarship, see Corcos (n. 31), 1641; Ruth Rubio Marín, 'Engendering the Spanish Monarchy: Modernizing or Abolishing?', Royal Studies Journal 7 (2020), 80-93 (85).

48 1921 Liechtenstein Constitution, available online at <https://www.constituteproject.org/constitution/Liechtenstein_2011>, last acces 1 July 2025, Art. 3 ('*The succession to the throne, hereditary in the Princely House of Liechtenstein, the coming-of-age of the Prince Regnant and of the Heir Apparent, as well as any guardianship which may be required, are to be determined by the Princely House in the form of a dynasty law.*')

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adopted by the State's legislative body, as usually happens in many constitutional parliamentary monarchies. Rather, succession rules are adopted internally by the Princely house itself. This 'reallocation' of regulatory competences should bear no relevance: royal households are branches of the 'State'[49] and, as such, are still bound by the same human rights law standards. In Liechtenstein, the Prince Regnant (along with the 'people') is the source of the power of the State.[50] In these terms, it could hardly be argued that a royal household, whose head is also the Head of the State, is not part of the State and – for this reason – is not bound to respect human rights when regulating matters that are 'internal to the family'. The parallel development of the rules in Luxembourg, where gender equality has been attained despite rules adopted internally by the Princely house, seems to confirm that human rights law would impose the same result in Liechtenstein.

III. Privileged Royal Status and International Law: A Permanent Immunity *ratione personae*

Another possible clash between 'royal status' and international law may occur in the field of immunities which follows the maxim, well known to international law lawyers, *rex non potest peccare*. However, before turning to the interrelationships between general principles in the field of immunities and the position of the sovereign assuming the role of Head of State, a preliminary specification should be made on the scope of the present investigation. 'Royals' *lato sensu* and the 'Sovereign Head of State', for the purposes of immunities, should be treated as two different categories. Senior members of a royal household may to some extent take part in public affairs at the international level, yet their public involvement does

49 Cris Shore, 'The Crown as Metonym for the State?: The Human Face of Leviathan', in: Cris Shore and David V. Williams (eds), *The Shapeshifting Crown: Locating the State in Postcolonial New Zealand, Australia, Canada and the UK* (Cambridge University Press 2019), 53-74; Geoffrey Marshall, *Constitutional Theory* (Clarendon Press 1971), 13 ff. See also Cheryl Saunders, 'The Concept of the Crown', Melbourne University Law Review 38 (2015), 873-896.

50 Liechtenstein 1921 (rev. 2011) Constitution, Art. 2 ('*The Principality is a constitutional, hereditary monarchy on a democratic and parliamentary basis (Art. 79 and 80); the power of the State is inherent in and issues from the Prince Regnant and the People and shall be exercised by both in accordance with the provisions of the present Constitution.*'). On the 'double-sovereignty', see Elisa Bertolini, 'La Costituzione del Liechtenstein nel diritto comparato', DPCE Online 52 (2022), 893-922 (904); Rolando Tarchi, 'La Costituzione del Liechtenstein nel suo centenario. Riflessioni di sintesi nella prospettiva comparata', DPCE Online 52 (2022), 1031-1070 (1041).

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not necessarily mean that they are automatically granted the same privilege international law recognises for the Head of State. If they are agents of their home State, some of their actions may indeed be 'covered' by (functional) immunities.

According to the *rex non potest peccare* doctrine and the *par in parem non habet imperium* principle, the very concept of (internal and external) immunity has been developed.[51] Assuming international law as a focal lens, two questions arise. In the first place, if the monarch assumes one of those roles which demand the recognition of (external) immunity *ratione personae* under international law,[52] such as becoming (a life-long) Head of State, one may wonder whether this is at odds with some principles generally accepted in the field of immunities. Heads of State, amongst few others, enjoy immunity from foreign jurisdiction for both public and private acts in civil and criminal matters.[53] This treatment evidently translates into interferences with the (human) rights of others, since they will not be able to start proceedings before the court that would eventually enjoy jurisdiction under the relevant rules of international procedure. It seems that a general understanding of international law is that personal immunity, i. e. the immunity from jurisdiction some high-ranking officials enjoy abroad for purely private conducts, is temporarily limited.[54] Once they leave their office, foreign courts will again have the opportunity to hear cases and, eventually, deliver a civil or criminal

51 *Ex multis*, Sandra Ekpo, 'Jurisdictional Immunities of the State (Germany v. Italy): The Debate over State Immunity and Jus Cogens Norms', Queen Mary Law Journal 8 (2017), 151-164 (152 f.).

