

Modernising the Constitution: Crown Estate & Sovereign's Private Estate

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Received: March 8, 2022 Accepted: April 21, 2022 Online Published: April 24, 2022

doi:10.5539/ilr.v12n1p1

URL: <https://doi.org/10.5539/ilr.v12n1p1>

*This article considers the **Crown estate**. In Anglo-Saxon times, it seems, kings were given Crown estate - while king - to use the revenues (only) to operate government. This Crown estate was inalienable and distinct from any private estate they had. Under William I (1066-87), the distinction was merged. It was not until 1322 (or, possibly, before) that kings accepted, once more, that the Crown estate was inalienable. And, not until 1800 that the Crown Private Estate Act 1800 allowed kings to have a private estate (real and personal). Today, Crown land, the duchies of Cornwall and Lancaster, royal palaces and collections etc are owned by the Crown (that is, by Parliament) on behalf of the nation. This should be modernized in a Crown Act.*

1. INTRODUCTION

Our constitution needs to be modernised. Eight prior articles have looked at this¹ - including the placing of some of this material in a Constitution Act of c.100 sections.² These articles did not consider two other matters relating to the constitution, the:

- Crown Estate;
- Sovereign's private estate.

Both these matters should be provided for in a **Constitution Act**. Neither are difficult. However, both are subject to antiquated legislation which should be replaced. This article looks at the same. It, also, recounts some older history relating to Crown land (also, called, the Crown (or royal) estate or demesne)³ which is, invariably, forgotten today. In conclusion:

- **Crown Estate**. This has great potential. It should be the holding vehicle for all assets held on behalf of the nation. Present legislation should be repealed. And, modern material placed - in most cases - in a SI, to enable easier amendment;
- **Private Estate**. With Crown Estate legislation listing all national assets, it will be easy to determine what property is held by the sovereign in a private capacity. This property should be subject to the general law. Also, to the same taxation as is borne by the subject.

2. ANGLO-SAXON ENGLAND & LAW

Few lawyers - including constitutional lawyers - know anything of Anglo-Saxon law. However, it fashioned our modern law (and language) to a considerable extent.

- The popular belief - which prevailed in Victorian and earlier times - was that, when William I (1066-87) won the battle of Hastings and claimed the throne of England, he supplanted all (or much) Anglo-Saxon law with the law of Normandy;

¹ See various articles by GS McBain, viz: (a) *Modernising the Constitution - A Crown Act*, (2021) International Law Research ('ILR') (2021), vol 10, no 1, pp 13-100; (b) *Modernising the Constitution - A Parliament Act* (2021) ILR, Ibid, pp 101-184; (c) *Modernising the Constitution - A Courts Act* (2022) ILR, Ibid, pp 195-248; (d) *Modernising the Constitution - Quangos* (2022) ILR, vol 11, no 1, pp 1-61; (e) *Modernising the Constitution - A Government Act* (2022) ILR, Ibid, pp 62-116; (f) *Modernising the Constitution - British Territories and Foreign Relations Act: Parts 1 & 2* (2022) ILR, Ibid, pp 117-62 & 163-96; (g) *Modernising the Constitution - An Armed Forces Act* (2022) ILR, Ibid, pp 197-258 (all free on the web).

² GS McBain, *Modernising the Constitution - A Constitution Act*, (2021) ILR (2022), vol 11, no 1, pp 259-325.

³ 'Desmesne' tends to be an older word used for 'estate' which, itself, tends to be used to describe a house with a considerable amount of land held by one owner. Probably, in Anglo-Saxon times, there were many manorial estates (like those *post-Conquest*). However, this is not wholly clear. See GS McBain, *Modernising English Land Law* [2019] ILR, vol 8, no 1, p 33.

- Modern legal research indicates this was not so.⁴ Things changed slowly in England in those times - including the law - and there are still remnants of Anglo-Saxon law to be found throughout the 12th century. Further, William I - a leader with few followers in a foreign land - was more concerned with military consolidation rather than legal innovation.

As it is, in early Anglo-Saxon times, the kings were elected. These kings were petty kings⁵ since there was no king over all England until 928 AD - the first time since the Roman legions had left Britain in c. 410 AD when imperial rule, effectively, ended. Thereafter, England began to disintegrate at a fairly fast pace. In part, this may have been due to plagues. It was, also, due to large incursions of Germanic tribes from Saxony (Anglo-Saxons, also called Saxons or Angles). They migrated to Britain in increasingly large numbers and they had subdued most of the country 'probably during the very years of Justinian's re-conquest of Italy' (i.e. 534-54 AD). Thus, Drew noted:

various Germanic peoples known as the Anglo-Saxons settled in Britain between the middle of the fifth and the middle of the sixth centuries.⁶

These Germanic peoples (tribes) brought with them their legal customs. Ones which had long been imbued in their culture and which, thus, were retained in England for a long time.

In conclusion, Anglo-Saxon law contains many earlier Germanic customs of a binding nature.

3. GERMANIC CUSTOMS

The Roman historian Tacitus (56-120 AD) gave valuable information about the German people in his book, *Germania*.⁷ He noted that they were very much a fighting people, addicted to warfare as opposed to being of an agricultural or trading disposition. Also, that they did not settle in cities. Rather - as usual for a tribal people - they dispersed in settlements, distant from each other;⁸ each with his own plot of land surrounded by a fence, unauthorised intrusion into which was a breach of the peace (a crime).⁹ The allocation of land to them in England (an allotment or 'lot') was made by the leader of the war band - the king. This land was, generally, parcelled out for military service¹⁰ and there would, also, have been a lot of common land. The king was (usually) elected for his military prowess and he was replaced - if ineffective - by the council (assembly) of the wise (the *witan gemote*). To enable him to govern, the king was given various prerogatives (privileges). Thus, Kemble stated:

In strict theory of the Anglo-Saxon constitution the king was only one of the people, dependent upon their election for his royalty, and upon their support for his maintenance. But he was nevertheless the noblest of the people, and at the head of the state, as long as his reign was felt to be for the general good, the keystone and completion of the social arch. Accordingly, he was invested with various dignities and privileges, enabling him to exercise public functions necessary to the weal [good] of the whole state...¹¹

In particular - besides any land that he privately owned at the time of his election - the king was given land and a palace(s),¹² by virtue of being king. This Crown land was not his own. He could not dispose of it by grant or will. Thus, there was a distinction drawn between *Crown land* and the *private estate* of the sovereign. As Kemble noted:

⁴ See in particular: (a) FL Attenborough, *The Laws of the Earliest English Kings* (1963); (b) AJ Robertson, *The Laws of the Kings of England from Edmund to Henry I* (1925); (c) J Hudson, *The Oxford History of the Laws of England*, vol 2, 871-1216 (2012).

⁵ See also JM Kemble, *The Saxons in England* (1876), vol 1. Especially, ch 6.

⁶ KF Drew, *The Lombard Laws* (Univ. of Pennsylvania Press, 1973), p vi. Also, p viii, 'It took a century for the Anglo-Saxons to subdue the resistance in Roman Britain, but subdue it they did.' The first landing appears to have been in 449 AD. See also GS McBain, *Modernising the Law: Breaches of the Peace & Justices of the Peace* (2015) Journal of Politics and Law, vol 8, no 3 (free on web), pp 158-66.

⁷ H Mattingly, *Tacitus on Britain and Germany* (Penguin, rep 1948), p 112-3 'On the field of battle it is a disgrace to the chief to be surpassed in valour by his companions... The chiefs fight for victory, the companions for their chief... The Germans have no taste for peace... You will find it harder to persuade a German to plough the land and to await its annual produce with patience than to challenge a foe and earn to gain the prize of wounds.'

⁸ *Ibid*, p 114. 'It is a well-known fact that the peoples of Germany never live in cities, and will not even have their houses set close together.'

⁹ *Ibid*, p 122 'Lands are taken into occupation... by whole villages in proportion to the number of cultivators, and are then allotted in order of rank. The distribution is made easy by the vast extent of open land.' See also Kemble, n 5, vol 1, p 89.

¹⁰ This was not dissimilar to the Roman practice of allotting land to retired legionaries. See *Essays in Anglo-Saxon Law* (Boston, Little Brown & Co., 1905, article by H Cabot Lodge), p 61 'On the continent, all unoccupied lands went to the king. In England... only certain definite quantities of land were allotted to him. The revenues from these arising from these estates must have proved inadequate at a very early day, and other means were soon devised to meet the ever-growing want... the readiest way to supply the royal needs was by payments in kind or services.' *Ibid*, p 92 'In England, the king had a large share of the conquered territory as an individual, and still more annexed to the Crown.' See also Kemble, n 5, vol 1, p 156 'The lot, share... of the king was extensive, and comprised many times the share of the freeman.' Also, *Ibid*, ch 4. WE Hearn, *The Government of England* (1886), p 351 'His [the king's] allotment of land was proportionately greater than that of other men... He held in right of his Crown great estates, which descended indeed with the Crown, but of which during his life he was the absolute proprietor. These lands were the main source of his personal revenue.'

¹¹ Kemble, n 5, p 29.

¹² Since the kings moved around their domain, they acquired various palaces (houses where they resided) when explains how they acquired lands in different parts of their realm or - after 928 AD - the realm, when England was unified under one king.

His personal rights, or royalties, [this wording could be better expressed as his '*rights as sovereign*'] consisted in the possession of large domains which went with the crown [i.e. Crown land]...which were his own property only while he reigned, and totally distinct from such private estates as he might purchase for himself...¹³

A good indication of this is the will of king Alfred (drawn up between 873 and 889 AD).¹⁴ In it, he disposed of private land which he had inherited, but not land held by him *qua* sovereign. As for the latter, by the time of Edward the Confessor (1042-66), a large quantity of land was recognised to comprise Crown land. This was, later, called the *ancient demesne*.¹⁵ Similarly, Jolliffe noted:

According to Asser,¹⁶ a distinction between the lands of the Crown and the personal lands of the king has already been established by the reign of Aethelwulf [king of Wessex, 839-58 AD], who, in his testament [will] has already commended [given] the *pecunia regni* ¹⁷[king's estate] to his two elder sons, who were to reign simultaneously over Wessex and Eastrey, and bequeathed his *propria haereditas* [own property] to his younger children, and to remoter connections.¹⁸

In conclusion, in Anglo-Saxon times, there was recognition of a:

- Crown estate; and a
- private estate.¹⁹

4. WILLIAM I (1066-87)

Unlike the Anglo-Saxon kings, William I (1066-87) asserted title to all England. Thus, he claimed that all English land (including the Anglo-Saxon ancient demesne, *dominicum*) was his as sovereign - which land he, then, parcelled out to his 1500 or so tenants-in-chief who comprised, in the main, Normans (especially military men) who had helped him to conquer England. This assumption of title to all England was even wider than the continental practice of the sovereign being given all unallotted land. The effect was to merge the distinctions drawn in Anglo-Saxon times between *Crown land* and the *private estate* of the sovereign. Everything became Crown land (also, called the royal or Crown demesne) although William I soon disposed of much of it; only retaining a residual interest in it as lord paramount. That said, William I held back a volume of land which he retained as sovereign - hugely expanding the '*footprint*' of the Anglo-Saxon concept of Crown land. Thus, uncertainty of definition was created, as Hearn noted:

All the land in the country...might be included within the latter description [i.e. Crown land]. It was held either of the king or by the king. It either was in the hands of proprietors who were bound by their tenure to render certain services to the Crown, or was held in the direct possession of the king himself and for his support. Thus, the conqueror retained in his own hands 1,422 manors in different parts of the country, besides his lands in those counties which are not recorded in 'Domesday Book [1087]'...²⁰

The result was that - *post*-Conquest (1066) - there were 3 main categories of '*Crown*' land:

- (a) Anglo-Saxon ancient demesne;
- (b) Demesne kept by William I as sovereign (inc. the 1422 manors referred to above);²¹
- (c) All English land, which he held as lord paramount (a residual holding).

These 3 categories were never clearly spelt out by his successors. For example, the co-called *Laws of Henry I* (c. 1113) stated:

¹³ Kemble, n 5, p 30. See also McBain, n 2, p 296. W Stubbs, *Select Charters* (9th ed, 1966) p 12 states 'the whole public land seems, by the eleventh century, to have been regarded as at the king's disposal really if not in name.' However, this seems dubious, since the ancient demesne was clearly defined by the time of the invasion of William the Conqueror in 1066.

¹⁴ FE Harmer, *Select English Historical Documents of the Ninth and Tenth Centuries* (1914), pp 49-53.

¹⁵ C Sweet, *A Dictionary of English Law* (1st ed, 1882)(*ancient demesne*) 'is a freehold tenure confined to socage lands held of manors which belonged to the Crown in the reigns of Edward the Confessor [1042-66] and William I [1066-87], and are described in Domesday Book as Crown lands (*terra regis* or *terra regis Edwardi*).' The tenure was abolished in 1922.

¹⁶ J Asser, a cleric (885- c.909 AD) wrote the *Life of King Alfred*.

¹⁷ This reference to the '*money*' of the king is probably much wider, *viz.* his kingly estate.

¹⁸ JEA Jolliffe, *The Constitutional History of England* (1947), p 127. He continued 'Substantial Crown lands for whose conservation the *witan* felt themselves responsible, seems, therefore to have been established as early as the ninth century...'

¹⁹ Hearn, n 10, p 324 'Over the lands which belonged to his kingdom the king seems in early times to have exercised the same powers as a bishop or other corporate person could exercise over the lands of his see. He might *use* them [*italics supplied*] as he pleased during his life, but he was bound to transmit them undiminished to his successor. Over his private lands the king exercised the same powers as those of any subject over his inheritance. The king's private estate passed to his heir and not to his successor, and might be transmitted at his pleasure by his will.' Hudson, n 4, p 108 'it does appear that there were certain royal lands particularly associated with the office of the king, and distinct from...other personal lands.' That said, there is too little information to be wholly clear. *Ibid.*, pp 93, 147.

²⁰ *Ibid.*, p 325.

²¹ Jolliffe, n 18, p 183 stated that this land 'brought in roughly double the revenue of [Edward] the Confessor [1042-66], some [£11k] yearly...'

The king has *soke* [legal jurisdiction] ...over all lands which are in his demesne [*omnium terrarium quas rex in dominio suo habet socnam*].²²

In fact, this is a reference to (a) and (b) only. Further, it may be noted that there was no distinction made between any private and Crown estate.²³ Indeed, there was no need to, since William I - when he came to the throne - personally, held no land in England. That said, because Domesday Book identified (for the most part):²⁴

- Anglo-Saxon Crown land (i.e. Anglo-Saxon ancient demesne); and
- land retained by William I after he had finished parcelling out much of it,

it was possible to speak of 'Crown land' (also, called the royal demesne or royal patrimony) with specificity since such was identifiable in practice. Thus, it was, thereafter, termed '*ancient demesne*'. This excluded English land which William I (and his successors) still held (technically) as the supreme overlord (lord paramount).²⁵

5. DISSIPATION OF CROWN LAND

Kings like Henry I (1100-35) were hugely wealthy. Thus, they could grant away parts of the ancient demesne *post-Conquest*²⁶ without feeling impoverished by the same. However, when sovereigns were profligate - such as king John (1199-1216) - there was a continuing alienation of this Crown land (and the franchising of Crown prerogatives) to secure money, in order to prevent the apparatus of government collapsing. The ability of sovereigns to dispose of any Crown land (including land comprising ancient demesne) until the formation of Parliament (c. 1275-85) was, effectively, unfettered since - to challenge the sovereign on this - was to directly oppose him. And, those who did, usually, fell.

- *Revenues* from this Crown land, the sovereign took for his household and himself.²⁷ Such was not inappropriate - or illegal - since it was always intended (even in Anglo-Saxon times) that such revenues be used by the sovereign for the purpose of government - which government was directed, in early times, from the royal household, centred on his palace(s). In this way, the sovereign was '*living off his own [Crown] estate*' and not supplementing the same by means of taxation;²⁸
- It would, also, have been difficult to argue, *pre-Henry III* (1216-72), that the sovereign was dissipating the Crown estate. The reason is that, new land was, often, being acquired by the sovereign by way of *escheat* (failure of an heir) or by reason of *forfeiture* for treason or felony. Thus, land to which William I only had a residual claim as lord paramount (i.e. **4(c)**) was now returning to him as **4(b)**. Of course, sovereigns were more than happy to encourage this.

In this fashion, the sovereign sought to maintain his position as the greatest landowner in England and not to be overreached by barons (many of whom had been wiser since they had not dissipated the land allocated to them by William I). Finally, the Anglo-Norman law itself was rudimentary since it had not (yet) developed the conception that the sovereign was only holding Crown land (i.e. **4(a)** and **4(b)**) *qua* king. That is, in a *public* - and not in a *personal* - capacity. Thus, Maitland (writing in 1887-8) stated:

The crown lands were the king's lands; what is more, the king's lands were the Crown lands - a distinction between the king's *private capacity* and his public capacity was not yet observed...The notion that the king was in any sense a trustee for the nation of these lands grew up but very slowly...²⁹

²² LJ Downer (ed), *Laws of Henry I (Leges Henrici Primi)* (Oxford, 1972), p 123.

²³ S De Smith & R Brazier, *Constitutional and Administrative Law* (8th ed, 1998), p 132 'For many centuries no distinction was drawn in financial matters between the king in his public capacity (the Crown) and the king in his private capacity. The king was expected to live within his own means, and only for special purposes was he to have recourse to Parliament in order to obtain extra money [later called extraordinary revenue] by the levying of taxation.'

²⁴ Domesday Book 1087 was not a complete record since it did not include London, Winchester, Northumberland, Durham or much of the north west of England.

²⁵ Thus, today (and from early times) when people speak of the sovereign '*owning all England*', this is purely residual and not treated as Crown land as such.

²⁶ That is: (a) the Anglo-Saxon ancient demesne (Crown land); and (b) land which William I (1066-87) held back for himself after the conquest (e.g. the 1422 manors *etc.*, see text to n 20). Reference to '*Crown land*' hereafter refers to these. It, also, does not include land subsequently acquired by the sovereign by way of a windfall - such as land acquired by virtue of being confiscated for felony or treason or acquired for want of heirs (i.e. by way of *escheat*) as Pollock and Maitland noted, see F Pollock & FW Maitland ('P & M') *History of English Law* (2nd ed, 1968 edited by SFC Milsom), vol 1, pp 383-4. This land sovereigns could dispose of without much complaint since it was newly acquired. That said, by the time of Blackstone (1765) he included them in Crown land, see W Blackstone, *Commentaries on the Laws of England* (Oxford, Clarendon Press, 1st ed, 1765-9, Univ. of Chicago Press rep 1979), vol 1, p 276.

²⁷ In Anglo-Saxon times, rent was (usually) paid through the provision of food (*feorme*, farm), as opposed to money, since the latter was always in short supply. From the time of Henry I (1100-35) payment in money - not with food - to the sovereign was, generally, required.