52 On which in the scholarship, see *ex multis* Mario Miele, *L'immunità giurisdizionale degli organi stranieri* (Giuffré 1961); Riccardo Luzzatto, *Stati stranieri e giurisdizione nazionale* (Giuffré 1972); Attila Tanzi, *L'immunità dalla giurisdizione degli agenti diplomatici* (CEDAM 1991); Pasquale De Sena, *Diritto internazionale e immunità funzionale degli organi statali* (Giuffré 1996); Rosanne Van Alebeek, *The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law* (Oxford University Press 2008); Natalino Ronzitti and Gabriella Venturini (eds), *Le immunità giurisdizionali degli Stati e degli altri enti internazionali* (CEDAM 2008).

53 Albeit no specific treaty has been concluded on the immunities of Heads of State as such, according to the International Court of Justice, the 1961 Vienna Convention on Diplomatic Relations (500 UNTS 95) and its rules on immunity for diplomats, constitutes a 'useful guidance' see ICJ, *Arrest Warrant of 1 April 2000* (Democratic Republic of the Congo v. Belgium), judgment of 14 February 2002, ICJ Reports 2002, 3 (para. 52); *Certain Questions of Mutual Assistance in Criminal Matters* (Djibouti v. France), judgment of 4 June 2008, ICJ Reports 2008, 177 (para. 170).

54 In the case law, see ICJ, *Arrest Warrant* (n. 53), para. 60 ('[…] *Jurisdictional immunity may well bar prosecution for a certain period or for certain offences; it cannot exonerate the person to whom it applies from all criminal responsibility* […]'). On the temporal requirement, and the distinction between immunity *ratione materiae* and *personae*, see for all Attila Tanzi, *A Concise Introduction to International Law* (Eleven/Giappichelli 2022), 267 f.

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judgment.[55] Only functional immunity, i. e. the immunity for official acts, may be invoked by (any) State agent at any time before foreign courts as the conduct is attributable to their sovereign State.[56]

The most fundamental question concerning personal immunity thus becomes whether, under international law, a person may hold office in such a way that the 'temporal' requirement is *de facto* annulled. Surely enough, a broad question as this is relevant in cases beyond those of royals, such as those of life-long dictators and similar.[57] It appears that an answer can only be given in light of the second requirement international law imposes on personal immunities. According to the International Court of Justice, immunities under international law only bar jurisdiction of foreign courts, whilst leaving open the possibility of suing the Head of State in their State of origin according to national rules.[58] However, starting proceedings against a king in their home country may not be easy, as they may enjoy a special protection from domestic proceedings (i. e., an 'internal immunity' from jurisdiction). For example, according to § 13 of the Danish Constitution, '*The King shall not be answerable for his actions; his person shall be sacrosanct*.' This provision has been interpreted in the sense of granting civil and criminal immunity within the State.[59]

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55 ICJ, Arrest Warrant (n. 53), para. 61 ('[…] *after a person ceases to hold the office of Minister for Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States. Provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity*').

56 Document A/68/10, Report of the International Law Commission on the work of its sixty-fifth session (6 May-7 June and 8 July-9 August 2013), ILCYB 2013, Vol. II, Part Two (1), 47 f. In the most recent case-law, see *Corinna zu Sayn-Wittgenstein-Sayn Claimant v. His Majesty Juan Carlos Alfonso Victor María de Borbón y Borbón*, [2022] EWCA Civ 1595, para. 16 ('*State immunity (ratione personae) attaches for acts performed by a head of state while in office. But even after a head of state (or other agent of the state) leaves office, they continue to enjoy immunity ratione materiae for acts performed by them as head of state (or agent of the state) while in office, under sections 1(1) and 14(1) or section 14(2) SIA*').

57 Also drawing a parallelism between monarchies and dictatorship as per the rules on succession, see Jason Brownlee, 'Hereditary Succession in Modern Autocracies', World Politics 59 (2007), 595-628.