²⁸ M Amos, *The English Constitution* (1930), p 96 'In the Middle Ages the king as expected to '*live off his own*'. The revenues of his domains, the feudal dues payable by the '*tenants in chief*' of the Crown, and certain other sources of income of less importance, were supposed to be enough to enable him to provide, not only for the proper maintenance of his royal dignity, but for the needs of Parliament as well.'

²⁹ FW Maitland, *The Constitutional History of England* (1950), p 435, p 431. It may be noted that this text was only published after Maitland's death. Thus, he had no chance to revise it. If he had, one would suggest that he may have altered the wording to indicate that the notion that

Yet, this statement is open to mis-interpretation:

- True, up to the passing of an Act of 1800, there was no express legal distinction between what the king owned in a *personal* capacity and what he owned *qua* king. However, at the Norman Conquest, William did not claim title to all England - as well as to the Anglo-Saxon ancient demesne - in his *natural* capacity (e.g. by grant or will). Rather, he claimed it in a *public capacity* - *qua* king, the lawful successor to the crown (throne) of England, deriving from Edward the Confessor (1042-66);
- And, ever since, every sovereign has held Crown land only so long as sovereign. Thus, sovereigns had no legal right to grant away Crown lands (i.e. **4(a)** and **4(b)**) - even though they frequently did so, to raise money which they spent (indeed, usually, dissipated) for their personal benefit. In so acting, such dissipation was, strictly, illegal - albeit, it would have been dangerous to directly challenge a king on that prior to Edward II (1307-27). Thus, various sovereigns plundered Crown land because might was right. And, the legal position was not effectively enforced since judges were the '*king's judges*' and keen not to oppose the wishes of the Crown.

6. REIGN OF HENRY III (1216-72)

Change came in the reign of Henry III (1216-72).³⁰ The sovereign was becoming greatly impoverished, through mis-management of government by the royal household. The result was that revenue from Crown land was insufficient to support the apparatus of government. Solutions (unsuccessfully) applied by Henry III were:

- selling off Crown land (i.e. **4(a)** and **4(b)**);
- taking land from the great barons;
- levying taxes - by way of tallage or *auxilia* (aids, a polite word for forced gifts).

This was opposed by the barons, as expected, since it contradicted the, then, prevailing view that the sovereign must '*live off his Crown estate*' (i.e. **4(a)** and **4(b)**) - as opposed to imposing oppression. In the reign of Henry III, also, there are the first indications of the concept of the '*Crown*' as a political body (i.e. a juristic body). One which was superior to the sovereign. This derived from the fervent intellectual environment of the time in which clerics (ecclesiastics) were seeking to divine the optimal architecture (structure) of the (catholic) church by reference to scripture and to the older Roman law. This influenced lawyers to seek to formulate the optimal *government structure*. One which paralleled the church - since many judges and members of government (the royal household) were clerics.

(a) King's Three Bodies

Kantorowicz's thought provoking work '*The King's Two Bodies*' (1957)³¹ looked at medieval political theology. In particular, the conceptualisation of the sovereign as having two bodies in one, similar to that of Christ whom the theologians conceptualised as having a natural body and a divine body conjoined. However, it might have been better (that is, more accurate) to refer to the '*The King's Three Bodies*' - as noted in an earlier article,³² since - in the thirteenth century - there arose the concept of the sovereign as having:

- (i) a natural body (with all its frailties);
- (ii) a divine body (without them); and
- (iii) being (*qua* sovereign) head of the nation (represented by the Great Council (*magnum concilium*)).

This tri-partite architecture (structure) went back to the oldest Christian conceptualisation of God and man's likeness to him. Thus, three in one:

<u>Nature</u>	<u>Essence</u>	<u>Church</u>
God	Divine	Church Triumphant
Holy Spirit	Spirit/Divine	Church Suffering
Christ	Human/Divine	Church Militant

For jurists (especially clerical ones) the issue was to optimise the legal structure of human government by replicating that of divine government (where all was presumed to be in harmony and at peace). Thus, in the time of chaotic rule by Henry III (and on the continent), there arose a growing conception - not to be realised in legislation until 1533 (see **12**), of the '*Commonwealth*' (realm)³³ being ruled over by the sovereign and his subjects

the king was a trustee of Crown land (i.e. that Crown land was the patrimony of the nation, as in Anglo-Saxon times) was only *enforced* upon sovereigns slowly.

³⁰ Henry III came to the throne as a child and exercised poor control over government throughout his reign.

³¹ EH Kantorowicz, *The King's Two Bodies. A Study in medieval political Theology* (new introduction by C Leyser, 2016).

³² McBain, n 2.

³³ There have been many synonyms employed which adds to the confusion. Thus, the *Commonwealth* (the unity of persons for the common good) was also called, in English writings, the *patria* (country), nation, realm, empire, state, republic (presumably, from the latin *res publica*, which referred to things not owned by the emperor or individuals but which belonged to the commonality (i.e. the public or general public)).

conjoined. A body superior to the sovereign himself. Thus, in parallel with the ecclesiastical logic,³⁴ the jurists developed the following government structure as a legal model:

Church ³⁵	Realm	Body Aggregate (Crown) ³⁶
Christ	King	Body Sole (<i>rex regnans</i>) ³⁷
Faithful	Subjects	Body Natural

As with the ecclesiastical architecture, two parts of the secular architecture to optimise government comprised legal (that is, artificial) devices (fictions)³⁸ viz. the body aggregate and the body sole. These were invisible. In this the sovereign was viewed both as sovereign *and* subject - being subject to the 'law' promulgated by the legislature which he, as sovereign, presided over.

(b) Benefit of Juristic (Political) Bodies

The great benefit of political (juristic) bodies was that they could be accorded legal natures (as well as rights and obligations) which were not possessed in the natural body. Thus, the sovereign (legally) could be paralleled (assimilated) with Christ (the archetype of the perfect king) and accorded:

- legal capacity (to overcome nonage);
- legal perfection (to overcome failure and misconduct as a ruler);
- legal immortality (to overcome death),

as previously discussed³⁹ and as agreed by the lawyers much later in the *Duchy of Lancaster Case* (1561):

the king has in him two bodies, viz a body natural, and a body politic. His body natural... is a body mortal, subject to all infirmities that come by nature or accident, to the imbecility of infancy or old age, and to the like defects that happen to the natural bodies of other people. But his body politic is a body that cannot be seen or handled, consisting of policy and government, and constituted for the direction of the people, and the management of the public weal [good], and this body is utterly void of infancy, and old age, and other natural defects and imbecilities...⁴⁰

(c) Legal Fiction of the 'Crown'

More particularly, the legal concept (fiction) of the 'Crown' - the sovereign in the body aggregate - was developed. Indeed, by c. 1285 it had become a physical reality. The sovereign sitting in Parliament with the representatives of his people (nobles and commoners). Such was a body aggregate (a corporate assembly). A body with the sovereign as head and the subjects as members.⁴¹

³⁴ In parallel, because Christ was the head of the mystical body - the church. And, the sovereign was head of the mystical body - the commonwealth (the realm). 'Mystical' body (*corpus mysticum*) because this was ordained by God, a sort of marriage. See also Kantorowicz, n 31, pp 208, 212 (bishop's ring, coronation ring). Also, Lucas de Penna (14th c. Neopolitan jurist) 'just as men are joined together spiritually in the spiritual body, the head of which is Christ... so are men joined together morally and politically in the *respublica* [nation, kingdom, realm, state], which is a body the head of which is Christ'. Ibid, p 216. The fisc [treasury], then, was the 'dowry' given to the sovereign when, at the coronation, he entered into the secular (mystical) marriage and received the crown (national assets) in order to govern the nation. These were not alienable, Ibid, p 217. Other mystical symbols at the marriage (coronation) were: (a) the spurs and sword (to defend the realm); (b) the sword of state, to impose justice; (c) the *curtana*, the sword to exercise mercy; (d) the staff ('take nothing but a staff' i.e. you have nothing, these things are given to you, see Bible, Mark, ch 6, v 8). See also GS McBain, *Abolishing Obsolete Offices* (2012) Coventry LJ, vol 17, no 2, p 48-9.

³⁵ See also the papal Bull *Unam Sanctam* (1302) issued by pope Boniface VIII (1294-1303) which states: 'Urged by faith we are bound to believe in one...church...which represents one mystical body, the head of which is Christ, and the head of Christ is God.' Quoted by Kantorowicz, n 31, p 194. Thus - in a secular context - one realm, which represents one body aggregate, the head of which is the sovereign. And the head of the sovereign [i.e. the superior to the sovereign] is the Crown. See also Bible, St Paul, 1 Corinthians 12:27 'Now you are the body of Christ, and each one of you [i.e. of the faithful] is part of it.'

³⁶ The head of the Church was the pope; the head of the realm was the sovereign. Also, as noted, see McBain, n 2, p 273, in the ecclesiastical sphere, the apostles were treated as *alter egos* of Christ. Thus, bishops and priests were treated as corporations sole under English law, as prevails at present in the Church of England. The secular equivalent to bishops were the 'great men' of the realm (earls, judges *etc*).

³⁷ 'Corporation' is another word for 'body'.

³⁸ That is developed by the art (skill, polity) of lawyers (and clerics). Maitland was unsure what the reference to '*political body*' meant (see McBain, n 2, p 275, n 157). However, surely, it referred to a juristic body - an artificial legal construct (fiction), developed to explain the science of politics (government) just as ecclesiastical bodies were artificial constructs to explain the science of God (theology). See also *Calvin's Case* (1608) Coke's Reports, vol 7, 10-10a, 'politic body...so called, because...it is framed by the policy [art] of man.'

³⁹ McBain, n 2, pp 261-2.

⁴⁰ E Plowden, *Commentaries or Reports* (1816), p 213. See also Kantorowicz, n 31, p 7. At p 16 he called such speech 'crypto-theological' and 'semi-religious terminology'. One would agree. *Willion v Berkley* (1559) Plowden, p 238 'because the body natural and the body politic are consolidated into one, and the body politic wipes away every imperfection of the other, with which it is consolidated, and makes it to be another degree than it should be if it were alone by itself...'

⁴¹ Kantorowicz, n 31, p 21 referring to medallions struck in 1642 of the king in Parliament 'He is clearly the king [in the] body politic and head of the political body of the realm: the king in Parliament whose task it was to stand together with the Lords and Commons, and if need be, even against the body natural.'

Why the need for such a body politic was urgent, both in church and state, was the absence of the accountability of medieval popes (and sovereigns) for their misconduct - including their alienation of the property of the church (and of the nation).

In England, although the terms - such as the 'realm' or the 'country' (*patria*) - were used generally, the legal term became that of the 'Crown'. Borrowed from theology, the 'Crown' symbolised the 'head'. And the head of Christ (the church)⁴² tended to be symbolised as 'God' the source and unity (assembly) of all things. Thus, the 'Crown' in legal terminology referred to the situation when the sovereign acted - not as king *per se* - but as head of the nation. More particularly, as head of the representative body called Parliament. That is, as legislator. And, as legislator (the sovereign in the body politic) could control and punish the sovereign:

- in the body natural;⁴³ and
- as a corporation sole.⁴⁴

In conclusion, in the legal fiction of the Crown, lawyers and theologians found the rationale - and legal means - to punish popes, bishops and kings who acted outside the law but who (technically) could not be punished because they had been given immunity from judicial process (or they were too powerful to be subject to such).

(d) Nebulous concept of the 'Crown'

The concept of the 'Crown' was developed in the early 14th century. Being a common law concept it was slow and hesitant to evolve. Especially, during the reigns of more powerful sovereigns. Why the 'Crown'?

- Quite possibly, it derived from the time of William I (1066-87) when he had crown wearing assemblies at Christmas, Easter and Pentecost to which all the important personages of the realm attended. In these assemblies of the Great Council (*magnum concilium*) great affairs of state were discussed and decisions taken;⁴⁵
- Thus, the Crown symbolised (i.e. referred to) the king and council promulgating legislation, not dissimilar to the Anglo-Saxon *witan gemote*. The 'Crown', also, had the merit of *symbolising kingship* - as opposed to referring to the actual reigning king (*rex regnans*) at the time. Thus, it symbolised the power and continuity of the *office* - not the *person*. In effect, the sovereign was guardian of the Crown (kingship, the throne).⁴⁶

Further, the 'Crown' was the appropriate juncture for lawyers and judges to commence distinguishing between those assets (i.e. real and personal property) which:

- related to the office (kingship); and
- those which related to the individual *qua* king (the sovereign).

As to this, there seems to have developed a fairly clear categorisation by 1322. Thus, art 4 of the Revocation of the Ordinances 1322 (still extant) which revoked those of 1311, stated that:

all ordinances...concerning the royal power (*poair real*) of our lord the king or of his heirs, or against the estate (*lestat*) of our said lord the king or of heirs, or against the estate of the Crown (*lestat de la coronne*), shall be void and of no avail or force whatsoever; [this refers to Ordinances in 1311 and a commission in 1308]

but the matters which are to be established for

the estate of our lord the king and of his heirs, and of

the estate (*lestat*) of the realm and of the people,

shall be treated, accorded and established in Parliaments [assemblies], by our lord the king, and by the assent of the prelates, earls, and barons, and the commonality of the realm; according as it hath been accustomed (*wording divided for ease of reference*)⁴⁷

This pivotal article has been the subject of much historical speculation (including as to its continued worth).⁴⁸ Doubtless, at the time, it was regarded as of great consequence. Assuming the draftsman chose his words carefully, a distinction was made between 3 things - legal powers of the sovereign, the prerogatives of the king *in person* and the prerogatives of *kingship* of which the king was only the guardian (including Crown lands). Thus, art 4 referred to the:

⁴² Thus, on earth, the head of the catholic (worldwide) church was the pope (deriving from saint Peter, a bishop). And each bishop was head of his local (territorial) church. And each individual church was headed by a priest. A sort of Russian doll.

⁴³ By deposing the sovereign for example, see Edward II (see **9**), Richard II (see **10**) and James II (see **14(b)**).

⁴⁴ By restricting, or removing, his privileges (prerogatives) such as the right of the sovereign to impose military tenures or to collect tax.

⁴⁵ Kantorowicz, n 31, p 337 'There was a visible, material, exterior gold circle or diadem with which the prince was vested and adorned at his coronation; and there was an invisible and immaterial Crown - encompassing all royal rights and privileges indispensable for the government of the body politic - which was perpetual and descended either from God directly or by the dynastic right of inheritance.'

⁴⁶ See *Prior of Worksop Case* (1317) where Sjt Toudeby opined 'The king is only guardian of the Crown'. This sums it up. The king does not own, for example, the Crown jewels. Nor the assets of *kingship* accorded to kings when exercising that office - such as Crown land. He is their guardian only. For the case see Kantorowicz, n 31, p 377.

⁴⁷ GS McBain, *Abolishing some Obsolete Constitutional Legislation* (2011) Coventry LJ, vol 16, issue 1, pp 2-9.

⁴⁸ Ibid.

- (a) royal power of the sovereign (*poair real*),⁴⁹ [i.e. powers *re* military, justice *etc*]
 (b) estate (*lestat*) of the king; [i.e. prerogatives of the king in a personal capacity]⁵⁰
 (c) estate of the Crown (*lestat de la coronne*). [i.e. prerogatives of kingship, held by the nation]⁵¹

Further, it seems clear that - in the case of (b) and (c) - the sovereign recognised that it was for Parliament to decide such matters '*as it hath been accustomed*'. As to the meaning of '*estate*' this was (probably) used in a general sense, to refer to real and personal estate (assets). Thus, *it seems*, art 4 recognised a clear division between:

- (i) estate (assets) the *revenues* of which belonged to the sovereign; and
 (ii) estate (assets) that belonged to his *kingship* (that is, the Crown, the permanent office of king).

If so, by 1322, it was recognised that Parliament (of which the sovereign was part) was the arbitrator on what was what. As to this, one would suggest:

- ***Sovereign (Private) Estate***. This would (possibly) be real and personal property acquired by the sovereign prior to becoming king. Also, certain prerogatives (called '*flowers of the Crown*').⁵² These were prerogatives (privileges) in which Parliament (the Crown in Parliament, to give it the longer title) permitted the revenues to be franchised (that is, alienated, or farmed out) to third parties.⁵³ Such as the right to hold a market or a fair, the right to wreck, to waif, to estray, to treasure trove *etc*.⁵⁴ These were **alienable**. And, if these franchised prerogatives were mis-used or lapsed, these '*flowers*' reverted to the Crown (Parliament);
- ***Crown Estate***. This was inalienable because held by the Crown. It comprised (it seems, although this was a major source of contention) all the ancient demesne (including royal palaces located on it). It also included the Treasury (including jewels, later, called Crown jewels - presumably to emphasise that they belonged to the nation). Also, (one presumes) things such as the highways, bridges, ports, warships, State regalia (the throne, swords) *etc*. These were **inalienable**. These rights - often called '*fiscal*' rights - as opposed to the '*flowers of the Crown*' - belonged to the nation - '*fiscal*' meaning '*bona publica*' (public property).⁵⁵ Any revenue streams from these could not be farmed out to third parties. For example, when Henry VI (1422-71) pledged the Crown jewels in 1461 and the pledge was enforced on default, the courts set it aside (to the loss of the pledgee).⁵⁶

As to who held the ownership of the Crown estate - since this expression meant the '*Crown in Parliament*' and the legal fiction of the '*Crown*' was closely allied to the realm (*patria*, the nation) - it seems clear that the ownership of Crown lands were held by what - today - we call Parliament, on behalf the nation.

- In short, '*Crown estate*' meant the estate (real and personal property) of '*the sovereign wearing his Crown sitting in Parliament*', That is, national estate was held by Parliament on behalf of the people (the *folk*);
- If so, this article 4 of 1322 was a return to Anglo-Saxon times, with the division drawn between land held by the sovereign in a private capacity and Crown land (see 3).

In conclusion, by 1322, the barons and common people were sufficiently powerful to re-assert Anglo-Saxon rights (including the concept of national assets) which had not been possible after the military dictatorship of William I (1066-87) and the subsequent 200 years of rule by autocratic sovereigns.

7. PROOF AS TO THE RISE OF THE BODY AGGREGATE - THE CROWN

It is one thing to assert that the Ordinances of 1322 were a sort of '*blast to the past*' and another to prove it, which is why the concept of the '*Crown*' meaning '*kingship*' and '*the people, the nation*' has proved to be so nebulous and elusive.

⁴⁹ This is not further dealt with. However, one suspects that it relates to the power of the king to impose justice (including to appoint judges), to wage war, to exercise mercy, to choose his council *etc*.

⁵⁰ These included the '*flowers of the crown*' - revenues from tolls, *estray*, treasure trove *etc* which went to the privy purse for the operation of government. They could be alienated.

⁵¹ See also Kantorowicz, n 31, p 176. Ibid, p 381 'The Crown was the owner of inalienable fiscal [i.e. public] property...the Crown appeared also as a composite body, an aggregate of the king and those responsible for maintaining the inalienable rights of the Crown and the kingdom...'. Thus, the Crown was the embodiment of kingship, inseparable but distinct from the sovereign as Sir Francis Bacon noted. Ibid, pp 382, 438.

⁵² This expression (clearly) shows that they were granted by Parliament; the revenue stream of these '*flowers*' went to the sovereign but the right itself was held by Parliament (that is, the sovereign could not, *per se*, create such rights).

⁵³ This process was common. For example, the sovereign (as owner) held London (Londonburg) in burgage. That is, the citizens (burghers, burh waru, the latter Anglo-Saxon word meaning men) paid an annual rent of £ 300 to him. This rent was farmed out to the two sheriffs of London who paid it up-front to the sovereign and, then, collected this from the citizens. Likely, this also prevailed in late Anglo-Saxon times. See generally, GS McBain, *Liberties and Customs of the City of London - Are there any Left?* (2013) Int. Law Research, vol 2, no 1, pp 5-8.

⁵⁴ One says this, since the courts never seem to have objected to the same. And, these were treated as '*hereditary revenues of the sovereign*' granted by the Crown even in 1660 (and today, albeit most are obsolete), see *Appendix A*.

⁵⁵ Kantorowicz, n 31, p 167 '*bona publica* or fiscal property of the realm.' In Roman law, the '*fisc*' tended to be a reference to the imperial treasury.

⁵⁶ GS McBain, *Modernising the Monarchy in Legal Terms* - Part 4 (2012) King's LJ, vol 23, pp 302-4. Treasure trove was different. It could be franchised (farmed out). See GS McBain, *Modernising the Monarchy in Legal Terms* - Part 3 (2012) King's LJ, vol 23, pp 18-23.

- Further, since William I (1066-87) asserted title not just to unallocated land but to all the land of England, the concept of the ‘*Crown*’ would have meant little to him besides an adornment. And, there would have been few left alive who sought to argue the contrary (William had wiped out, or deposed, most of the Anglo-Saxon aristocracy within a few years);
- The ‘*Crown*’ would (it is suggested) also have meant little to his sons - William Rufus (1087-1100) and Henry I (1100-35). They, also, were autocrats. Nor to his grandson, Henry II (1154-89). However, during the last reign there was a greater freedom of ideas and much more interaction with the continent, as well as religious ideas. Further, the end of the reign of Henry II (1154-89) was much troubled and the vast wealth which he had accrued - both in England and on the continent - was being dissipated.

However, there are indications in the (few) legal texts of the period to evince an increasing legal move to distinguish assets held by the sovereign in a personal capacity and those held by him in a public capacity (by virtue of his kingship), leading up to art 4 of the 1322 Ordinances. These comprise the following texts:

- Laws of Henry I (c. 1100) - defining ‘*flowers of the Crown*’;
- Glanvill (1189) - same;
- Bracton (c. 1250) - the ‘*Crown*’ as a legal concept distinct from ‘*the king*.’

These texts are now considered:

(a) Laws of Henry I (c.1113)

This compilation by an unknown author c. 1113 does not comprise the actual laws prevailing in the time of Henry I (1100-35).⁵⁷ Rather, it is more of a legal textbook. One which gathered together such Anglo-Saxon law (probably) still extant at the time he wrote, as well as various customs. This text is useful in that it contains a passage concerning the rights which only the king had *viz.* the prerogatives of the king. A number of these related to fines for offences which breached the king’s criminal jurisdiction (his ‘*peace*’). They are not relevant here. As to those of a constitutional nature, this text states:

These are the jurisdictional rights⁵⁸ which the king of England has in his land solely and over all men...
 unlawful appropriation of the king’s land or money [*presumptio terre vel peccunie regis*];
 treasure trove;
 wreck of the sea,
 things cast up by the sea [i.e. flotsam, jetsam, lagan, derelict] ...⁵⁹

The *revenues* to the latter three assets became part of those hereditarily surrendered as from 1760 (see **17**). Thus, this early text shows the commencement to a legal process identifying what prerogatives belonged to the king *in person* - without any mention of those of the Crown (representing the nation). These prerogatives could, and were, franchised (that is, alienated, farmed out) by the sovereign for money. The first mentioned jurisdictional right referred to above - ‘*appropriation of the king’s land and treasure*’ - suggests that - at this time - the king (the powerful Henry I, similar to William I) was asserting that he, in person, owned the ancient demesne, as well as the contents of the treasury - something not unexpected. There is also a text called *The Laws of Edward the Confessor* which was probably written long after c 1140.⁶⁰ However, it adds nothing substantive to the above, save for a hint that Edward may have sworn an oath not to alienate Crown land.⁶¹

In conclusion, the Laws of Henry I (c.1113) mentioned various rights which were, later, termed ‘flowers (prerogatives) of the Crown’. That is, revenue streams used by the sovereign in person for the purpose of his managing the government of the realm.

(b) Glanvill (1189)

The first English legal text is, generally, held to be Glanvill, *The Treatise on the Laws and Customs of the Realm* (c. 1189).⁶² This text mainly deals with civil litigation, though it also contains (a scant) treatment of criminal litigation. Glanvill indicated that royal power (*regiam potestatem*) should be furnished with laws.⁶³ He also noted that:

⁵⁷ Downer, n 22. Downer (the editor) noted, p xii, that the text was a compilation of the laws of Wessex, Mercia and the Danelaw as well as a ‘multitude of local customs and franciscan complexities.’

⁵⁸ This is translation of Downer (the editor). However, the latin, p 109, states: ‘*Hec sunt iura [rights] que rex Anglie solus et super omnes homines habet in terra sua*’ ...’. Thus, the sense is more that ‘these are the prerogatives which the king alone, and above all subjects, has in the realm.’

⁵⁹ Ibid, p 109.

⁶⁰ B O’Brien, *God’s Peace and King’s Peace, The Laws of Edward the Confessor* (1999).

⁶¹ Kantorowicz, n 31, p 346.

⁶² GDG Hall, *The Treatise on the Laws and Customs of the Realm of England* (Nelson, 1965). Hall (the editor), p xi, ‘It is the first textbook of the common law, and its two great themes are the king’s court at the Exchequer and writs’.

⁶³ Ibid, p 1 ‘Not only must royal power be furnished with arms against rebels and nations which rise up against the king and the realm, but it is fitting that it should be adorned with laws for the governance of subject and peaceful peoples...’.

Although the laws of England are not written, it does not seem absurd to call them laws - those, that is, which are known to have been promulgated about problems settled in council on the advice of the magnates and with the supporting authority of the prince [king] - for this also is a law, that 'what pleases the prince has the force of law'.⁶⁴

Glanvill went on to refer criminal pleas, some of which (the more serious) belonged to the 'crown of the lord king' (*ad coronam domini regis*) and others to the sheriffs of counties. As for civil pleas, he noted that some were to be determined in the court of the lord king (*in curia domini regis*).⁶⁵ The text also held that bishops and abbots could not alienate their demesne (estate) without the consent of the king, since they held from the same.⁶⁶

- The reference to the 'Crown of the lord king' may, possibly, be expressed as a reference to the king's 'Great Council' (*magnum concilium*), the precursor to Parliament;
- Thus, there is the hint of a distinction between orders (commands) given by the king in person and those emanating from the Great Council (the Crown) - the supreme legislative body. However, little more can be said since this text only deals with civil and criminal procedure.

In conclusion, the legal text, Glanvill (c.1189), mentions as 'laws' decisions promulgated by the Great Council, the precursor to Parliament as we know it. And the 'Crown' is a reference to the same. That is, to the king sitting in his Great Council assenting to the passage of legislation.

(c) Bracton (c. 1250)

The judge and legal writer Bracton, in his posthumous work, *On the Laws and Customs of England* (c 1250), presaged the advent of the 'Crown' as a legal concept distinct from that of the king - although, he did not provide that Crown land fell within in the latter.⁶⁷

(i) Logic of Bracton re role of the King

Bracton stated:

Though in almost all lands use is made of the *leges* and the *jus scriptum*, England alone uses written and unwritten law and custom. ..Nevertheless, it would not be absurd to call English law *leges*, though they are unwritten, since whatever has been rightly decided and approved with the counsel and consent of the magnates and the general agreement of the *res publica [the nation]*, the authority [i.e. the assent] of the king or prince having first been added thereto, has the force of law⁶⁸...

Law is a general command, the decision of judicious men [i.e. judges], the restraint of offences...the general agreement of the *res publica [the nation]*...⁶⁹ ...

There is public law [*ius publicum*], which pertains to the common welfare of the Roman *res publica [the nation]* and deals with religion, priests and public officers...⁷⁰

Thus, Bracton - following Glanvill - was referring (in essence) to laws being made by the precursor of Parliament, the king's Great Council. More especially, as to the meaning of '*res publica*' it is suggested it refers to the '*nation*' (*patria*)⁷¹ with the implication this refers to its representative - the king's Great Council [*magnum concilium*]⁷² the assembly which embodies the nation and which speaks for it - the whole nation not being able to physically attend. Bracton also stated that:

The king himself must ...be...under the law, because the law makes the king...⁷³

This proposition '*lex facit regem*' (the law makes the king) implicitly accepts that the law could, also, unmake the king. Also, that the office of '*king*' - as well as any prerogatives (i.e. powers and privileges) of the same - are dictated by the law, the same being determined by the Great Council (the legislature).

⁶⁴ Ibid, p 2. For the Scots equivalent to Glanvill, see Lord Cooper, *Regiam Majestatem* (Stair Society, 1947), especially, pp 58-9.

⁶⁵ Ibid, pp 3-4.

⁶⁶ Ibid, p 74 'neither a bishop nor an abbot can alienate in perpetuity any part of his demesne [estate] without the lord king's consent and confirmation, because their baronies are a charitable endowment from the lord king and his ancestors.'

⁶⁷ Bracton, *On the Laws and Customs of England* (c. 1250, trans SE Thorne, 1977), vol 2. Bracton was a judge in the time of Henry III (1261-72) a king who asserted that Bracton had the right to do what he liked with *Crown land* (no different to William I (1066-87). Therefore, there is nothing to suggest that Bracton (as one of his judges) challenged this.

⁶⁸ Ibid, p 19. See also p 21 (*re* amendment of laws).

⁶⁹ Ibid, p 22.

⁷⁰ Ibid, p 25.

⁷¹ Ibid, p 40 'Those things are taken to be public that belong to all people [*omnium populorum*], that is, which are for the use of mankind [the nation, *volk*] alone...'

⁷² As well as the *Magnum Concilium* (which was similar to the *witan gemote* of the Anglo-Saxons) there was, also, the *curia regis* (later, the privy council and, then, cabinet). It seems clear that the first was being referred to.

⁷³ Bracton, n 67, p 33. Ibid, p 110 'The king has a superior...the law by which he is made king.' [*legem per quam factus est rex*]. Also, his '*curia [regis, council]* namely, the earls and barons, because if he is without bridle, that is without law...'. See also Kantorowicz, n 31, p 156. Also, p 163 quoting *Humphrey of Bohun v Gilbert of Clare* (1292) 'the king is...the debtor of justice' [i.e. subject to the law].

(ii) Who Owns What - the Crown

Bracton asserted that certain things were not alienable because they belong to God *viz.*

- sacred (holy) things (such as temples, cemeteries *etc.*).⁷⁴

There were, also, things that belonged to the Crown *viz.*

- quasi-sacred things (*res quae sacrae*, such as walls and gates of a city, free men *etc.*).⁷⁵

These quasi-sacred things (which Roman law called '*res publicae*, public things)⁷⁶ included the '*peace*' of the king (i.e. legal jurisdiction, justice, the system of law enforcement). Thus, Bracton stated;

There are also other *quasi-sacred* things, which touch the person of the king and may not be transferred to anyone except as [i.e. to] a justice of the lord king [judge],⁷⁷ [such] as the view of frankpledge...the trial of thieves, all of which pertain to the peace [i.e. the enforcement of the law] and consequently to the Crown...⁷⁸

A thing belonging to the fisc [i.e. the nation, general public] is also *quasi sacred* and cannot be given or sold or transferred to another by the prince or reigning king; such things constitute the crown [nation] itself and concern the common welfare, [such] as peace and justice, which have many forms...⁷⁹ Also, alms...⁸⁰

Thus, '*quasi-sacred*' things - the '*fisc*', '*public property*' and the '*Crown*' - are treated as synonyms. It is suggested these refer to the '*nation*' (commonwealth, realm, *patria*, country).⁸¹ The sovereign cannot, by law, alienate these. As Kantorowicz noted - these things (rights) which pertained to the Crown became known as '*Crown prerogatives*'.⁸² Bracton stated, in respect of them:

They pertain to none except only to the Crown [i.e. the nation], and the royal dignity [i.e. the sovereign], nor can they be separated from the Crown, since they make the Crown what it is.⁸³

(iii) Who Owns What - the Sovereign

Bracton noted that things owned by no one (*res nullius*) belonged to the sovereign. Following *the Laws of Henry I* and *Glanvill* (see above) he gave as examples: (a) derelict; (b) treasure trove; (c) wreck; (d) waif; (e) estray.⁸⁴ These things were alienable. Thus:

There are also other things that belong to the Crown because of the king's privilege [*ad coronam propter privilegium regis*] but do not so touch the common welfare that they may not be given and transferred to another, for if they are [,] that will be to the damage of no one except the king or prince himself...things of that kind, as

wreck of the sea,
treasure trove, and
great fish, [such] as whale, sturgeon and other royal fish...

they belong to the Crown by the *ius gentium*.⁸⁵

⁷⁴ These belong to God. Ibid, pp 57-8. See also AM Prichard, *Leage's Roman Private Law* (1961), p 155.

⁷⁵ Bracton, n 67, pp 40-1, 57. Also, public rivers *etc.* Ibid, p 40. Ibid, 'Those things are taken to be public that belong to all people, that is, which are for the use of mankind alone.' See also Prichard, n 74, p 155.

⁷⁶ Kantorowicz, n 31, p 187. Prichard, n 74, p 154 '*Res Publicae*: these are objects which are owned by the people or the State and which are solely for the use of people generally. Highways and rivers and ports are examples Justinian [Emperor 527-65 AD] gives. The seashore...whether one classifies it as common or public really does not seem to matter very much...'

⁷⁷ Also, termed the 'keepers of the pleas of our crown'. Bracton, n 67, pp 59-60.

⁷⁸ Bracton, n 67, pp 58-9. Ibid, p 168 'Those things quasi-holy were '*things public*' existing for some common utility of the realm, such as the preservation of justice and peace.'

⁷⁹ Ibid, p 58. Ibid, p 166 'all the rights belonging to the Crown and the secular power and the material sword pertaining to the governance of the realm. Also justice and judgment and [everything] connected with jurisdiction...'

⁸⁰ Ibid, p 59.

⁸¹ Kantorowicz, n 31, p 251 (*patria* synonymous with the whole kingdom or body politic over which the '*Crown*' or its bearer ruled). Ibid, p 341.

⁸² Ibid, p 149.

⁸³ Ibid. See also Bracton, n 67, p 167. This reference to the '*Crown and the royal dignity [i.e. sovereignty]*' may be the source of such wording in later Civil List acts.

⁸⁴ Bracton, n 67, p 41 'all of which formerly belonged to the finder by natural law but are now made the property of the prince [sovereign] by the *ius gentium* [law of nations].' Ibid, p 27 'The *ius gentium* is the law which men of all nations use...'. Bracton, also, noted that wild beasts can be the king's if they fall within the '*king's privilege*' (*privilegium*). Ibid, p 42. However, it seems clear that Bracton thought that 'things common to all' [i.e. the nation] applied to 'the sea and the seashore, and to precious stones, gems and other such things found on the shore.' Ibid, p 43. Islands formed in public rivers belonged to the sovereign, Ibid, p 45. See also n 74 (Prichard) for the Roman legal position.

⁸⁵ Ibid, p 58. Also, Ibid, pp 166-73. Ibid, p 170 'Certain *regalian* rights, for example, wreckage, treasure trove, or big fish...which indeed pertained to the Crown, were of no concern to 'common utility' so that the king, if he pleased, could transfer those rights, or parts of them to private persons...'. Thus, a (clear) distinction was made by Bracton between: (a) rights vested in the king for his public benefit of the community of the realm (the nation); and (b) rights serving the benefit of the king's person, to enable him to finance government.

Thus, Bracton asserted that - by the law of nations - these assets belonged to the Crown (the nation, represented by the Great Council). However, that the Crown, then, gives these prerogatives (the use of the revenue streams in most cases) to the sovereign, to finance government. And that he can franchise them - the franchise is, also, called a liberty - for money. That is, farm them out. Other things which Bracton held to be alienable (franchisable) comprised: (i) enquiring into (and judging) assizes of bread, beer, weights and measures;⁸⁶ (ii) soke (legal jurisdiction)⁸⁷ and sake; (iii) toll and team; (iv) infangthef and outfangthef;⁸⁸ (v) the right to hold markets and fairs.

(iv) Who Owns What - Crown Land

What about Crown land? Bracton stated:

There are also other things which belong to the Crown [*per quae corona roboratur*] and [they] are not so sacred that they cannot be transferred, [such] as estates, lands, tenements and the like, by which the Crown of the king is strengthened.⁸⁹

Elsewhere, he noted:

In the demesne [estate] of the lord king [*in dominico domini regis*] there are divers sorts of men...⁹⁰

This appears to be referring to the *ancient demesne*. These two statements together suggest an ambivalent position. The former (clearly) states that the Crown *owns* them; but the sovereign can alienate them, if the Crown (the nation) is '*strengthened*.' Thus, in the reign in which Bracton was writing - that of Henry III (1216-72) - there was legal uncertainty. This was realised in the baronial struggles with the sovereign over such matters⁹¹ - a situation, also, played out in the continent.⁹² That is, what belonged to the sovereign *in person* and what belonged to the *nation* was a critical issue of its time.