58 ICJ, Arrest Warrant (n. 53), para. 61 ('[…] *such persons enjoy no criminal immunity under international law in their own countries, and may thus be tried by those countries' courts in accordance with the relevant rules of domestic law* […]').

59 See Thomas Bull, 'Institutions and Division of Powers' in: Helle Krunke and Björg Thorarensen (eds), *The Nordic Constitutions. A Comparative and Contextual Study* (Bloomsbury 2018), 43-66 (46); Jens Faerkel, 'Some Aspects of the Constitution of Denmark', Irish Jurist 17 (1982), 1-31 (8, and there fn. 15), and European Commission of Human Rights (Second Chamber), *Hoffunktionærforeningen I Danmark v. Denmark*, 13 January 1992, appl. no. 18881/91, available online at < https://hudoc.echr.coe.int/eng?i=001-1260>, last access 1 July 2025.

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From an international law standpoint, it would seem that a combination of both privileges, one barring jurisdiction of foreign courts for private conducts, the other barring jurisdiction of national courts, would lead to an excessive interference with the right to access a court of law, possibly to the point that the privileges at hand could clash with human rights.[60] What is more, they could clash with those principles reconstructed by the International Court of Justice in the specific field of immunities, provided that a complete and absolute procedural bar in all legal systems would not be that different from granting substantive impunity – which is barred under international law.[61] Eventually, one may even argue that foreign courts, should they face a combination of international and domestic prerogatives leading to an absolute and *sine die* procedural immunity, could be allowed to deny jurisdictional immunities *ratione personae* under international law due such a situation's inconsistency with international law itself and due to the necessity to ensure some access to justice. Of course, this is without prejudice to the possibility of still applying functional immunities for official acts of the agent, if the act may be qualified as such rather than being 'private' in nature.[62] If this conclusion is correct, then one may frown upon some State practice, where national legislators considered enacting rules to ensure full judicial protection of previous (no longer in office) monarchs for their private acts.[63] Even the possibility of

60 Limitations to the right to access a court of law have been carefully scrutinised and admitted only in rather exceptional cases, see ECtHR, *Stichting Mothers of Srebrenica and Others v. the Netherlands*, 11 June 2013, appl. no. 65542/12; on which see Beatrice I. Bonafè, 'L'esistenza di rimedi alternativi ai fini del riconoscimento dell'immunità delle organizzazioni internazionali: la sentenza della Corte suprema olandese nel caso delle Madri di Srebrenica', RDI 95 (2012), 826-829; Maria Irene Papa, 'Immunità delle Nazioni Unite dalla giurisdizione e rapporti tra CEDU e diritto delle Nazioni Unite: la decisione della Corte europea dei diritti umani nel caso dell'Associazione Madri di Srebrenica', Diritti umani e diritto internazionale 8 (2014), 27-62; Valentina Spiga, 'Effective Limitations and Illusory Rights: A Comment on the Mothers of Srebrenica Decision of the European Court of Human Rights', The Italian Yearbook of International Law 23 (2014), 269-286; and Kirsten Schmalenbach, 'Preserving the Gordian Knot: UN Legal Accountability in the Aftermath of Srebrenica', NILR 62 (2015), 313-328.

61 ICJ, *Arrest Warrant* (n. 53), para. 60.

62 See *Corinna zu Sayn-Wittgenstein-Sayn* (n. 56).

63 This is the case in the Spanish system; after the abdication of King Juan Carlos I and the possibility of him being subject to a number of legal proceedings different in nature, the Government considered, at first, a constitutional amendment to extend the full inviolability of the King to former kings as well. This constitutional change has not been pursued, see Laura Frosina, 'Una monarchia rinnovata per la Spagna del XXI secolo. L'abdicazione del Re Juan Carlos I, la proclamazione di Felipe VI ed il c.d. Aformiento reale', Nomos 2 (2014), 1-18 (13 f.) and has led the Government to 'settle' for a high-level protection for the royal house, despite a possible lack of performance of public functions, ensuring that only the Tribunal Supremo has jurisdiction (see Ley Orgánica 4/2014, de 11 de julio, complementaria de la Ley de racionalización del sector público y otras medidas de reforma administrativa por la que se

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starting proceedings against governmental departments, considered as the extensions of the King's *political body*, although they provide procedures unavailable against a monarch exercising the same functions, does not solve the issue of a possible (domestic) immunity from jurisdiction for private acts of the king or the queen.[64] In other words, the greater the opportunities to seek

modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, BOE núm. 169, 12 July 2014, 54647). Cases against former King Juan Carlos I have also been brought before foreign courts, which had thus to assess questions related to immunity and private international law. Most recently, see *Sayn-Wittgenstein-Sayn v. HM Juan Carlos Alfonso Victor Maria De Borbon y Borbon*, [2023] EWHC 2478 (KB), 6 October 2023, on which see Ugljesa Grusic, 'Former King of Spain, His Ex-Lover, and Brussels I bis in English Courts', EAPIL Blog, 16 October 2023.