(v) Conclusion

It seems clear that Bracton, in his legal text, was asserting that the sovereign (*rex regnans*) was subject to the sovereign as legislator (i.e. to the Great Council). And, that legislation was effected by the Great Council with the assent of the sovereign. Thus, Bracton stated (by reference to the Institutes and the Digest of the roman emperor Justinian):

the king ...can do nothing save what he can do *de jure*, [i.e. by law] despite the statement that the will of the prince has the force of law,⁹³ because there follows at the end of the *lex* [that law] the words '*since by the lex regia, which was made with respect to his sovereignty*';

nor is that anything rashly put forward of his own will, but what has been rightly decided with the counsel of his magnates, deliberation and consultation having been had thereon, the king giving it *auctoritas* [his assent].⁹⁴ (*wording divided for ease of reference*)

The reference to the '*lex*' is to the Roman law (Digest of Justinian). Another translation of the passage of Bracton above was given by Kantorowicz *viz.*

The king has no other power...save that which he has of right...And this is not to the contrary of the passage which says '*What pleases the king has the power of law*' [quoting Azo];⁹⁵ for there follows at the end of that law (D[igest] 1.4.1): because by the *lex regia*, which has been laid down concerning his *imperium* [rule], [the people transferred to him and on him all its power and authority]...⁹⁶

that is, not what has been rashly presumed by the [personal] will of the king, but what has been rightly defined by the *consilium* [council] of his magnates, by the king's authorization, and after deliberation and conference concerning it...⁹⁷(*wording divided for ease of reference*)

⁸⁶ Thus, the sovereign could recover fines for breach of these assizes, and franchise the same.

⁸⁷ For example, the sovereign could franchise the right (prerogative) to manors to hold a court (called a court leet) dealing with minor criminal matters and to impose fines for breach.

⁸⁸ Confiscation of the property of thieves.

⁸⁹ Bracton, n 67, p 58. As to whether there was a coronation oath swearing not to alienate given by kings such as Henry III (1216-72) and Edward I (1272-1307), see Kantorowicz, n 31, pp 347-57.

⁹⁰ *Ibid*, p 37.

⁹¹ As Jolliffe noted, n 18, p 183 'as late as 1264 the gravamen [accusation] against Henry III [1216-72] was that he treated the realm as the same unfettered demesne as an earl's honour.' See also Kantorowicz, n 31, p 190 'during the constitutional struggles of the thirteenth and fourteenth centuries, the baronial objections were always centered on the fiscal-domanial sphere, including the prerogative rights attached to it...'

⁹² See generally, F Kern, *Kingship and Law* (1956).

⁹³ See Justinian, Institutes 1.2.6 and Digest 1.4.1.

⁹⁴ Bracton, n 67, p 305. See also Kantorowicz, n 31, p 150.

⁹⁵ The reference is to Azo of Bologna (c. 1150-1230), a commentator (glossator) on the Digest of Justinian.

⁹⁶ Kantorowicz, n 31, p 150. Kantorowicz has read in the words in [] in order to make sense of the passage.

⁹⁷ *Ibid*, p 150. Also, p 152.

Thus, what did the concept of the 'Crown' mean to Bracton in 1250 (and, presumably, to his other judges as well)? One would suggest it was fairly clear. It meant the Grand Council - that which we call, today, Parliament - which *assembly represented* the nation (*volk*). However, there have been many verbal formulations of the concept of the 'Crown' down the centuries which has produced much of the confusion. Thus, that the Crown means:

- The sovereign sitting in the Great Council (*pre-1275*).
- The sovereign [sitting] in right of his [the] Crown in Parliament (*post 1285*);
- The sovereign in the body politic in right of the Crown [i.e. sitting in Parliament];⁹⁸
- The Crown in Parliament [i.e. the sovereign in Parliament as head of this assembly];⁹⁹
- Parliament [the assembly of the nation (realm, *volk*) headed by the sovereign].¹⁰⁰

All five, actually meant - and mean - the same thing. That is, the sovereign in the body aggregate, sitting as head of a body of members - originally the Great Council and, now, Parliament. In short, the sovereign as legislator.

As to Parliament, it is the representative of the *folk* (the nation, country, *patria*) who had become so large that they could not meet in person - even in Anglo-Saxon times. Thus, all assets held by Parliament were *national* assets. Not those of the king in person.

(vi) Conclusion - Meaning of the 'Crown' by 1250

By 1250 - when Bracton wrote - there was an increasing legal recognition that all rights (prerogatives) give to the sovereign derived from the Crown (the nation) of which the sovereign was part. They were not inherent to the reigning king, but to kingship (the unbroken line of succession). By 1322, there was a 3 fold categorisation:

- royal power of the sovereign (*poair real*);
- the estate (*lestat*) of the king;
- the estate of the Crown (*lestat de la coronne*).

As to the second of these, by the time of Bracton (1250), this clearly included things like estray, treasure trove etc. Things which, later, became part of the hereditary revenues and which were (post 1760, see 17) surrendered at the outset of each reign (and which are of little value today). As for Crown *land*:

- it was not wholly clear, in 1250, whether - legally - this was part of the sovereign's estate or part of the Crown's (nation's) estate. However, by 1322 (see 6(d)), it seems clear that Edward II (1272-1307) accepted that it fell within the latter);

also, that it was for Parliament to determine such matters.

As it is, after Bracton's death (his writing was posthumous), Kantorowicz noted what he considered to be the first official document against the alienation of Crown land:

In England...the first official document stating clearly and succinctly that the royal demesne was inalienable, was relatively late: the councillor's oath, containing the clause '*Item, I will consent to the alienation of none of those things which belong to the ancient demesne of the Crown*' falls in the year 1257, that is, in the time of Bracton.¹⁰¹

For present purposes it is enough to note that:

- opposition to the alienation of Crown land becomes more publicly apparent in the reign of Henry III (1216-72) as part of a power struggle between the sovereign and the barons (the great men of the realm) in which the latter focused on his financial mis-management - including the mis-management of Crown land.¹⁰² The issue of the *ownership* of the same, therefore, became pertinent;
- the legal rationale for arguing that Crown land was inalienable developed from *ecclesiastical law* - that bishops (including the pope as senior bishop) could not alienate church property. Thus, the English cleric William of Ockham (1285/-1347) denied the right of the pope to alienate church property;¹⁰³

⁹⁸ This is, often, the modern (long winded) expression modern expression to symbolise the sovereign as head of the political body aggregate, Parliament, see e.g. OH Phillips & Jackson, *Constitutional and Administrative Law* (8th ed, 2001 eds P Jackson & P Leopold), p 314.

⁹⁹ Technically, the Crown always sits in Parliament, as evidenced by the throne (and the mace) as opposed to a Crown as such. Today, the attendance of the sovereign - other than to open Parliament - no longer occurs. Also, the assent of the sovereign is now formal.

¹⁰⁰ Here, the presumption is that the sovereign is present, to head the body aggregate. The same applies in respect of cabinet which is the smaller assembly of that which was once the king's *Curia Regis* (later, the privy council, then, the cabinet).

¹⁰¹ Kantorowicz, n 31, p 166. Also, Ibid, p 360 (councillor's oath of 1307). He referred, *inter alia*, to JF Baldwin, *The King's Council in England during the Middle Ages* (1913) and to RS Hoyt, *The Royal Demesne in English Constitutional History: 1066-1272* (1950).

¹⁰² Ibid, pp 190-1.

¹⁰³ Ibid, p 205.

- the legal rationale also came from Roman law which held that a quasi-sacred thing (*res quae sacrae*) was inalienable.¹⁰⁴ It was a *res publica* (public property)¹⁰⁵ which included the imperial estates.¹⁰⁶ That is, property held on behalf of the nation.

8. REIGN OF EDWARD I (1272-1307)

The struggle between the barons and the sovereign continued in the autocratic reign of Edward I (1272-1307). In this power game, the power of the barons was strengthened by the formation of a Parliament c. 1285 in which the commons were present. Throughout the reign of Edward, there was increasing Parliamentary impediments placed on the sovereign's right to tax.¹⁰⁷ Much of the power struggle centred on two simple things:

- The sovereign had *foreign possessions* which he wanted to defend. However, the barons and the shire militias did not want to fight abroad;¹⁰⁸
- The sovereign wanted to expand his sovereign power at the expense of the great barons (in the house of lords) and the common people (now represented in Parliament). Neither wanted this.

The struggle between the king and Parliament was to continue up until the Glorious Revolution of 1688. Further, it became clear that the Crown lands (demesne) started to be treated *in law* (as in Anglo-Saxon times) as being held in the *body politic* and not in the *body natural*. This is evidenced in 3 especial ways; if the sovereign:

- abdicated - or was forced from the throne - he lost it all;¹⁰⁹
- was dis-inherited by legislation - he lost it all;
- died, it did not pass by his will.¹¹⁰

(a) Statute of Westminster 1275

As it is, Edward I (1272-1307) accepted, it seems, from the outset of his reign, that there was a legal distinction between the sovereign and the Crown. Thus, in the first Parliament (including the commons) which met after his coronation, to redress various ecclesiastical wrongs in the country, there was passed the Statute of Westminster 1275.¹¹¹ Section (chapter) 50 of the same stated:

And forasmuch as the king hath ordained these things unto the honour of God and holy church...he would not that at any time it should turn in prejudice of himself [as sovereign], or of his Crown [*de luy, ne de sa corone*]; but that such right as appertains to him, should be saved in all points.¹¹²

Writing much later Coke noted that this was '*a saving to the king of the rights of his Crown*', by which he meant his Crown prerogative.¹¹³ It is, also, possible that Edward - in his coronation oath - promised to the people, the nation, that he would not alienate Crown prerogatives. Thus, Kantorowicz referred to a letter from Edward I in 1275 to pope Gregory X (1271-6) in which the former declared that - pursuant to his coronation oath - he was bound:

to do nothing that touches the diadem [*diadema*, Crown] of this realm without having resorted to the counsel of prelates and magnates. [i.e. to the Great Council].¹¹⁴

(b) Britton (c. 1290)

A legal text, Britton, written 1290, referred to '*franchises*' (that is, prerogatives of the king given to others in return for money, also called liberties or royalties). Thus, he referred to the:

¹⁰⁴ Ibid, p 183 *et passim*.

¹⁰⁵ Ibid

¹⁰⁶ Ibid.

¹⁰⁷ Thus, the Confirmation of the Charters 1297 (still extant) made it clear that the sovereign could not levy any aid (*auxilia*), '*task*' (i.e. tallage, tax) or '*prise*' (customs duty on wine, abolished 1809) without the consent of Parliament (the 'common assent of the realm') (extant). See also the Statute concerning Tallage (c. 1297, also extant) which referred to '*no tallage or aid*' being leviable without the consent of Parliament). See generally, GS McBain, *Modernising the Monarchy- In Legal Terms* (2010) King's LJ, vol 21(3), pp 535-48.

¹⁰⁸ See McBain, n 1, article (g), p 230.

¹⁰⁹ That is, because his *private land* was treated by the common law as *Crown land* when he was sovereign, to lose sovereignty was a disaster.

¹¹⁰ TFT Plucknett, *Taswell-Langmead's English Constitutional History* (11th ed 1960), p 602 'when the kingship had become more strictly hereditary, the person and the office of the king were held to be so thoroughly identified that his private estates were merged in the royal demesne and made incapable of alienation by will.' It was the same as the title to the throne itself. Henry VIII (1509-47) sought to dictate the line of succession after him in his will. However, this was ignored.

¹¹¹ The *preamble* states: 'These be the acts of king Edward...made at his first Parliament general after his coronation...by his council, and by the assent of archbishops, bishops, abbots, priors, earls, barons, and all the commonalty of the realm being thither summoned...the king hath ordained and established these acts under-written, which he intendeth to be necessary and profitable unto the whole realm...'

¹¹² See E Coke, *Institutes of the Laws of England* (W Clarke & Sons, London, last ed, 1824), vol 2, p 263 commenting on this Act.

¹¹³ Ibid.

¹¹⁴ Kantorowicz, n 31, p 362. Ibid, p 364 'Edward...had not defined the notion of the Crown; but from the description he gave of the nature and functions of the Crown there leads a direct line to the exclusively English concept of sovereignty, the king in council in parliament.' One would agree.

franchise of...fairs, or markets, or...to have wreck of the sea...or toll, or estray, or murage, or pontage or cheminage...¹¹⁵

This followed on from the *Laws of Henry I* (c. 1113) (see **7(a)**) and Bracton (c. 1250) (see **7(c)(iii)**) suggesting that the fact that these comprised ‘*flowers of the Crown*’ was uncontroversial among lawyers and statesmen at that time. Britton also stated:

Kings...may not so alien the rights of their crown or of their royalty [sovereignty] [*dreitz de lour coroune ne de lour reaute*] so as not to be revocable by their successors...It is nevertheless allowable for kings to grant franchises [see above].¹¹⁶

Maitland was inclined to be rather dismissive of Britton’s statement - perceiving it to be no more than an intimation (rather than a firm legal proposition); one which relied on an antique rule of family law.¹¹⁷ However, it is suggested the position is much clearer than that. And, that the source is ecclesiastical law.¹¹⁸ The same dismissal by Maitland applied to *treasure*; he argued that such belonged to the sovereign and that he could do what he wanted with it.¹¹⁹ However, it seems clear that - at least, by the time of Edward II (1307-27) - the sovereign could not alienate the same.¹²⁰ Thus, Maitland’s statements should be limited to the situation in c. 1250 and not later.

In conclusion, by the reign of Edward II - a distinction between: (a) the rights of the sovereign; and (b) the rights of the Crown (the nation) - was accepted. Further, it seems clear that, by 1290 (if not before), it was accepted (at least, by legal writers) that Crown prerogatives (rights) could not be alienated. Thus, one moves to the reign of Edward II, which led to the Ordinances 1322, art 4, as previously discussed (see 6(d)).

9. REIGN AND DEPOSITION OF EDWARD II (1307-27)

The reign of Edward II was hugely unsuccessful. By all accounts he was unsuited to the role of sovereign and the country abounded in mis-management and corruption. As early as 1308, the barons sought to fetter his power (or, as they would likely argue, control his incompetence) by means of a commission. More importantly, in October 1311, Edward II had forced on him certain New Ordinances.¹²¹ These legal restrictions on him as sovereign directly resulted from his mis-government of the royal household and the realm. In particular, in his dissipating the wealth of the nation - including giving land, money and jewels to his favourite Piers Gaveston (d.1312). Thus, clause 7 (of the 41 clauses into which the New Ordinances tend to be divided) stated that:

all the gifts which have been given to the damage of the king and the diminution of the Crown since the commission [of 1308] made to us, of castles, towns, lands and tenements, and balliwicks, wardships and marriages, escheats and releases, whatsoever they be, as well in Gascony, Ireland, Wales, and Scotland, as in England, be repealed.¹²² (*italics supplied*)

Thus - at least, from 1311 - the barons were asserting that Edward could not alienate Crown land. True, Edward II had these Ordinances repealed in 1322. However, as noted in **6(d)**, Edward accepted at the same time (or was forced to accept) that:

matters which are to be established for

the estate of our lord the king and of his heirs [i.e. the sovereign], and of

the estate (*lestat*) of the realm and of the people [i.e. the Crown, the nation]

¹¹⁵ FM Nichols (trans), *Britton* (1901), pp 62-3. Also, *Ibid*, p 14. Murage, pontage and cheminage were different types of toll which the king could franchise. They comprised a toll to repair town walls, a toll to repair bridges and cheminage (also, called chimmage) a toll for passing through a forest.

¹¹⁶ *Ibid*, p 182. The legal text, *Fleta* (1290) put this more clearly, see HG Richardson & GO Sayles, *Fleta* (Selden Society, 1955) m vol 2, p 17 ‘It is not lawful to the king to alienate the ancient manors or rights annexed to the Crown (*antiqua maneria, vel iura corone annexa*), and every king is bound to resume those things alienated from his Crown.’ Also, p 15 ‘a king is created by law (*per legem factus est rex*).’ *Ibid*, p 35 ‘the Crown is a symbol (*et ideo corona insignitur*) that he [the king] will rule the people subject to him by a process of law (*per indicia populum regat sibi subiectum*).’ *Ibid*, pp 37. Also, *Ibid*, pp 38-9, judges, sheriffs and other ministers to swear that ‘they will not consent to the alienation of such things as belong to the ancient demesne of the Crown.’ *Ibid*, p 39 ‘Counsellors ...shall swear...that they will not...ask any of the council, or any in attendance on the king, to procure that the king shall give them anything that belongs to the Crown in such wise that they may retain it for themselves’. *Fleta* may have been a judge.

¹¹⁷ P & M, n 26, vol 1, p 518 ‘The main import of this distinction is to be found in the strong sentiment - it is rather a sentiment than a rule of law - that the ancient demesne should not be given away, and that, if it be given away, some future king might resume it...The king, who asserts a right to revoke the improvident grants of his ancestors, is relying on an antique rule of family law, rather than upon any such doctrine as that kings are trustees for the nation. The idea that a man may hold land or goods in to different capacities is not easily formed.’

¹¹⁸ Thus, Britton, n 115, p 182 continued ‘Neither can prelates of holy church so alien [alienate] the rights of the churches, nor templars, hospitallers, or other persons in religion, as their gifts shall not be revocable by the donors.’

¹¹⁹ See P & M, n 26, p 521.

¹²⁰ See **6(d)**.

¹²¹ See generally, B Wilkinson, *Constitutional History of Medieval England 1216-1399*, vol 2, ch 2.

¹²² See generally, GS McBain, *Abolishing some obsolete Constitutional Legislation* (2011) Coventry LJ, vol 16, issue 1, pp 1-3. See also Wilkinson, n 121, p 128 (different translation of art 7) ‘since the Crown has been so abased and ruined by numerous grants, we ordain that all grants made to the damage of the king and impoverishment of the Crown since the commission [in 1308] was given to us...shall be annulled.’

shall be treated, accorded and established in parliaments [assemblies], by our lord the king, and by the assent of the prelates, earls, and barons, and the commonality of the realm; according as it hath been accustomed (*wording divided for ease of reference*)¹²³

Therefore, it seems clear that - by 1322 at the latest - there was a clear distinction between: (a) the estate of the sovereign; and (b) the estate of the Crown. Also, that it was legally accepted that Crown land belonged to the nation (the Crown in Parliament). And, that it could not be alienated. Further, '*the proof was in the pudding*' since, in 1327, when Edward II abdicated (under duress) - he retained no rights to the same¹²⁴ and all Crown revenues and possessions (royal jewels *etc*) passed to this son (Edward III). Edward II died impoverished.¹²⁵ The same was to happen to Richard II in 1399 (see below).

In conclusion, - by 1322 at the latest - it was clear that Crown property (real and personal) belonged to the nation. Not to the sovereign in person. And, that this legal position has never been controverted to date. Crown land was, and is, held by the Crown in Parliament (i.e. by Parliament) on behalf of the nation.

10. REIGN AND DEPOSITION OF RICHARD II (1377-99)

The same as happened on the deposition of Edward II (see 9), applied in the case of the forced abdication (deposition) of Richard II (1377-99) in 1399. Thereupon, he lost all rights to any Crown land which passed to his successor, Henry IV (1399-1413). The reasons (the causes, *causae*) for his deposition (which Richard II agreed to) included that he:

has given the goods and possessions of the Crown to unworthy persons and otherwise dissipated them indiscreetly... Also, the king of England was able, without oppressing his people, to live honourably from the issues [revenues] of his kingdom and from the patrimony belonging to the Crown [i.e. Crown land]... yet the same king... gave the greater part of his said patrimony to unworthy persons.¹²⁶

Thus, here, the older Anglo-Saxon conception of Crown land prevailed once more. Crown land was not held in the *body natural* but in the *body politic aggregate*. It was, therefore, patrimony of the Crown and it could not be dissipated; although the sovereign was entitled, while he reigned, to use the revenues of the same to fund government and the royal household - including '*pocket money*' for himself.

11. TRAVERSING THE CENTURIES: 1322-1533

Looking *post*-1322, up to the Act in Restraint of Appeals (1533), the following quotations tend to summarise things as to the development of the legal concept of the sovereign as the head of a body aggregate, the '*Crown*.'

- *Modus Tenendi Parliamentum - c. 1330*. 'the king is head, the beginning and end of Parliament.'¹²⁷
- *Grandisson - 1337*. This bishop of Exeter stated: 'the substance of the nature of the Crown is found chiefly in the person of the king as head and of the peers as members',¹²⁸
- *Thorpe CJ - 1365*. 'Parliament represents the body of the whole realm',¹²⁹
- *Commons Speaker - 1401*. At the close of Parliament in 1401, the speaker indicated that the Lords spiritual and temporal, the Commons and the sovereign formed a trinity. He, then, compared this body politic with the holy trinity,¹³⁰
- *Russell - 1483*. A former Chancellor - in a sermon at the opening of Parliament in 1483 - he discussed the body politic of England comprising the 3 estates with the sovereign at its head. And that such was a politic (mystical) body of the realm,¹³¹

¹²³ GS McBain, *Abolishing some Obsolete Constitutional Legislation* (2011) Coventry LJ, vol 16, issue 1, pp 2-9.

¹²⁴ One of the articles of accusation against Edward II (1307-27) was that he had lost the realm of Scotland and other territories and lordships in Gascony and Ireland and that he had stripped his realm, see Wilkinson, n 121, pp 170-1.

¹²⁵ The fate of Edward II is subject to some conjecture. However, it is, generally, accepted that he (was murdered) on 21 September 1327 at Berkeley Castle.

¹²⁶ For the indictments (*causae*) of deposition, see Wilkinson, n 121, pp 309-18. In article 41 (p 314) the indictment was that the king took the treasures and jewels of the realm to Ireland with him without the consent of Parliament. Such indicates that treasury and the crown jewels were regarded in those times as being held by the nation. See, also, the work of the medieval historian, Thomas of Walsingham (d. 1422). *Ibid*, p 320 'When he [Richard II] departed for Ireland, he also took with him the treasury and the relics and other jewels and riches of his kingdom, which were traditionally left in the treasure-vaults of the kingdom for the honour of the kings. And he did this without the consent of the estates of the realm [Parliament].' See also MacDonagh, *The English King* (1929), p 13. Also, Kantorowicz, n 31, p 369.

¹²⁷ Kantorowicz, n 31, p 364 '*Rex est caput, principium, et finis parliamentum...*'.

¹²⁸ *Ibid*, p 362. Kantorowicz noted, n 31, p 363 'There can be no doubt that in the later Middle Ages the idea was current that in the Crown the whole body politic was present - from king to lords and commons and down to the least liege-man.'

¹²⁹ *Ibid*, p 225. Also, Maitland, *Selected Essays* (ed, Hazeltine et al, 1936), p 107.

¹³⁰ *Ibid*, p 227.

¹³¹ Kantorowicz, n 31, p 225.

- *Fineux CJ - 1522* ‘the Parliament of the king and the lords and the commons are a corporation’.¹³²

12. ACT IN RESTRAINT OF APPEALS (1533)

The concept of the sovereign as head of a corporation aggregate was given impetus by the Act in Restraint of Appeals (1533).¹³³ The *preamble* to it stated:

by divers sundry old authentic histories and chronicles it is manifestly declared and expressed that *this realm* of England is an empire [nation]...governed by one supreme head and king, having the dignity and royal estate of the imperial Crown of the same unto whom [i.e. which is] a body politic compact of all sorts and degrees of people divided in terms and by names of spirituality and temporality be bounden [bound together]...¹³⁴ (*italics supplied*)

This wording nicely conjures up the sovereign as the head of a nation, both the same being represented by the sovereign in his assembly (Parliament). Further, reference to it was given in the following legal texts:

- *Henry VIII - 1542* ‘We be informed by our judges that we [the sovereign] at no time stand so highly in our estate royal [sovereignty] as in the time of Parliament [our presence in this assembly], wherein we as head and you as members are conjoined and knit together in one body politic [i.e. the Crown or the Crown in Parliament or, more simply, Parliament];¹³⁵
- *Fortescue - c. 1543*. A former Chief Justice, he noted that ‘the kingdom issues from the people, and exists as a body mystical [*corpus mysticum*],¹³⁶ governed by one man as head...just as the head of the physical body is unable to change its sinews, or to deny its members proper strength and due nourishment of blood, so a king who is head of the body politic is unable to change the laws of that body, or to deprive the same people of their own substance uninvited or against their wills.’;¹³⁷
- *Smith - 1562-5*. Queen Elizabeth’s ambassador to France ‘the prince (king) is...the head, and the authority of all things that be done in this realm of England’,¹³⁸ which he also described as a ‘Commonwealth’.

Also, in *Willion v Berkley* (1559), Southcote (counsel) stated:

the king has two capacities, for he has two bodies, the one whereof is a body natural...the other is a body politic, and the members thereof are his subjects, and he and his subjects together compose the corporation [body]...and he is incorporated with them, and they with him, and he is the head, and they are the members, and he has sole government of them...¹³⁹

All these statements comprise legal recognition that the sovereign (a corporation sole) could exist in a corporation aggregate. Thus, the legal conceptualisation and categorisation of the Act of 1533 was longstanding, stretching back to Henry III (1216-72, see 6). The Crown governed the nation (the realm). The Crown comprised a corporation aggregate with the sovereign as head and all subjects as its body (members). However, since the nation could never physically assemble together - too many people, unlike the open air meetings of the tribal *folk* of olden times - the nation was represented by means of a more limited political assembly (a parliament)¹⁴⁰ comprising the:

- Sovereign;

¹³² Quoted by Maitland, n 129, p 107. ‘Parliament’ here refers to the ‘assembly’ not to the specific building in Westminster palace where it now meets.

¹³³ 24 Hen VIII (1533). C Stephenson & FG Marcham, *Sources of English Constitutional History* (1937), pp 305-6. The *preamble* to the Act stated that it was ‘An Act that the appeals in such cases as have been used to be pursued to the see of Rome shall not be from henceforth be had nor used but within this realm.’

¹³⁴ It continued: ‘He being also institute and furnished by the goodness and sufferance of Almighty God with plenary, whole and entire power and pre-eminence, authority, prerogative and jurisdiction, to render and yield justice and final determination to all manner of folk, residents or subjects, within his realm, in all causes, matters, debates, contentions, happening to occur, insurg or begin within the limits thereof, without restraint, or provocation to any foreign princes or potentates of the world.’

¹³⁵ Kantorowicz, n 31, p 228.

¹³⁶ See n 34.

¹³⁷ J Fortescue, *On the Laws and Governance of England* (CUP 1997) ed. S Lockwood, pp 20-1. See also Kantorowicz, n 31, p 224.

¹³⁸ T Smith, *De Republica Anglorum* (ed M Dewar, 1982), p 88. Ibid, p 57 ‘A commonwealth is called a society or common doing of a multitude of free men collected together and united by common accord and covenants among themselves...’. Ibid, p 88 ‘parliament (which is the whole universal and general consent and authority as well of the prince as of the nobility and commons, which is as much to say of the whole head and body of the realm of England and also of the prince [sovereign] (which is the head, life and governor of this commonwealth...the commonwealth of the politic body of England)... Ibid, p 79 ‘the consent of the Parliament is taken to be every man’s consent.’ (*wording in all quotations modernised*)

¹³⁹ (1559) Plowden n 40, 233a. *Case of the Duchy of Lancaster* (1561) at 213 ‘the body natural, by this conjunction of the body politic to it, (which body politic contains the office, government, and majesty royal) is magnified, and by the said consolidation hath in it the body politic.’ See also McBain, n 2, p 274. For Crown land existing at this time, see R Hoyle, *The Estates of the English Crown 1558-1640* (CUP, 1992). At pp 5-6 he noted ‘At the turn of the [16th c] the income drawn from [Crown land] was about 39 per cent of the Crown’s total income, about 14 per cent in c. 1641.’ For the duchy of Cornwall, Ibid, ch 3 (by G Haslam).

¹⁴⁰ How the word ‘Parliament’ came about is unclear. However, the root is likely an assembly (*aggrementum, gemote*) of people to discuss (*parler*) the state of the nation (*patria*).

- Lords; and
- Commons (together, the 3 estates of the realm).

This was the Crown *in Parliament* - as opposed to the Crown in other bodies, such as the Crown (the nation) acting in the Church of England. Or, the Crown (the nation) acting in the privy council (or the smaller version, the cabinet). Thus, it seems clear that the Crown land was owned by the Crown - or, to put it more technically, the Crown acting in Parliament. Thus, Crown land (i.e. national or public land) was not owned by the sovereign in person (in the body *natural*). Nor by the sovereign in the body sole (i.e. as a *corporation sole*).¹⁴¹ However, as noted by Maitland:

The notion that the king was in any sense a trustee for the nation of these lands grew up but very slowly.¹⁴²

Thus, it is not suggested that it was - in the time of the Tudors - legally (or popularly) accepted that Crown land (estate) was held on behalf of (i.e. in *trust for*) the nation. Indeed, the longstanding notion that the sovereign could deal with (use) Crown land as he liked while sovereign prevailed and - in respect of any alienation of it - while (strictly) this land was inalienable, it was unwise to challenge kings such as Henry VIII (1509-47) who had seized vast amounts of church land, on that point. That said, the legal *rationale* for Crown land being held in trust for the nation was *latent*, to become *apparent* in legislation relating to Crown land in 1623 and 1702 (see 15 and 16).

13. REIGN AND DEPOSITION OF CHARLES I (1625-49)

After the deposition of Richard II (1377-99) Crown lands - and revenues - continued to be dissipated (plundered).

(a) Duchy of Lancaster - No Different to Crown Land

Further, an attempt was made by Henry IV (1399-1413) to separate his *private estate* - owned by him prior to becoming sovereign - from *Crown land*.

- Thus, when, as Duke of Lancaster, Henry succeeded to the realm in 1399 in place of Richard II - uncertain whether he would manage to hold on to his sovereignty - he sought to legally ensure that the duchy was held by him in the *body natural*, as opposed to being held by him *qua* sovereign,¹⁴³
- While the fiction of this still exists, the reality did not since the duchy was, thereafter, financed by Crown revenues which Henry IV received as sovereign. Further, legal problems arising from this became apparent. A sovereign holding *qua duke* did not have any prerogatives relating to the former. Especially those of: (a) never being a minor (nonage); (b) being perfect (incapable of error); (c) being immortal.¹⁴⁴

As it is, any pretension of holding the duchy of Lancaster in a *personal* capacity ended with the *Case of the Duchy of Lancaster* (1561). In this case, the court held that sovereignty *overreached* any natural capacity - including nonage. Thus, the duchy land was, by the common law, treated as being held *qua* sovereign even though, once, it had been held in the *body natural*.¹⁴⁵ The same logic applies to the duchy of Cornwall, when held by the sovereign (as opposed to the heir apparent). Further, this case of 1561, effectively, ended any legal argument that title to Crown land could be held by the sovereign in the *body natural* at common law. That is *privately*. It could not, since - thereby - it failed to receive the benefit of (a)-(c) above. As a result, it *had* to be held in the *body politic* to enable the sovereign not to be subject to human frailties.¹⁴⁶

(b) Further Dissipation of Crown Land

It is unnecessary - for present purposes - to go through all the history of the dissipation of Crown land from the time of Richard II (see 10) and the attempts at resumption. Suffice to say that the *dissipation* of the Crown land (i.e. 4(a) and 4 (b)) continued until the execution of Charles I (1625-49). Thus, there were numerous attempts by Parliament to overturn ruinous grants to royal favourites and others. Yet, even when these Acts of Resumption were made,¹⁴⁷ dissipation of the revenues of these lands continued unabated. The reason for all this seems clear. Since the sovereign governed the country - if his government was poor and financially inept - the *only* means of avoid bankruptcy was to secure funds from Parliament (by grants, the same acquired by increasing taxation) *or* to deplete Crown land (later, called the Crown *lands* or Crown estate). Thus, Plucknett noted:

Continually augmented by feudal *escheats* and forfeitures the Crown lands were as continually diminished by improvident grants to the royal favourites and followers. Attempts were made to check this abuse from time to time,

¹⁴¹ The duchies of Lancaster and Cornwall were different. Here, the sovereign (*qua* duke) owned them as a corporation sole. The physical handing over of a seal represented the transfer of power to govern by the sovereign to the duke (a subject and a natural person). However, when the sovereign holds a duchy his sovereignty overreaches his humanity. In the case of the duchy of Lancaster this always occurred; in the case of the duchy of Cornwall, this occurred when there was no male heir.

¹⁴² See text to n 29.

¹⁴³ See generally, McBain, n 2, p 274. Also, GS McBain, *Time to Abolish the Duchy of Lancaster* (2013) Review of European Studies, vol 5, no 4, pp 172-93.

¹⁴⁴ *Ibid*, pp 261-2.

¹⁴⁵ *Ibid*, p 274.

¹⁴⁶ In other words, if the duchies could be held privately by the sovereign it would set up unacceptable legal anomalies. For example, as Duke of Lancaster (or Cornwall) the duke could, then, be sued for errors of judgment; however, as sovereign, he could not.

¹⁴⁷ See also McBain, n 2, p 202, where reference is made to Acts of Resumption in 1450, 1456, 1467, 1495 and 1515.

by means of Acts of Resumption, for example, but without effect, and Charles I [1625-49] still further diminished the royal patrimony by extensive sales and mortgages.¹⁴⁸

After Charles I (1625-49) was executed in 1649, Parliament could have put a stop to this. Indeed, it did. The office of 'king' was abolished in 1648 by Interregnum (1649-60) legislation.¹⁴⁹ Thus, any title of the sovereign *in person* to Crown land - or any revenue there from - died, in any case, with the extinction of the office of king (kingship).

14. REIGN OF CHARLES II (1660-85)

(a) Reallocation of Crown Land Revenues

In 1660, when Charles II (1660-85) returned to England to claim the throne, Parliament could have accepted that the extinction of kingship had occurred in 1648 during the *Interregnum*. However, it did not, for political reasons.

- Thus, it was *legally* accepted that Charles II began his reign in 1649 the moment (*eo instanti*) his father died - although his reign did not occur, *in fact*, until 1660;
- When Charles II (1660-85) was invited to rule, there was no question of offering him the title to (i.e. ownership of) Crown lands - much of which had been sold off during the *Interregnum* and then re-acquired (resumed) by Parliament¹⁵⁰ - since such had never being held by a sovereign in a *natural capacity*.

Thus, the issue was: *How was the sovereign to be funded in order to run government and his household?*

Also, Charles II was penniless. Now, Parliament could have chosen not to pass to him any hereditary revenues - including the revenues from Crown land. Instead - perhaps unwisely - Parliament chose a half-way house. It decided that funding for the monarchy was to come by way of a *civil list* (although it was not, yet, called such). Thus, to fund the sovereign, in 1660, Parliament did 3 things:

1. *Abolished Military Revenues* All old military tenures were abolished (thereby, abolishing any revenues arising to the sovereign from the same);¹⁵¹

2. *Crown Land Revenues still Kept*. The sovereign would still receive: (a) Crown land revenues; and (b) 'flowers of the Crown' revenues. Together, often, called 'old hereditary revenues'.¹⁵² Also, revenues from the duchies of Lancaster and Cornwall;

3. *Excise & Customs Duties*. However, 1 & 2 being insufficient to meet the ordinary expenditure of a rapidly expanding government, Charles II, also, received (more importantly) a large amount of excise and customs duties.

(b) Further Dissipation of Crown Land Revenues

One would have thought that such income would be enough. Yet, the lessons of history had not been learned. Charles II was hugely dishonest, dissipated and not at all bright (something of a trait in English sovereigns) and the dissipation of the newly re-allocated Crown land (and their revenues) continued. Thus, Plucknett after noting the example of his father (Charles I) (see **13(b)**), continued:

His example was followed by the Parliaments of the Commonwealth; and although at the Restoration [in 1660] these latter sales were declared void, Charles II [1660-85] soon squandered the estates which had been restored to the Crown, and in three years reduced their annual income from [£217k to £100k]. James II [1685-8] and William III [1688-1702] were equally liberal and improvident,¹⁵³ and on the accession of Queen Anne [1702-14], it was found by Parliament that the Crown lands had been so reduced that the net income from them scarcely exceeded the rent roll of a squire.¹⁵⁴

The above sovereigns were (well) aware of the legal position. They did not *own* Crown land. They only had the *use* of it while sovereign. However, the problem lay with Parliament not doing anything when sovereigns treated Crown land as their own. The reason lay with the reality that Parliament - during the above reigns - was both corrupt and heavily influenced by the sovereign (in the Lords).

- That said, the true legal position prevailed at times of crisis. Thus, as James II (1685-8) discovered - when he fled the realm and was held by Parliament to have abdicated (recognised by the Bill of Rights 1688) - his position was no different to that of Edward II (see **9**) and of Richard II (see **10**);

¹⁴⁸ Plucknett, n 110, p 602.

¹⁴⁹ Act abolishing the Office of King (1648-9). See GB Adams & HM Stephens, *Select Documents of English Constitutional History* (1933), p 397.

¹⁵⁰ See JR Tanner, *English Constitutional Conflicts of the Seventeenth Century 1603-1689* (1962), p 216. The position as to Crown land in England and in Ireland was not the same.

¹⁵¹ The Abolition of Tenures Act 1660 abolished them. See also *Appendix A*.

¹⁵² These were things such as revenue from: (a) *escheat*; (b) royal mines (gold and silver mines); (c) waif and estray; (d) *bona vacantia*; (e) Crown *droits* (rights); (f) *deodands*. Yet, these brought in small sums. For the position in 1765, see Blackstone, n 26, vol 1, ch 8. For the position by 2001, see Phillips, n 98, p 314.

¹⁵³ Because William III (1688-1702) so dissipated the Crown lands, there was no money to pay for the operation of government nor for the royal household. For the historical position of the civil list, see *Appendix A*.

¹⁵⁴ Plucknett, n 110, p 602.

- That is, he lost all and became penniless. There was no question of private land (or revenues) being mixed with Crown land (or revenues). *All* Crown land belonged to the Crown; that is, held by the sovereign in the body politic.¹⁵⁵ Lose sovereignty, therefore, and lose all.