64 As recently noted by the Ministry of Justice of the United Kingdom, '*The Queen as head of state has sovereign immunity from both civil and criminal proceedings. That is a long established customary rule of law not statutory provisions. Such sovereign immunity is common to other jurisdictions. Judges are appointed by the Sovereign and dispense justice in the name of the Sovereign. As a result, all orders of the court, civil and criminal are on behalf of the Crown. Criminal cases are prosecuted by the Crown Prosecution Service, in the name of the Sovereign against a defendant. In civil cases the court dispenses justice on the authority of the Sovereign. It is also worth noting that the Crown Proceeding Act 1947 allows for civil actions to be brought against the Crown in certain circumstances but this in general terms means Her Majesty's Government rather than the Sovereign*', see Freedom of Information Act (FOIA) Request – 190519007, 3 June 2019, available online at <https://www.whatdotheyknow.com/request/577449/response/1375834/attach/5/FOI%20190519007.pdf?cookie_passthrough=1>, last access July 2025. Allowing some proceedings against the Crown (but not against the person of the King) evidently raises the challenge of properly and correctly defining the Crown itself; an uneasy task which leads to different argumentations and conclusions. Amongst the most debated theories, two are of particular interest and relevance. According to a first conceptualisation, the so called 'two-bodies doctrine', the person of the King is the sum of their natural and of their political bodies, whereby this last one consists of their political and governmental powers. Under a second conceptualisation, that of the 'corporation sole' doctrine, the Crown is seen as a continuous and uninterrupted office held by different persons over time. Scholars have long rationalised diverse approaches to offer a definition of what the Crown is; still, what the Crown really is, remains a question with no single answer (see in this sense David Torrance, The Crown and the Constitution (House of Commons Library 2023), 8). Even the Crown Proceedings Act 1947 to some extent takes for granted what 'the Crown' is; no specific definition is offered, and only Section 17, dedicated to the parties to the proceedings, adopts a quite extensive notion of 'Crown', which includes authorised Government Departments – conceptualised as an extension of the political body of the King. On the conceptualisation of the King, the Crown, and their governmental functions, see Ernst H. Kantorowics, The King's Two Bodies: A Study in Medieval Political Theology (7th edn, Princeton University Press 1997), 7 ff.; Marie-France Fortin, 'The King's Two Bodies and the Crown a Corporation Sole: Historical Dualities in English Legal Thinking', History of European Ideas 47 (2021), 1-19; Maurice Sunkin and Sebastian Payne (eds), The Nature of the Crown. A Legal and Political Analysis (Oxford University Press 1999); Jason Grant Allen, 'The Office of the Crown', C. L. J. 77 (2018), 298-320. However, this does not ensure that domestic prerogatives of the monarch ensuring immunity from national jurisdiction may be superseded; in this regard, some have argued that the 'monarch is immune from prosecution, even for parking offences', Catherine Barnard, 'Monarchy and the Courts', in: Changing Europe, the Constitution Unit, UCL, The British Monarchy (online report 2023), 39-41 (39).

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justice in the State of origin, the stronger international law immunities can be justified and preserved.

IV. Unprivileged Royal Status and International Law: The Need to Ensure Respect of Royals' Human Rights

Not only may the *status* of royals 'elevate' some people over others granting them special legal treatment which could sometimes be at odds with the ordinary assumptions of international law, but it can eventually ground cases where royals, because of their *status*, can suffer an interference with their own rights. One such instance has already been touched upon and can only be mentioned here again for the sake of completeness. As seen, some legal systems such as Spain, Monaco, and Liechtenstein still discriminate against women in rules concerning the succession to the throne. This legal treatment can hardly be reconciled with human rights law as there is no apparent justification for the different treatment, which cannot be defended by arguing that the matter is 'private' and internal to the relevant dynasty.

Further arguable limitations to the human rights of royal family members may be reconstructed and assessed under the ordinary approaches followed when interferences with fundamental rights are at stake.

1. Head of State and Head of State's Confession

Taking the British monarchy as a well-known example, the King or the Queen, by law, must be Protestant to assume their role.[65] This comes with little surprise since the Head of State is also the Head of the Anglican Church. As usual, any limitation on human rights would have to 'pass' the traditional test, meaning that the limitation at hand must be foreseen by law, necessary, and proportionate. Evidently, in the case of a Head of State who must also assume the role of the Head of the Church, the necessity and proportionality of the limitation of the individual's human right are likely to play a significant role in justifying the interference with the religious freedom. Additionally, it could be argued the essence of the right to religious freedom is not at stake; the sovereign, or the heir, is always left with the choice to leave the relevant office.

65 Act of Settlement (1700).

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In this specific case, if the strong relationship between the two roles – that of Head of State and Head of the Anglican Church – may to some extent be seen as a sufficient justification to require that the monarch must follow one specific religion, conditions and limitations on freedom of religion on other members of the royal family may be more difficult to justify. Possibly, these tensions with human rights explain why a peculiar condition on the rules of succession to the throne has recently been changed. A marriage between an heir to the throne and a Catholic person was a reason to be excluded from the line of succession.[66] This, which may also be scrutinized under different focal lenses (as an interference with the right to marry or to a private life), was repealed in 2013 with the Succession to the throne act, according to which, now, '*A person is not disqualified from succeeding to the Crown or from possessing it as a result of marrying a person of the Roman Catholic faith*.'[67]

2. Pre-Emptive Consent to Enter a Marriage

Human rights limitations extend only to a certain number of members of the royal house. Again, under British law, the first six persons in line to inherit the throne must obtain royal consent to marry. Should the royal consent not be requested or given, '*the person and the person's descendants from the marriage are disqualified from succeeding to the Crown*'.[68] Similar provisions are not uncommon,[69] and may be found with some degree of differences on who is called to give the consent to the marriage. In The Netherlands, for example, the heirs to the throne need a parliamentary authorisation to marry, under penalty of being excluded from the line of succession.[70]

The admissibility test for human rights limitations remains unchanged; necessity and proportionality would evidently play a significant role in justifying the limitation at hand. However, some concerns remain. In the first place, it could be argued that a 'State' may have a stronger legitimate interest

66 Act of Settlement (1700).

67 Succession to the Crown Act 2013, Ch. 20, S. 2.

68 Succession to the Crown Act 2013, Ch. 20, S. 3.

69 See Hausgesetz des Fürstlichen Hauses Liechtenstein vom 26. Oktober 1993 (n. 41), Art. 7.

70 See Dutch Constitution, Art. 28 ('*The King shall be deemed to have abdicated if he contracts a marriage without having obtained consent by Act of Parliament. Anyone in line of succession to the Throne who contracts such a marriage shall be excluded from the hereditary succession, together with any children born of the marriage and their issue* […]').

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in exercising control over the heir apparent that, by law, is destined to become the Head of the State when compared to other persons in the line of succession. The more unlikely a person is to become the sovereign, the less acceptable any limitation on the freedom to marry would become. In the second place, it is not necessarily clear what these interests are, or what the limits of the scrutiny are. While it appears reasonable to deny permission to marry someone that has notoriously committed international crimes and seeks a royal marriage to gain protection, as the State would have an interest in not becoming an agent for impunity, one may wonder whether considerations such as the infertility of the prospective spouse that may threaten the line of succession can also justify withholding permission.

Evidently, it is not possible to develop a fit-for-all rule. As a matter of general principle, State practice shows that there is a State interest in pre-emptive control over marriages of sovereigns and heirs to the throne. Such an interest, however, should not extend beyond what is strictly necessary for the performance of public duties of the sovereign, and pre-emptive consent should not become an indirect tool for a character judgment on the person entering the marriage with the sovereign or the heir. If these general criteria are respected, conditioning the right to marry can comply with human rights standards. And, again, it could always be argued that the core right to enter a marriage is not prejudiced, as the heir is left with the choice between the throne and love.