15. CROWN LANDS ACT 1623

There are two pieces of legislation still extant which deal with Crown land. The Crown Lands Act 1623 and the Crown Lands 1702 (for which see 16). Both have been dealt with in detail in a prior article.¹⁵⁶ It argued that both should be repealed as unnecessary. However, for present purposes, the following may be noted in respect of this 1623 Act:

- At common law - when the Crown leased land and made it a condition of such that the lease was voided on non-payment of rent - it could re-enter without demand. This 1623 Act (ss 1 & 2 extant) clarified that - where a tenant of Crown land defaulted in the payment of rent (or services) but remedied such prior to the forfeiture of the land - the Crown (or any grantee) could not take any advantage (i.e. go ahead and forfeit the land). It is unclear whether this Act could be applied to the modern Crown Estate. However, it is asserted that this Act is not needed in any case and it should be repealed, leaving the general law to apply;
- The title to this 1623 Act refers to '*Crown Lands*'.¹⁵⁷ And, s 2 also refers to where the sovereign grants lands where the reversion, remainder or estate is (or shall be) in '*the King's Majesty, or his successors, in the right of the Crown*';
- Since the above refers to Crown land it seems a clear statutory acceptance in 1623 that the ownership of the same was that of *the Crown* (not the sovereign in the *body natural* nor the sovereign in the *body sole*). Further, according to the Act of 1533 (see 12), the reference to the same means the sovereign as head of a body aggregate comprising the nation (all subjects). That is, Parliament held title to all Crown land.

In conclusion, this Act of 1623 should be repealed, as obsolete. However, it terms seem to (clearly) indicate that title to Crown land is held by the Crown. That is, Parliament, on behalf of the nation.

16. CROWN LANDS ACT 1702

This Act does not apply to the Crown Estate (nor to the private estate of the sovereign nor to the Duchy of Lancaster). It was designed to prevent dissipation of the royal demesne.¹⁵⁸ It voided any grant (or lease) of Crown land which was longer than 31 years (or 3 lives) (save for houses, where the term was 50 years). It has been asserted, in any case, that this Act is unnecessary and should be repealed. One other thing should be noted. This Act, s 5 recites that:

the necessary expenses of *supporting the Crown*, or the greater part of them, was formerly defrayed by a land revenue, which hath, from time to time, been impaired and diminished by the grants of former kings and queens of this realm, so that [HM's] land revenue at present can afford very little towards the support of her government.¹⁵⁹ (*italics supplied*)

S 5 went on to refer to grants of land *etc* made by the sovereign, her heirs or successors '*in right of the Crown*'. S 8 also referred to debts due to the '*Crown*'.

Thus, as with the 1623 Act (see 15), this Act - since it refers to Crown land in this fashion - seems to comprise a clear statutory acceptance that the ownership of Crown land lay with the *Crown* (not in the sovereign in the *body natural* nor the sovereign in the *body sole*). Further, according to the Act of 1533 (see 12), the reference to the same means the sovereign as head of a body aggregate comprising the nation (all subjects) *viz.* Parliament.

Finally, the 1702 Act was fairly revolutionary in its way. It was the first time that Parliament by legislation limited (considerably) the ability of the sovereign to manage Crown land. Prior to this, the sovereign had been given a free hand (although not owing the Crown estate). Now, Parliament was actively involving itself in the management of Crown land.

- Also, looking to finance the sovereign and the royal household by way of a fixed sum of money (a civil list as we know it) while progressively taking away all the functions (and cost) of government from the same;

¹⁵⁵ Finally, to cite a more modern instance, in 1936, when Edward VIII (1936) abdicated, if any Crown land (the Crown Estate) or revenues, had belonged to him personally he could have asserted the right to take them with him. However, of course, he did not since none of the Crown Estate (or the duchies) comprised part of his *private* estate. Nor, since the Act of 1800, has any sovereign asserted otherwise.

¹⁵⁶ GS McBain, *Modernising the Monarchy - in Legal Terms* (2010) King's LJ, vol 21(3), pp 535-60.

¹⁵⁷ *viz.* 'An Act for the relief of patentees, tenants, and farmers of Crown lands... *etc.*'

¹⁵⁸ Plucknett, n 110, p 602 'To preserve what still remained, an Act was passed [the 1702 Act] which after sadly reciting 'that the necessary expenses of supporting the crown, or the greater part of them, was formerly defrayed by a land revenue, which hath, from time to time, been impaired and diminished by the grants of former kings and queens of this realm, so that [HMs] land revenue at present can afford very little towards the support of her government', prohibited absolute grants entirely, and prescribed stringent conditions as to the length of term and rentals of all future leases. Thus the small remnant of the crown lands was saved from utter dissipation.' See also J Chitty, *A Treatise on the Law of the Prerogatives of the Crown* (1820), pp 203-4.

¹⁵⁹ See also note above.

- As it is, when George I (1714-27) no longer attended cabinet (from 1717) - since he recognised that his ministers were no longer responsible to him but to Parliament¹⁶⁰ - a further big step was taken *viz.* recognition that the sovereign no longer, in practice, ran government. It was inevitable, therefore, that the civil list would (in time) shrink, to only cover the sovereign and the royal household.

In conclusion, this Act of 1702 should be repealed, as obsolete. However, its terms seem to clearly indicate that title to Crown land was held by the Crown. That is, by Parliament, on behalf of the nation.

17. SURRENDER OF CROWN LAND REVENUES IN 1760

(a) Accession of George III in 1760 - Surrender of Most Hereditary Revenues

The events of 1760 are, often, mis-stated. This has been productive of confusion.

- From 1660-1760, Parliament was constantly having to financially bail out (in many cases) improvident sovereigns. However, it was not wholly their fault. Government was expanding. So too, the royal household. Thus, more money was needed. Both, also, were - often - mis-managed since - in those times - ministers and servants of the Crown were not appointed for their financial acumen. Indeed, Crown offices (including ministerial appointments) contained a huge number of sinecures - as well as appointments secured by bribery *etc.*;
- Thus, there began - from the restoration of the monarchy in 1660 with Charles II (1660-85) - a system of Parliament financing the monarchy by handing over an annual, fixed sum of money (a civil list) - although the expression '*civil list*' is, usually, only applied *post*-1760. For this, see *Appendix A*.
- As it is, George III (1760-1820) - when he came to the throne - found that the sums produced from the revenues of Crown land - as supplemented by further monies supplied by Parliament - were (as usual) insufficient to finance the operation of the *royal household*, which still included a large amount of government (paying the wages of judges, ambassadors, the civil service, the secret service *etc.*). Thus, he decided to do something about it.

Unlike prior sovereigns, George III surrendered most of the present means of finance for his government called the '*old hereditary revenues*' (which included Crown land revenues) in return for a fixed annual payment. As Maitland noted:

On the accession of George III (1760-1820)...the king gave up for his life the greater part of the hereditary revenues of the Crown, including the crown lands [revenues],¹⁶¹ many minor prerogatives and the hereditary excise...¹⁶²

What the sovereign did not surrender was the *Crown land itself*. This, for the obvious reason that he did not *own it* (although this is, invariably, overlooked). There was an element of farce in this surrender of hereditary Crown revenue in return for a fixed payment, since it was simply a case of the Parliament substituting a:

- (a) fixed sum of £800k pa (which could not be exceeded); for
- (b) money paid to George arising from hereditary revenues which had been allocated to the sovereign to maintain government - and the royal household - since the restoration of the monarchy in 1660.¹⁶³

In short, things were simplified and the sovereign got a one-off 'up front' fixed annual payment (as opposed to intermittent revenues). As it is, the sum of [£800k pa]¹⁶⁴ given to George III was still not enough to finance government and the royal household (in goodly part, because of all the corruption - to which George was happy to contribute).¹⁶⁵ Thus, as Feilden noted:

in 1769, and again in 1777, debts were paid by Parliament, and on the latter occasion, the list was increased to [£ 900k]. Frequent debates on the subject culminated in Lord Rockingham's Civil List Act, 1782 (22 Geo III, c 82), which regulated the expenditure, and diminished offices, pensions and secret service money. The debt, however, increased, and the civil list was again raised in 1812, and 1816, reaching in the latter year over a million, whilst various items of expenditure were removed. In 1831, William IV gave up the hereditary revenues of Scotland, the civil list for Ireland and other interests, accepting in exchange a civil list of [£510k], which was still further relieved

¹⁶⁰ See McBain, n 2, p 284.

¹⁶¹ This, rather important, word has been missed out.

¹⁶² Maitland, n 29, p 436.

¹⁶³ S Amos, *Fifty Years of the English Constitution 1830-1880* (1880), p 216 'The story of the civil list from the time of Charles II [1660-85] to that of its final settlement in the present reign [of Victoria] is that of a series and partial and tentative efforts on the part of Parliament to substitute a definite grant of money to the Crown for certain portions of its hereditary revenues...'

¹⁶⁴ It may be noted that annual revenue from Crown lands was only £6k, from 1760-85, see HC Feilden, *Short Constitutional History of England* (1922), p 176.

¹⁶⁵ Plucknett, n 110, p 601 'notwithstanding the king's economical and even parsimonious mode of living...his struggle to establish the ascendancy of the Crown by systematic bribery of members of parliament...compelled him to make repeated applications to the nation for the payment of debts upon the civil list.' Also, it may be that the prime minister, the Duke of Newcastle, told the king that this civil list was '*Your Majesty's own money; you may do with it what you please.*' (see V Bogdanor, *The Monarchy and the Constitution* (1997), p 184). If so, the Duke was even more stupid than the sovereign since the £800k was to finance the whole of government; it was not just the pocket money of the king.

by the removal of judicial salaries, and other expenses. The civil list of the Queen [Victoria], which has been relieved from all extraneous charges, is [£385k]...¹⁶⁶

The result is that all governmental functions had been stripped from Crown by the reign of Edward VIII (1901-10), so that he was paid a sum of £470k pa to maintain himself and his royal household only. For this, see *Appendix A*.

(b) 1760 Act did not separate Crown and Private Estate

When the 1760 Act took away from the sovereign the revenues arising from the operation of the Crown land, it would have been (very) useful if it had, then, allowed the sovereign to own land *privately*. This would have been to return to the Anglo-Saxon position under which there was a separation between: (i) Crown land; and (ii) private land held by the sovereign (see **3**). As it was, the Act did not. This had to await until 1800 (see **18**). As to the ownership of Crown land, it seems clear that Blackstone in his work, *Commentaries on the Laws of England* (1st ed, 1765-9), stated the true position (which had been latent since 1322, see **6(d)**). Thus, he stated:

The next branch of the king's ordinary revenue... consists in the rents and profits of the demesne lands of the Crown. These demesne lands, *terrae dominicales regis*...were antiently very large and extensive. At present they are contracted within a very narrow compass, having been almost entirely granted away to private subjects. This has occasioned the parliament frequently to interpose; and particularly, after king William III [1688-1702] had greatly impoverished the Crown, an Act [of 1702, see **16**] passed whereby all future grants or leases from the Crown for any longer term than [31] years or three lives are declared to be void *etc.*...¹⁶⁷ (*underlining supplied*)

Blackstone, generally, used his words carefully. Thus, it seems clear that he accepted that Crown lands were not held by the sovereign in the *body natural* - nor by the sovereign as a *corporation sole* - but by the 'Crown'. That is, by a corporation aggregate. Given this, it seems likely that Blackstone would (if asked) have confirmed that the reference to the latter was to the *Crown holding on behalf of the nation*, as per an Act of 1533 and *Willion v Berkley* (1559)(see **12**). Blackstone might also have asserted that both the Acts of 1623 and 1702 (see **15** and **16**) supported this proposition.

In conclusion, by 1765, it seems to have been legally accepted by considerable textual authority (Blackstone) that Crown land was owned by the Crown (not the sovereign in a natural capacity, nor as a corporation sole).

18. CROWN PRIVATE ESTATE ACT 1800

This Act is dealt with in more detail in **31**. However, its effect was important. At last, it enabled sovereigns to own land *privately*. Such was useful since, thereafter, it provided a clear indication as to what land comprised Crown land. Thus, it was *definitive* that the sovereign had no claim on the same. It is noteworthy, for example, no sovereign has, since this 1800 Act, ever sought to claim that Crown land (i.e. the royal palaces, parks, the foreshore, tidal waters, public rivers *etc*) are owned by the sovereign *privately* (if so, they would be governed by the 1800 Act and held by trustees). The same also applies to the duchies of Lancaster and Cornwall. Hearn noted (in 1880):

The same century witnessed, by a singular revolution in policy, a recurrence to the ancient practice of the Anglo-Saxons respecting the property of the king. The Crown lands were virtually restored to the public [nation]; and the king obtained [by the Act of 1800], the right of acquiring landed property by purchase, and of devising it like a private person.¹⁶⁸

One would agree. However, it is a pity that this Act of 1800 did not (in a schedule) set out what comprised Crown land at that time. Nor, expressly stated that Crown land was owned by the nation. By not doing, confusion crept in.

In conclusion, this 1800 Act clearly separated Crown land from land privately owned by the sovereign - something which had been latent since 1322 but never firmly stated in legislation before.

19. RISE OF OBSCURITY RE OWNERSHIP OF CROWN LAND - HALSBURY (1909)

Despite Blackstone making it pretty clear that Crown land was owned by the Crown, obscurity crept in. Thus, Halsbury (1st ed, 1909) stated:

The lands which the *sovereign enjoys in his body politic in right of the Crown* [i.e. the Crown owns] comprise the remaining demesne lands which were acquired at the original distribution of landed property, or which came to the Crown afterwards by forfeiture or other means; (*italics inserted*)
the lands and rights relating to land which are enjoyed by virtue of the prerogative, such as foreshore, lands formed by alluvion or left bare by diluvion,¹⁶⁹ and

¹⁶⁶ Feilden, n 164, pp 176-7.

¹⁶⁷ Blackstone, n 26, vol 1, p 276.

¹⁶⁸ Hearn, n 10, p 350. Cf. Maitland, n 29, p 432 'Now even this Act [that of 1702] drew no distinction between lands belonging to the public, and those belonging to her in her private capacity... This was done in 1800.'

¹⁶⁹ There is no evidence that lands formed by 'alluvion' or 'diluvion' or the foreshore were ever treated distinct from other Crown land. That is, no evidence in Anglo-Saxon law (it seems) that they were treated different to any other part of Crown land. Further, even if they were, William I (1066-87), when he claimed title to all English land, made no exception to the same. This raises an interesting question of whether

royal mines,

as also the lands and rights which are acquired by virtue of the prerogatives of *escheat* and forfeiture.¹⁷⁰ (*wording divided for ease of reference*)

The phrase that Crown land is [t]he lands which the sovereign enjoys¹⁷¹ in his body politic in right of the Crown' is obscurely put. It would have been better to have said that Crown land is land:

- owned by the Crown; or
- owned in right of (i.e. by) the Crown.

Even the heading inserted by Halsbury stated it better *viz.* 'Lands enjoyed [owned] in right of [meaning 'by'] the Crown.' Indeed, while being obscure *re* Crown land Halsbury was clearer when writing about the Crown's ownership of tidal waters, public navigable rivers or the foreshore.¹⁷²

20. RISE OF OBSCURITY RE OWNERSHIP OF CROWN LAND - CROWN ESTATES ACT 1961

The Crown Lands Acts of 1851-2 placed the *management* of Crown lands in a statutory corporation - the Commissioners of Work, now the Crown Estate.¹⁷³ However, as to who *owns* the Crown land, the wording in the Crown Estate Act 1961 (still extant), s 1 is a model of obscurity. Instead of saying that the Crown owns Crown land (*a la* Blackstone, see **17(b)**) but the Crown Estate shall:

- (a) be treated as if the owner; and shall
- (b) manage the same, save where a SI provides otherwise,

it trundles out the following:

(1) The Crown Estate Commissioners (in this Act referred to as "*the Commissioners*") shall continue to be a body corporate for all purposes, charged on behalf of the Crown with the function of managing and turning to account land and other property, rights and interests, and of holding such of the property, rights and interests under their management as for any reason cannot be vested in the Crown or can more conveniently be vested in the Commissioners; and the property, rights and interests under the management of the Commissioners shall continue to be known as the Crown Estate.

(2) Subject to the provisions of this Act, the Crown Lands Acts 1829 to 1936 shall cease to have effect, and the Commissioners shall, for the purpose of managing and improving the Crown Estate or any part of it, have authority to do on behalf of the Crown over or in relation to land or other property, rights or interests forming part of the Crown Estate, and in relation to all matters arising in the management of the Crown Estate, all such acts as belong to the Crown's rights of ownership, free from any restraint on alienation imposed on the Crown by [1702 Act, s 5] or by any other enactment (whether general or particular), and to execute and do in the name of [HM] all instruments and things proper for the effective exercise of their powers.

However - despite the verbiage - it seems clear that s 1(2) accepts the '*Crown's rights of ownership*' in Crown land. The difficulty with this section seems to have resulted in the Crown Estate commissioners being uncertain as to who owned Crown land since, in their report for 1978, after stating that the Crown Estate was an estate in land,¹⁷⁴ they continued:

*The estate itself remains part of the hereditary possessions of the sovereign in right of the Crown. It is not government property...but neither is it part of the private estate of the reigning monarch.*¹⁷⁵

While it is clear they accepted that Crown land was not owned by the sovereign in the *body natural*, the wording '*hereditary possessions of the sovereign in right of the Crown*' is little more than legal gobbledegook since the issue is ownership - not *possession*. Also, to refer to '*the sovereign in right of the Crown*' is the same as simply stating '*the Crown*'. Even so, to call Crown land a '*hereditary possession of the Crown*' is inaccurate. Parliament does not own it as such. It is not '*hereditary*' since it never not owned it.

In conclusion, the Crown Estate (Crown land) is owned by the Crown. This means it is held by Parliament (a body aggregate with the sovereign as head) on behalf of the nation.

the *sovereign* himself could ever grant away (i.e. franchise) alluvion, diluvion or foreshore. That said - as with Crown land - sovereigns may have franchised foreshore illegally. In respect of the Duchy of Cornwall the position at common law as to whether it held the foreshore in the duchy was unclear. Thus, this was provided for in the Cornwall Submarine Mines Act 1858. See Halsbury (1st ed 1909), vol 7, pp 113-4. Cf. Chitty, n 158, p 207 (where he suggests the king is owner of foreshore and, thus, can franchise it. This seems dubious; thus, all the more reason for the Crown Estate to contest the same).

¹⁷⁰ Halsbury, *Laws of England* (1st ed, 1909), vol 7, pp 111-2. Forfeiture was abolished in 1870.

¹⁷¹ 'Enjoys' means 'owns'.

¹⁷² Halsbury (1st ed, 1909), vol 7, p 112 '*The Crown is by prerogative right the prima facie owner of all lands covered by the narrow seas etc.*' (*italics supplied*).