3. LGBTQ and Succession to the Throne

The latest point, that of pre-emptive authorisation to marry and the limit of such scrutiny, raises a subsequent matter of particular relevance in respect to the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community. The history of sovereigns appears to be characterised by hetero-normative models, and it may be wondered if and to what extent LGBTQ heirs could ascend to the throne, lawfully marry, and generate heirs themselves. Again, no fit-for-all-solution can be developed, yet some general considerations can be offered.

The question of sexual orientation appears to have been explicitly addressed in some ways at least by the Dutch, Swedish, and British legal systems. As for the first two, communications by the governments[71] suggest that consent to marry will not be withheld to the heir or the sovereign only

71 See the online article by Hugo Greenhalgh, 'After King Charles, Could Britain Have an Openly LGBTQ+ Monarch?', www.openlynews.com, 5 May 2023.

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because of the same-sex nature of the relationship. This, of course, also suggests that sexual orientation is per se no condition or limit to ascend to the throne. As for the British legal system, Parliamentary debates during the adoption of the new rules on succession in 2013 highlighted the gender neutrality of the draft, allowing for a same-sex marriage of the sovereign or the heir.[72] However, the same debates have pointed to 'consequential' problems in terms of succession that may be common to some royal houses. In a number of cases, heirs succeed to the throne because of their (biological) descendancy to a former sovereign – for example Princess Sophia of Hannover in the case of the British royal family.[73] The question – which is evidently of relevance for both traditional and same-sex royal marriages – thus becomes whether heirs that have no blood connection at all with the 'body of' the ancestor might be excluded for such a reason from the succession. In the United Kingdom, a proposal to amend the 2013 Draft Succession Act to limit succession claims only in favour of heirs born out of a wedding between a 'man' and a 'woman'[74] did not find its way into the final text of the statute, suggesting at least the will not to take an official position on heirs stemming from same-sex marriages.

Adopting a human rights law lens, the trends for a gender-neutral reading of the provisions on the succession to the throne (or on authorisation to enter a marriage) surely appear in line with human rights law. At the same time, including their offspring in the line of succession raises much more complex issues. To the extent a legal system relies on a principle of 'biological dynasty' to justify the existence of monarchy, medieval expressions such as 'heir to the body of […]' are destined to raise many questions in the future. What has to be noted, however, is that there does not appear to be an inherent right to be included in the line of succession. Even children of a traditional couple are

72 Succession to the Crown Bill, Report, Volume 744: debated on Wednesday 13 March 2013, available online at <https://hansard.parliament.uk/lords/2013-03-13/debates/13031351000661/SuccessionToTheCrownBill>, last acces 1 July 2025, column 268 ('[…] *it will clearly be lawful for a monarch or an existing heir of the body to enter into a same-sex marriage when that Act becomes law. After all, one hesitates to imagine the circumstances in which either Clause 3 (3) of this Bill were used to frustrate an intended same-sex marriage – a novel interference with rights, as others have pointed out – thereby denying that person succession to the Throne, or indeed where there was no intervention and the marriage was accepted in some of the realms and not others.*').

73 Act of Settlement (1700).

74 Succession to the Crown Bill, Report, Volume 744: debated on Wednesday 13 March 2013, available online at <https://hansard.parliament.uk/lords/2013-03-13/debates/13031351000661/SuccessionToTheCrownBill>, last access 1 July 2025, column 267 ('*1: After Clause 1, insert the following new Clause – "Royal marriages: heirs of the body (1) A marriage is a Royal Marriage for the purposes of establishing the claim of any person to succeed to the Crown as heir to the body if that Marriage is a marriage between a man and a woman* […]"').

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excluded from the succession line if they are born out of wedlock.[75] A circumstance that per se may raise questions in broader terms. But if even biological 'heirs to the body' of Sophia of Hannover may be excluded from the line of succession, it seems logic that the same applies for those who have no direct bloodline at all. On the contrary, it is more questionable whether one may exclude the heir of a same-sex royal marriage born with a medically assisted procreation technique from the succession because this person does indeed share the same DNA with the successor of Sophia of Hannover.

Other royal families are apparently less specific in their succession rules and may allow for greater flexibility: Art. 24 of the Dutch Constitution, for example, provides that the throne may be claimed by '*descendants of King William I, Prince of Orange-Nassau*'. Even Art. 10(1) of the Constitution of the Principality of Monaco may be read as introducing some elements of flexibility, as it provides that '[l]*a succession au Trône* […] *s'opère dans la descendance directe et légitime du Prince regnant* […]'. Expressions such as 'descendants' could be interpreted so as to include adopted children, since they do not clearly rely on a biological connection (even though this was most certainly taken for granted at the time said provisions were drafted). Rules relying on 'direct descendancy' may be interpreted to include within their scope surrogacy agreements if there is a genetic link between the sovereign and the child. In such a circumstance, the second – additional – condition of being a 'legitimate' child, i. e. not being born in wedlock, would probably constitute a more significant obstacle.

As mentioned, it does not seem possible to develop any specific solution at this stage. What appears clear, however, is that an LGBTQ-integrated reading of succession rules in light of human rights law still has to be further developed while taking into account all the specificities of the different legal systems.

4. (Theoretical) Limitations on the Right to Vote

Senior members of a given royal family may willingly refrain from voting or from expressing their political views, especially in those legal systems where the monarchy has a predominantly ceremonial role and does not directly take part in the political life of the country. Again, the United Kingdom appears to be an apt case study since, at least under the reign of Queen Elisabeth II, political neutrality was strictly adhered to. There is effectively no rule of law that prohibits senior members of the British Royal Family

75 Legitimacy Act 1926; Legitimacy Act 1959.

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from standing for general elections or to vote. Rather, this is a result of a custom.[76] This, taken alone, removes the matter from the legal field and places it in that of protocol and politics. However, one may wonder if a legal limitation on such a right[77] could be acceptable in human rights law terms. Having particular regard to the necessity and proportionality of a possible limitation to vote, if it is true that the monarchical structure is perceived as being *fundamental* to ensuring the continuity and neutrality of an 'overseeing office' unentangled by the political constraints of a given moment,[78] some limitations on the participation of the sovereign's political life may not necessarily be unjustified.

5. Sanctions for Former Royal Houses

A *past* royal *status* in some cases has led to interferences with human rights. In Italy, former Italian kings and queens, as well as their male heirs, were prohibited entry to or residence in Italy by the post-World War II constitution.[79] All former members of the royal household were excluded from voting in Italy, and from holding any public office in the country.

Limitations on the rights of members of the former royal family even made it to the European Court of Human Rights that preliminarily ruled for the admissibility of the case.[80] The Court did not decide the case on the merits though[81] as, after postponing some of the hearings, Italy changed its Constitution and ceased to apply *pro futuro* limits concerning entry into the country or access to political life.[82] Still, the constitutional amendment did

76 Torrance (n. 64), 30.

77 On the strict requirements over possible limitations to the right to vote in the case law, see ECtHR, *Case of Hirst v. The United Kingdom (no. 2)*, appl. no. 74025/01, judgment of 6 October 2005, ECLI:CE:ECHR:2005:1006JUD007402501, paras 56 ff.; ECtHR, *Case of Aziz v. Cyprus*, appl. no. 69949/01, judgment of 22 June 2004, ECLI:CE:ECHR:2004:0622-JUD006994901, para. 25 ff.; ECtHR, *Case of Vito Sante Santoro v. Italy*, appl. no. 36681/97, judgment of 1 July 2004, ECLI:CE:ECHR:2004:0701JUD003668197, paras 47 ff.

78 See Yeager (n. 11), 242 ff. and Elzinga (n. 29), 105-117.

79 Costituzione delle Repubblica italiana, Art. XIII of the final provisions ('*I membri e i discendenti di Casa Savoia non sono elettori e non possono ricoprire uffici pubblici né cariche elettive. Agli ex re di Casa Savoia, alle loro consorti e ai loro discendenti maschi sono vietati l'ingresso e il soggiorno nel territorio nazionale*').

80 Corte Europea dei Diritti dell'Uomo, *Vittorio Emanuele di Savoia c. Italia*, judgment of 13 September 2001, case no. 53360/1999, available online at <http://dirittiuomo.it/caso-vittorio-emanuele-di-savoia>, last access 1 July 2025.

81 Cour européenne des droits de l'Homme, *Affaire Victor-Emmanuel De Savoie c. Italie*, Requête no 53360/99, Arrêt 24 avril 2003, ECLI:CE:ECHR:2003:0424JUD005)336099.