¹⁷³ Thus, the Crown Estate Commissioners now manage the Crown estate (Crown land), see Crown Estate Act 1961, s 1(1) 'body corporate charged ...with the function of managing and turning to account land...'. It does not say that the Crown Estate owns the land.

¹⁷⁴ Report of the Crown Estate Commissioners for the year ended 31st March 1987, p 25 'The Crown Estate is an estate in land. Its origins go back at least to the reign of Edward the Confessor [1042-66]. It includes a wide variety of land and landed property deriving from a number of different sources.' This may be so, but an '*estate in land*' has no legal meaning as such (nor a 'landed estate' nor a 'landholding').

¹⁷⁵ *Ibid.*

21. CONCLUSION - MODERNISING THE LAW

This review of the history of the Crown land indicates that:

- *Crown Land never owned Privately*. Crown land was never owned by the sovereign in the *body natural* (although some sovereigns *post-Conquest 1066* sought to treat it so). The proof of this is that - when a sovereign abdicated (forcibly or otherwise) - Crown land never went with him as his *privately* owned land. Crown land was inalienable;
- *No Sovereign has asserted so, post-1800*. Since the Crown Private Estate Act 1800, no sovereign has sought to treat Crown land as part of their *private estate*.

Today, it is appropriate - not least to enable the Crown Estate to play a pivotal role in holding the nation's assets - that modern legislation states the true legal position *viz.* Crown land is owned by the Crown, but managed by the Crown Estate.

- Indeed, it was a pity, perhaps, that, in 1660, when Parliament restored the revenues of Crown land to Charles II (1660-85) the latter was not called the '*National Estate*' - to emphasise that it was, simply, land owned by the nation (as from Anglo-Saxon times) the *revenues* of which were granted to the sovereign (while such) to enable him to finance the apparatus of government;
- The failure to do so, probably, helped to found a myth, *post-1800* that - in some way - Crown land was, at one time, the *private estate* of the sovereign. However, there is no evidence of such.

Thus, perhaps - since Crown land is a *national* asset - it would seem more appropriate that there be a statutory corporation aggregate established called the '*National Estate*'. Then, everyone will know where they stand. For possible modern legislation, see *Appendix B*.

Having considered who owns the Crown land (answer, the Crown) it is time to turn to legislation relating to Crown land still on the statute book, for which see below.

22. CROWN LANDS 1760-1961

Legislation affecting the Crown land - apart from the Acts of 1623 and 1702 - (see **15** and **16**) comprises Acts (or, rather, bits of Acts) which date from 1851, 1852, 1874, 1894 (twice), 1906, 1927, 1936 and 1961. Most of this is, quite frankly, very dull (and obscure) since it concerns certain London royal parks. Readers might like to skip this bit and go to **29**. However, it may be summarised as follows:

- Until 1782 Crown land was poorly managed and it produced a very low income. In 1782, a Civil List Act sought to specify more accurately how money was to be applied to maintain Crown land since the situation was very opaque. Also, the Act abolished various sinecures. Further, the Act (s 7) appointed a general surveyor (comptroller) to look after the royal gardens (parks);
- In 1794 the management of Crown land was improved by legislation and, in 1810, Crown land was put under the control of a Commissioners of Woods and Forests.¹⁷⁶ In 1851, royal parks were put under the management of Commissioners of Works (later, the Secretary of State ('SS') for Culture);
- Royal parks are dealt with in the legislation referred to in **23**. However, today, although title to these parks lies with the Crown, the SS for Culture is responsible for them. And, management is provided by a charity (Royal Parks Charity, www.royal-parks.org.uk). Thus, as will be seen, it is asserted that title to all royal parks should be divested, whether to the Ministry of Culture or to the relevant London boroughs.
- Apart from this legislation on royal parks, the Crown Estate Act 1961 sought to put the Crown Estate on a more modern footing (see **28**).

Bearing the above in mind, legislation concerning the Crown Estate is now discussed.

23. CROWN LANDS ACT 1851

(a) Content of the Act

This Act is entitled '*An Act to make better provision for the Management of the Woods, Forests, and Land Revenues of the Crown, and for the direction of Public Works and Buildings*'. It contains the following sections:¹⁷⁷

S 15 (*Appointment of ex-officio Commissioners of Works and Public Buildings*). '[HM's] Principal Secretaries of State for the time being, and the President and Vice President for the time being of the Committee of Council appointed for the consideration of matters relating to Trade and Foreign Plantations, shall by virtue of their respective offices be Commissioners of Works ['CoW'] ... and shall... be styled "*The Commissioners of [HMs] Works and Public Buildings.*" (*wording in italics is obsolete*)

The functions of the CoW are now exercised by the SS for Culture.

S 21 (*Commissioners of Works, &c. to perform the duties formerly performed by Surveyor General*). All the duties and powers which would have been performed and exercised by the Surveyor General of [HMs] Works and Public Buildings if the Crown Lands Act 1832 had not been passed, and the exemptions and privileges which would have been enjoyed by the said Surveyor General ['SG'] if such Act had not been passed, so far as such duties and powers, exemptions and privileges, are not inconsistent

¹⁷⁶ Amos, n 163, p 225. In 1832 it was combined with the Department of Public Works.

¹⁷⁷ See also, for the history, AB Keith, *The Constitution of England from Queen Victoria to George VI* (1940), vol 2, pp 76-7.

with the enactments of this Act, shall be performed, exercised, and enjoyed by such [CoW]; and all Acts of Parliament, deeds, and other instruments, in which the [SG] of Works and Public Buildings is mentioned, so far as the said deeds and instruments are now in force, and so far as the enactments of the said Acts are not inconsistent with the enactments of this Act, shall apply to the [CoW], as if such [CoW] had been originally named or mentioned in such Acts of Parliament, or named or mentioned in or made parties to such deeds and instruments respectively, instead of such [SG].

S 22. (*Duties of Commissioners of Woods, &c. in relation to royal parks, &c., and under the Acts in schedule, vested in [CoW]*). The [CoW] shall perform and exercise the duties and powers of management, and all other duties and powers which, if this Act had not been passed, would have been performed and exercised by the Commissioners of [HMs] Woods, Forests, Land Revenues, Works, and Buildings, of and in relation to the royal parks, gardens, and possessions herein-after mentioned; that is to say,

Saint James's Park *
Hyde Park *
Green Park *
Kensington Gardens *
Chelsea Garden
The Treasury Garden
Parliament Square Garden
Regent's Park *
Primrose Hill
Victoria Park
Battersea Park
Greenwich Park *
Kew Gardens, Pleasure Grounds & Green
Kew Road
Richmond Road
Hampton Court Gardens, Green & Road
Hampton Court Park
Richmond Park & Green *
Bushey (Bushy) Park
*Holyrood Park*¹⁷⁸

S 23 (*Powers as to parts of the parks preserved to Commissioners of Woods &c. under this Act*). Provided always, that all such houses, gardens, and portions of ground within any of the royal parks herein-before mentioned, as are now leased or agreed to be leased, shall be under the management of the Commissioners of Woods; and all the powers of leasing such parts of Victoria Park and Regent's Park respectively as, if this Act had not been passed, might from time to time be leased by the Commissioners of [HMs] Woods, Forests, Land Revenues, Works, and Buildings, and all powers in relation to the parts so to be leased, which would have been vested in or might have been exercised by such last-mentioned Commissioners, shall be vested in and may be exercised by the Commissioners of Woods.

Management of the Commissioners of Woods was transferred to the Commissioners of Crown Lands in 1927 and, then, in 1956 to the Crown Estate Commissioners ('CEC'). Those with an * are now managed by the Royal Parks Charity, as noted in 22.

24. COMMISSIONERS OF WORKS ACT 1852

(a) Content of the Act

This Act amended the Act of 1851. It contains the following extant sections:

S 1 (*Commissioners of Works and Public Buildings incorporated for the purpose of holding lands, &c. under this Act*). The persons who for the time being, under the provisions of the Crown Lands Act 1851 shall be the [CoW] shall be and they are hereby constituted a corporation, by the name and style of "*The Commissioners of [HMs] Works and Public Buildings*," and by that name shall and may have perpetual succession, and use a common seal, to be by them from time to time altered as they shall think fit, for the purpose of taking and holding all the lands, tenements, and hereditaments whatsoever, of every tenure, by this Act vested in them, or hereafter to be vested in or purchased by them under or by virtue of the provisions of this Act, and of conveying, assigning, leasing, underleasing, or otherwise disposing of the same lands, tenements, and hereditaments, and of entering into any covenants or agreements respecting any such hereditaments vested or to be purchased, taken, or disposed of as aforesaid, but not for any other purpose.

¹⁷⁸ Now owned by the Scottish Ministers and managed by Historic Environment Scotland.

S 2 (*CoW may purchase lands for public service, and may sell the same etc*). It shall be lawful for the [CoW] to purchase, take, or accept any hereditaments, of what tenure so ever, necessary for the public service, and to sell or exchange the same, and give a good discharge for the purchase money thereof to any purchaser or other person, and to grant any lease or leases, underlease or underleases of any such hereditaments so taken as aforesaid, and to enter into any agreements for such sale, exchange, lease, or underlease; so nevertheless that all such hereditaments shall be purchased, taken, exchanged, sold, or leased, and the produce and income thereof applied with the consent of the Treasury which may be given either generally for any class of case, or for any particular transaction, and so as every conveyance of any freehold hereditaments in England, Wales, or Ireland, made to or by the said [CoW] under the authority of this Act, be enrolled amongst the records of the Court of Exchequer in England or Ireland, as the case may be; and all acts by this Act authorized to be done by the [CoW] and all and every the powers and authorities whatsoever by the [Crown Lands Act 1833]¹⁷⁹ and vested in or transferred to the commissioners thereby appointed, may be executed and done by the First Commissioner for the time being of Works or by any two of the said commissioners.

S 4 (*Courts and buildings of the Courts of Session, Justiciary, &c. at Edinburgh vested in the Commissioners of Public Works*). All the courts, court houses, and buildings for the accommodation of the courts of Session, Justiciary, or other the supreme courts at Edinburgh, and of the clerks and officers thereof, and all the lands and buildings connected therewith, and all lands whereon the same are built, and all lands or heritages held therewith, or purchased or acquired under or by virtue of the Acts passed in the [46 Geo III c 154], [48 Geo III c 146] the Jury Trials (Scotland) Act 1819 and the Courts of Justice (Scotland) Act 1825, or any of them, shall be vested in the [CoW] in their corporate capacity, for the purposes specified in the aforesaid Acts respectively, and shall be maintained and kept in repair by the said commissioners by and out of all funds (if any) now applicable for that purpose, and which funds shall be vested in or payable to the said commissioners, or by and out of such funds as shall be directed by Parliament to be applied to such purposes.

S 5 (*Commissioners may sell, exchange, &c. lands and buildings not required for their original purpose*). As regards such of the said lands, buildings, or other heritages so hereby vested in the [CoW] as may not have been or shall not be required for the purposes for which they were acquired, the said commissioners may from time to time grant, sell, exchange, or convey the same, and lease or agree to lease the same till sold, exchanged, or conveyed; and the monies arising from any such sale or lease shall be paid to the Consolidated Fund of the [UK] of Great Britain and Ireland, but the receipts of the said commissioners shall be sufficient discharges to any purchaser or lessee paying any monies to them; and the said commissioners may complete or carry into effect any contract for sale, grant, exchange, or lease of any part of the said lands, buildings, and heritages herein-before entered into by any trustees of the same, or by the Commissioners of [HMs] Woods, Forests, Land Revenues, Works, and Buildings, or any person or persons on their behalf.

S 6 (*No sale, &c. without consent of Treasury*). Provided, nevertheless, that no such sale, grant, exchange or lease shall be made except with the consent of the Treasury.

(b) Modernisation

This Act, which is linked to the 1851 Act (see 23) should be repealed. In respect of s 4, this should pass to the Scottish Parliament (if still required).

25. WORKS AND PUBLIC BUILDINGS ACT 1874

This Act is entitled ‘*An Act to regulate the incorporation of the Commissioners of [HMs] Works and Public Buildings, and for other Purposes thereto.*’ It contains the following sections:

S 2 (*Commissioners incorporated by [1851 Act] to have the powers conferred on subsequent Commissioners*). The [CoW] as incorporated by and for the purposes of the Crown Lands Act 1851, are hereby declared to be, and shall be a corporation to all intents and purposes, and as such shall have and hold, and may exercise not only all the estates, property, interests, privileges, and powers now vested in or enjoyed by them under that Act, but also all estates, property, interests, privileges, and powers now vested in or held or enjoyed by the [CoW] as a corporation under the Commissioners of Works Act 1852 or any subsequent Act, and in or by the *Battersea Park Commissioners*. [spent]

S 3 (*Duties of continuing corporation*) The continuing corporation shall perform all the duties, and be subject to and bear and discharge all the existing liabilities of all the dissolved corporations out of the funds applicable to the same respectively, and shall have the benefit of all covenants and agreements entered into with any of the dissolved corporations.

S 4 (*Powers of Commissioners*). The first Commissioner and the other Commissioners for the time being of Works, and all officers of the [CoW], shall retain and have for the purposes of this Act in relation to the corporation hereby confirmed all the powers and authorities given to or enjoyed by them in relation to any of the corporations hereby dissolved, and also all the powers and authority given to or enjoyed by them by or under the Crown Lands Act 1851 and the Commissioners of Works Act 1852.

S 5 (*Transfer of Dunfermline Palace, &c. from Commissioners of Woods to Commissioners of Works*). The Royal Palace of Dunfermline or ruins thereof, and so much of the land adjacent thereto as is now vested in or belongs to [HM] in right of her Crown, and also the Royal Palace of Linlithgow or ruins thereof, and the peel or park surrounding the same, with the adjacent loch, also the King’s Garden and Knott, being part of the Crown estate, Stirling, shall be and the same are hereby transferred from the management of the Commissioners of Woods to the management of the [CoW] as if the said palaces and lands had been included in the [Crown Lands Act 1851, s 22].

¹⁷⁹ The only extant section appears to be s 8 (*original conveyance etc to be evidence of right and title in a court*). Such is unnecessary today, given the Civil Evidence Act 1968.

This Act, which is linked to the 1851 Act (see **23**) should be repealed. In respect of s 5, this should pass to the Scottish Parliament (if still required).

26. COMMISSIONERS OF WORKS ACT 1894

This Act provides:

S 1 (*Provisions as to sales, purchases, &c. under [1851 Act]*). (1) For the purpose of the purchase of land by the Secretary of State ['SS'] under the Commissioners of Works Act 1852, the provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than [s] 31, shall apply. In the said Part I as so applied the word "*land*" means (except where the context otherwise requires) any corporeal hereditament, including a building, and, in relation to the acquisition of land under the said Act of 1852, includes any interest in or right over land. (2) In the case of any purchase, sale, exchange, or lease by the [CoW] under the [1852 Act] it shall not be necessary for any vendor, purchaser, lessor, or lessee to ascertain whether the consent of the Treasury has been given to the purchase, sale, exchange or lease.

S 2. (*Provisions as to office of Civil Service Commission*). The building and land now in the occupation of the Civil Service Commission shall be under the management of the [CoW] and the provisions of the Acts relating to the [CoW] shall apply to that building and land as if they had been acquired by the [CoW] in pursuance of those Acts.¹⁸⁰

This Act, which is linked to the 1852 Act (see **24**) should be wholly repealed (s 3 is spent anyway).

27. CROWN LANDS ACTS 1894, 1906, 1927 & 1936

(a) Content of these Acts

The 1894 Act contains one section extant *viz.*

S 6 (*New lease to operate as surrender of old lease*). Where any person, in whom property belonging to the Crown is vested under a lease, accepts a new lease of the property, either to begin presently or at any time during the continuance of the existing lease, the acceptance of the new lease shall, as from the commencement of the term of the new lease, but subject to anything to the contrary expressed in the new lease, operate as a surrender of the existing lease as to so much of the property demised thereby as is demised by the new lease, but without prejudice to any rights or liabilities existing at the date of the surrender.

The 1906 Act amended the Crown Lands Acts 1829-94. It has the following sections extant:

3 (*Power of Board of Trade, &c. to settle disputes as to foreshore*). (1) If any claim to any foreshore on the part of the [Crown Estate Commissioners, CEC], or the Chancellor and Council of the Duchy of Lancaster ['CCDL'] is disputed by any of those departments the [CEC] with the consent of the Treasury, and the CCDL, may enter into an agreement for settling the dispute. (2) Any such agreement may provide for the payment to or by the [CEC] by or to the [CCDL] of any sum of money in satisfaction of any claim which the department, to whom the money is paid, may have had to the foreshore which is the subject of the agreement. (3) Any agreement under this [s] shall be executed on the part of the Chancellor and [CCDL] under the hand and seal of the Chancellor, and attested by the clerk of the Council.

S 6 (*Power of [CoW] to convey bridges*). (1) The [SS] may under and in accordance with the Crown Lands Acts 1829 to 1894, convey to a bridge authority willing and able to accept such a conveyance any bridge under the management of the [SS] and any land required for the purpose of widening or improving any bridge, either unconditionally or subject to such conditions and upon such terms as may be agreed upon between the [SS] and the authority, anything in those Acts to the contrary notwithstanding. (2) For the purposes of this [s] the expression "*bridge*" includes the approaches to and abutments of a bridge, and the expression "*bridge authority*" means any local authority having the duty of the care and maintenance of bridges.

S 7 (*Power to transfer management of Richmond and Kew Greens*). (1) Notwithstanding anything in the Crown Lands Act 1851, it shall be lawful for the [SS] and the council of the borough of Richmond to enter into an agreement for the transfer from the [SS] to the council of the control and management as open spaces of Richmond Green and Kew Green, and on the execution of such an agreement the Open Spaces Acts 1877 to 1890, shall, subject to any conditions and reservations contained in the deed of transfer, apply as if the control and management of those greens had been transferred to the council under those Acts. (2) The Minister of Agriculture, Fisheries and Food and the said council may, in like manner and with like effect, enter into an agreement for the transfer to the council of the control and management of the land, formerly part of Kew Green, which lies between Kew Green and the north-west entrance to the Royal Botanic Gardens, but until such transfer the land shall for all purposes continue to be deemed to be part of those gardens.

S 10 (*Payment and application of money*). Any money due from or received by [the CEC], or the [CCDL] under this Act shall be paid or applied as if it had been payable or received for the purchase or sale of lands.

S 11 (*Short title and interpretation*). This Act may be cited as the Crown Lands Act 1906 and with the Crown Lands Acts 1829 to 1894; and for the purposes of this Act the expression "*foreshore*" has the same meaning as in the Crown Lands Act 1866.