82 Legge costituzionale 23 ottobre 2002, n. 1, Art. 1(1).

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not repeal rules on expropriation of royal property. This is quite remarkable given that the expropriations of royal properties had already been litigated before the European Court of Human Rights, which, in a case involving Greece, ruled in favour of the members of the royal house.[83] Expropriation of royal properties has evidently been a matter of concern for States. Historically, some have deposited specific reservations to human rights treaties so as to ensure the non-applicability of some rights to the national rules on royal expropriation.[84]

V. Conclusions: Royals and International Law – A Long Road Ahead

Contrary to what one might think at first sight, the relationships between monarchies and international law are numerous and particularly interesting from a methodological perspective. Connections and cross-influence range from immunities to human rights law and anti-discrimination law. As we have seen, public international law rules on Statehood may themselves be blind as to whether a national legal system privileges monarchies or other forms of government. Nonetheless, in specific fields of international law, monarchies may not be as irrelevant for two reasons: (1) either because royalty *status* proves to be a systemic aporia which requires careful argumentation to be legally defensible, as the case of discrimination against 'commoners' demonstrates, or (2) because royalty *status* no longer proves to be fully impermeable to legal principles that are now required by legal systems – as is the case of principles of equality in the succession order.

Yet monarchies also raise other legal issues under international law that should be addressed in the future. In particular, it deserves further scholarly

83 See ECtHR, *Case of the Former King of Greece and Others v. Greece*, appl. no. 25701/94, 23 November 2000, ECLI:CE:ECHR:2000:1123JUD002570194, and judgment (just satisfaction) of 28 November 2002, ECLI:CE:ECHR:2002:1128JUD002570194.

84 Reservations and Declarations for Treaty No. 046 – Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 046), Austria, Reservation made at the time of signature, on 16 September 1963, and renewed at the time of deposit of the instrument of ratification, on 18 September 1969 (according to which '*Protocol No. 4 is signed with the reservation that Article 3 shall not apply to the provisions of the Law of 3 April 1919, StGBl. No. 209 concerning the banishment of the House of Habsbourg-Lorraine and the confiscation of their property, as set out in the Act of 30 October 1919, StGBl. No. 501, in the Constitutional Law of 30 July 1925, BGBl. No. 292, in the Federal Constitutional Law of 26 January 1928, BGBl. No. 30, and taking account of the Federal Constitutional Law of 4 July 1963, BGBl. No. 172.*').

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elaboration whether a *sine die* personal immunity paired with a full national immunity complies with the basic premises of immunity as recognised by the International Court of Justice. Conversely, human rights already have exerted their influence on monarchies, showing that rules to succession should not be drafted with discriminatory effects or intent. It seems that the human rights dimension may, in the long term, mould monarchies and change them. From a continental European perspective, one may wonder if and to what extent the European Union could play a role in the – indirect – shaping of monarchies. Whereas there is little doubt that the Union has no say on the existence of monarchies as such in Member States and that these may very well fall within the concept of 'national identity' the Union has to respect,[85] the pervasive power and force of the Union's founding principles and fundamental liberties[86] may at least contribute to the evolution of 'democratic monarchies'.[87]

85 See Consolidated version of the Treaty on European Union, in OJC 326, 26 October 2012, 13, Art. 4(2), reading that '*The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.*'

86 On the effects of a national legislation prohibiting nobility titles with negative consequences on the free movement of persons, and its possible admissibility under EU law, provided that proper and relevant justification is given by the Member State, see ECJ, *Ilonka Sayn-Wittgenstein v. Landeshauptmann von Wien*, judgment of 22 December 2010, case no. C-208/09, ECLI:EU:C:2010:806, and ECJ, *Nabiel Peter Bogendorff von Wolffersdorff v. Standesamt der Stadt Karlsruhe*, judgment of 2 June 2016, ECLI:EU:C:2016:401. In the scholarship, see *ex multis* Giulia Rossolillo, 'Changement volontaire du nom, titres nobiliaires et ordre public: l'arrêt Bogendorff von Wolffersdorff', European Papers 1 (2016), 1205-1213.

87 See *ex multis* Hans Ulrich Jessurun d'Oliveira, 'The EU and Its Monarchies: Influences and Frictions', Eu Const. L. Rev 8 (2012), 63-81.

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