The only section of the 1927 Act extant states:

S 13 (*Power to exchange houses in Royal Parks, &c. for other houses*). (1) With the consent of [HM], signified in writing under the royal sign manual, the Treasury may by order - (b) transfer from the [SS] to the [CEC] the management of any house within any of the royal forests, parks or chases which is, at the time being, under the management of the [SS]. (4) In this [s] the expression

¹⁸⁰ S 3 (*Explanation of powers as to site of Millbank Prison*). 'It is hereby declared that the powers of sale and leasing exercisable by the [SS] with respect to the site of Millbank Prison extend to the site of the chapel formerly attached to that prison.' This appears to be spent.

“house” includes any garden or portion of ground attached to and usually occupied with the house or otherwise required for the amenity or convenience thereof.

The 1936 Act provided for the vesting in the CoW of certain Crown lands in Westminster for public offices and police offices. This Act has a lengthy *preamble* which is not set out. Nor Part 1 (extension and amendment of Public Offices (Sites) Act 1912). The 1936 Act contains the following extant section in Part 2 of the same:

9. (*Power to transfer the management of certain Crown Lands*). (1) Subject to the provisions of this [s], [HM]... (b) on the joint representation of the Commissioners of Crown Lands [‘CCL’] and the [CoW] may from time to time by Order in Council transfer to the [CoW] all or any of the powers of management of the [CCL] over any land situate within the road known as the Outer Circle in Regent's Park in London: *Provided that* the powers transferred by any such Order shall not include a power to sell or (without the consent of the [CCL]) to lease the land in respect of which the transfer is made.¹⁸¹

(b) Modernisation

These Acts are effectively redundant. All sections should be repealed. It may, also, be noted - at this juncture - that the revenue from the Crown land (Crown Estate) paid to the aggregate fund, by 1939, was very small.¹⁸²

28. CROWN ESTATE ACT 1961

This Act was designed to modernise the Crown Estate. It provided that it was an:

An Act to make new provision in place of the Crown Lands Acts 1829 to 1936 as to the powers exercisable by the Crown Estate Commissioners [‘CEC’] for the management of the Crown Estate, to transfer to the management of the Minister of Works certain land of the Crown Estate in Regent's Park and extend or clarify the powers of that Minister in Regent's Park, to amend the Forestry (Transfer of Woods) Act 1923 as it affects the Crown Estate, to amend the law as to escheated land, and for purposes connected therewith.

(a) Content of the Act

This Act contains the following extant sections:

S 1. (*Continuance of Crown Estate Commissioners, and general provisions as to their constitution and functions*). (1) The [CEC] (in this Act referred to as “the Commissioners”) shall continue to be a body corporate for all purposes, charged on behalf of the Crown with the function of managing and turning to account land and other property, rights and interests, and of holding such of the property, rights and interests under their management as for any reason cannot be vested in the Crown or can more conveniently be vested in the Commissioners; and the property, rights and interests under the management of the Commissioners shall continue to be known as the Crown Estate [‘CE’]. (2) Subject to the provisions of this Act, the Crown Lands Acts 1829 to 1936 shall cease to have effect, and the Commissioners shall, for the purpose of managing and improving the [CE] or any part of it, have authority to do on behalf of the Crown over or in relation to land or other property, rights or interests forming part of the Crown Estate, and in relation to all matters arising in the management of the [CE], all such acts as belong to the Crown’s rights of ownership, free from any restraint on alienation imposed on the Crown by the Crown Lands Act 1702 [s 5] or by any other enactment (whether general or particular), and to execute and do in the name of [HM] all instruments and things proper for the effective exercise of their powers. (3) It shall be the general duty of the Commissioners, while maintaining the [CE] as an estate in land (with such proportion of cash or investments as seems to them to be required for the discharge of their functions), to maintain and enhance its value and the return obtained from it, but with due regard to the requirements of good management.¹⁸³

S 2. (*Reports and accounts of Commissioners*). (1) As soon as may be after the end of each financial year, the Commissioners shall make to [HM] a report on the performance of their functions in that year, and shall lay a copy of that report before each House of

¹⁸¹ (2) The powers transferred by any such Order may be transferred for such period and subject to such conditions as may be specified in the Order: *Provided that* the period for which any power is so transferred shall expire if and when the hereditary revenues which are by the [Civil List Act, 1936, s 1] directed to be carried to and made part of the Consolidated Fund of the [UK] cease at any time to be carried to and made part of that Fund, (3) An Order made under this [s] may provide that, during the period for which powers of management over any land are transferred by the Order, that land shall, for the purpose of the provisions of the Parks Regulation Acts, 1872 and 1926, and any regulations made thereunder, be treated as if it were part of the Royal Botanic Gardens, Kew, or of Regent's Park, as the case may be.

¹⁸² AV Dicey, *Introduction to the Study of the Law of the Constitution* (1948) (9th ed, 1939, ed by ECS Wade), p 313 ‘we need hardly trouble ourselves at all with the hereditary revenue of the Crown, arising from Crown lands, *droits* of admiralty, and the like. It forms an insignificant portion of the national resources, amounting to not much more than [£500k] a year.’

¹⁸³ (4) The Commissioners shall comply with such directions as to the discharge of their functions under this Act as may be given to them in writing by the Chancellor of the Exchequer [‘COE’] or the [SS], but the [CE] or [SS] in giving directions to the Commissioners under this [ss] shall have regard to [ss] (3) above, and before giving any such direction shall consult the Commissioners. (4) The [COE] and the [SS] shall act jointly in giving directions under this [ss], except that in matters not relating to Scotland the [CE] may act without the [SS] and in matters relating exclusively to Scotland the [SS] may act without the [CE]. (5) The validity of transactions entered into by the Commissioners shall not be called in question on any suggestion of their not having acted in accordance with the provisions of this Act regulating the exercise of their powers, or of their having otherwise acted in excess of their authority, nor shall any person dealing with the Commissioners be concerned to inquire as to the extent of their authority or the observance of any restrictions on the exercise of their powers. (6) Any transaction entered into by the Commissioners in the exercise of their powers (including an acquisition for the [CE]) may be carried out by the same means and with the same formalities, and any deed or other instrument entered into by them shall be construed in the same manner, and shall be registrable, as if they were acting on behalf of a subject of [HM]: *Provided that* an advowson shall not be taken to be comprised in any general words in a grant or agreement for a grant of land. (7) The provisions of the [sch 1] to this Act shall have effect with respect to the constitution and proceedings of the Commissioners and other matters relating to the Commissioners.

Parliament. (2) The report of the Commissioners for any financial year shall set out any directions given to the Commissioners during the year by the [CE] or [SS], except any direction in the case of which the [CE] or [SS] has notified to the Commissioners his opinion that it should be omitted in the interests of national security. (3) The Commissioners shall keep proper accounts and other records in relation thereto, and shall furnish the Treasury with such returns, accounts and other information about the [CE] and about the activities of the Commissioners, and with such estimates of future receipts and expenditure, as the Treasury may from time to time require. (4) In their accounts the Commissioners shall distinguish between capital and income, and shall make any proper adjustments between capital account and income account (including provision, where appropriate, for recouping capital expenditure out of income), but so that - (a) any sum received by way of premium on the grant of a lease shall be carried to income account if the lease is for a term of [30] years or less, and to capital account, if the lease is for a term exceeding [30] years; and (b) the gross annual income received, and the expenses incurred, from or in connection with mining leases or the working of mines or minerals shall be carried or charged as to one half to capital account and as to one half to income account. (5) The Commissioners shall prepare for each financial year statements of account in such form as the Treasury may direct, and shall transmit them to the Comptroller and Auditor-General not later than the end of November in the following financial year. (6) The Comptroller and Auditor-General shall examine and certify the accounts transmitted to him under this section, and shall lay before each House of Parliament copies of the accounts, together with his report thereon. (7) The Commissioners' financial year shall begin with the first day of April, and references to a financial year in relation to the Commissioners shall be construed accordingly.

S 3. (*General provisions as to course of management*). (1) Save as provided by the following provisions of this Act, the Commissioners shall not sell, lease or otherwise dispose of any land of the [CE], or any right or privilege over or in relation to any such land, except for the best consideration in money or money's worth which in their opinion can reasonably be obtained, having regard to all the circumstances of the case but excluding any element of monopoly value attributable to the extent of the Crown's ownership of comparable land. (2) The Commissioners shall not grant a lease of land of the [CE], or of any right or privilege over or in relation to any such land, for a term ending more than [150] years from the date of the lease, and every such lease granted by them shall be made to take effect in possession not later than [12] months after its date or in reversion after an existing lease having at that date not more than [21] years to run. (3) The Commissioners shall not, by the grant of an option or otherwise, contract to convey or create any estate or interest in, or any right or privilege over or in relation to, land of the [CE] at a date more than [10] years after the date of the contract: *Provided that* this [s] shall not apply to a contract under which the consideration to be received by the Commissioners for the conveyance or creation of the estate or interest, or of the right or privilege, is to be determined at the time it is conveyed or created, and is to be determined in such manner as, in their opinion, is calculated to secure to them the best consideration in money or money's worth which can at that date reasonably be obtained. (4) Where moneys forming part of the [CE] are to be invested, they shall be invested either - (a) in the name of the Commissioners on real, leasehold or heritable securities in the [UK], but excluding the security of any lease or leasehold property where the lease has less than [60] years to run at the date of the investment; or (b) in the name of the National Debt Commissioners in any securities or other investments for the time being authorised as investments for ordinary deposits with the National Savings Bank. In this [ss] "*heritable security*" has the same meaning as in the Town and Country Planning (Scotland) Act 1947.¹⁸⁴

S 4. (*Grants for public or charitable purposes*). (1) For the development, improvement or general benefit of any land of the [CE], the Commissioners with the consent of [HM] signified under the royal sign manual may dispose of land, or of a right or privilege over or in relation to land, without consideration or for such consideration as they think fit, where the land is to be used and occupied, or the right or privilege is to be enjoyed - (a) for the purposes of any public or local authority, or for the purposes of any authority or person exercising powers conferred by or under any enactment for the supply of water; or (b) for the construction, enlargement, improvement or maintenance of any road, dock, sea-wall, embankment, drain, water-course or reservoir; or (c) for providing, enlarging or improving a place of religious worship, residence for a minister of religion, school, library, reading room or literary or scientific institution, or any communal facilities for recreation, or the amenities of or means of access to any land or building falling within this paragraph; or (d) for any other public or charitable purpose in connection with any land of the [CE], or tending to the welfare of persons residing or employed on any such land. (2) The Commissioners may, out of the income of the [CE], make contributions in money for any religious or educational purpose connected with land of the [CE], or for other purposes tending to the welfare of persons residing or employed on any such land. (3) [ss] (1) of [s 3] of this Act shall not apply to any exercise of the powers of the Commissioners under [s] 29 of the Church Property Measure 2018 (which relates to gifts or grants of land for the sites of churches, *etc.*).

¹⁸⁴ (5) The powers exercisable by the Commissioners in the management of the [CE] shall include power to borrow money, on security or otherwise, for the purpose of discharging or redeeming incumbrances affecting any part of the [CE], but not for other purposes; and [ss] (1) to (3) above shall not apply in relation to any security for the principal or interest of money so borrowed (with or without any expenses of the lender or other incidental sums). (6) [ss] (1) above shall not restrict the discretion of the Commissioners as to the parcels in which any land is to be disposed of, or as to the apportionment of the consideration for any disposition or of any part of that consideration between different parts of the land disposed of, nor their discretion to reserve any right or privilege over or in relation to any land disposed of, or to dispose of land subject to any covenants, conditions or restrictions; and in determining for the purposes of this section whether the consideration to be given by a person for any disposition is the best that can reasonably be obtained, the Commissioners (where it is appropriate to do so) may take into account as part of that consideration any benefit conferred on the [CE] by improvements or works executed on the land in question by him or another without cost to the [CE]. (7) [ss] (1) and (2) above shall not apply to any exercise of the powers of the Commissioners for the purpose of complying with an obligation enforceable against the Crown or against the Commissioners, or for the purpose of confirming any lease or grant which is void or voidable. (8) Where the Commissioners dispose of land subject to restrictions on the user of the land, the restrictions may, notwithstanding any enactment or rule of law relating to perpetuities, be made enforceable by a right of re-entry exercisable on behalf of [HM] on a breach of the restrictions occurring at any distance of time.

S 6. (*Powers to make regulations for land open to public*). (1) The Commissioners may make such regulations to be observed by persons using land of the [CE] to state to which the public are for the time being allowed access as they consider necessary for securing the proper management of that land and the preservation of order and prevention of abuses on that land. (2) While regulations under this [s] are in force as respects any land in Great Britain, the provisions of the Parks Regulation Act 1872 shall apply to the land as if it were a park to which that Act applies, but so that any reference to regulations shall be construed as referring to the regulations under this [s] and any reference to the Minister of Works shall be construed as referring to the Commissioners.¹⁸⁵

S 7 (*Powers of Ministers of Works in Regent's Park*) (not set out)

S 8 (*Miscellaneous provisions as to transfers of and title to property*) (not set out)

S 9 (*Savings, transitional provisions and repeals*) (spent)

S 10 (*Short title, extent and interpretation*) (not set out)

Sch 1 *Constitution etc of CEC* (not set out)

Sch 2 *Savings & Transitional Provisions* (not set out)

(b) Modernisation

Much of this Act is effectively redundant. Any powers still needed should be set out in a SI.

29. CONCLUSION – CROWN ESTATE ACTS

All the above Acts - which are very antiquated - should be repealed. In particular:

- **Royal Parks**. All those which the Crown Estate still holds title to should be listed in a *Crown Act* (and, later, a *Constitution Act*). All powers in respect of the *management* of royal parks - and who by - should be set out in a SI and not in legislation, to enable easier amendment. That said, the Crown Estate should divest itself of management of all parks to the Ministry of Culture or relevant London borough;
- **Crown Estate**. The constitution, reports, accounts, course of management, ability to pass regulations and powers of the Crown Estate in respect of all assets to which they hold title presently, should be set out in a SI and not in legislation, to enable easier amendment.

Thus, legislation on the Crown Estate should be repealed and re-stated in a *Crown Act* (and, later, a *Constitution Act*) with most material being in a SI. Further, the *role* and purpose of the Crown Estate should be revamped. Basically, the Crown Estate (perhaps, now, called the National Estate) should have the role of a '*holding company*.' That is, it should hold title to all assets that belong to the nation. Further, its purpose should be to maximise their tourist and environmental potential. In particular, the following is suggested (see also *Appendix B*):

- **Statutory Corporation**. Legislation should provide that the Crown Estate is a statutory corporation (aggregate). It should have a board of management comprising a CEO and 6 directors ('*Commissioners*' is too old fashioned).
- **Holding Assets for the Nation**. The Crown Estate should hold ownership of various assets that belong to the nation *viz.*¹⁸⁶
 - (a) Crown Jewels;¹⁸⁷
 - (b) Royal Palaces listed in Sch [];¹⁸⁸ [which, probably, should be divested]
 - (c) Royal Collections listed in Sch [];¹⁸⁹
 - (d) *Duchy of Lancaster*;¹⁹⁰
 - (e) *Duchy of Cornwall*;¹⁹¹
 - (f) Royal parks listed in Sch [] [which, probably should be divested]

¹⁸⁵ (3) If any person fails to comply with or acts in contravention of any regulations under this [s], he shall be liable on summary conviction or, in Scotland, on conviction in a court of summary jurisdiction to a fine not exceeding [£5]. (4) The power of the Commissioners to make regulations under this [s] shall be exercisable by statutory instrument, and a draft of any such statutory instrument shall be laid before Parliament.

¹⁸⁶ Bogdanor, n 165, p 190 'On occasion, estimates of the sovereign's private wealth have included such items as the Crown jewels, Buckingham Palace, and Windsor Castle. But these belong to the Crown rather than to the sovereign, they are inalienable and must be passed on from one sovereign to the next.' Ibid, p 192 'It was also agreed in 1992 that the official residences of the Queen – Buckingham Palace and Windsor Castle - together with the Crown jewels and the Royal Collections, should be free of tax, in light of their status as inalienable.'

¹⁸⁷ At least, since 1399, they were treated as Crown patrimony and not personal possessions of the sovereign in the body natural, see also n 126.

¹⁸⁸ See McBain, n 1, art (a), p 88. Also, *Appendix B*. These should include Sandringham and Balmoral. See also Bogdanor, n 165, p 193. MacDonagh, n 126, p 49 (in 1929) 'Nor does the king pay rates in respect of his palaces. They belong to the State, and State buildings are exempt from local charges.'

¹⁸⁹ Ibid. Consideration should be given for certain collections to be sold if no longer of interest to the general public (e.g. the stamp collection or works of art of minor importance). Such would raise funds for the Crown estate to buy back, for example, foreshore.

¹⁹⁰ This assumes the same is retained.

¹⁹¹ All of (a)-(e) are held in the body politic since they are not part of the Crown Estates Act 1800 (which deals with private property of the sovereign).

- (g) UK foreshore (seashore);
 - (h) UK tidal waters (including the riverbed, the *fundus*);
 - (i) UK public rivers (including the river bed, the *fundus*);
 - (j) Other assets (woods, forests, parks, mountains, hills, rivers, lochs, buildings *etc*) as set out in a SI;
 - (k) Royal yacht.¹⁹²
- **Maintenance & Lease of Crown Estate assets.** Provision for the operation and maintenance of the above - and the lease of land or buildings *etc* - should be put in a SI. It would seem economically efficient if all are maintained by the same ministry - to cut costs, achieve cross-benefits *etc*;
 - **Transfer.** The Crown Estate should have power to transfer (by way of sale, grant, exchange) title to any of (b), (c), (f) and (j) with Treasury consent - including devolution of the same. Also, in the case of (b), to the National Trust;
 - **Obligations of Crown Estate.** The constitution and obligations of Crown Estate with respect to all the above should be set out in a SI - including reports and accounts, the making of regulations, the management philosophy, the power to lease *etc.*;
 - **Duty to Acquire (g)-(j).** In times past, the Crown gave away rights to others in respect of (g)-(j) albeit - whether the sovereign had the power to *franchise* - is dubious.¹⁹³ The Crown Estate should have the *obligation* (with the consent of the Treasury) from profits (as well as monies paid to it from time to time by Parliament and from public subscription) to re-acquire any all of (g)-(j) presently in private hands - so that they can be enjoyed by the general public, tourists and future generations. Also, a title register should be established for all of (g)-(j). And, all private owners should be required, as part of registration, to prove legal title - with an obligation on the Attorney-General to contest the title if it is not thought to be certain in law (one would suspect this is so in many cases);
 - **Optimising Environmental Quality.** In the case of (d)- (j), the Crown Estate should have the obligation to optimise their environmental potential from profits (as well as monies paid to it from time to time by Parliament and from public subscription). That is, to adopt '*best*' environmental practices, including things such as:
 - (a) placing pylons underground;
 - (b) removing mining slag, waste (including plastic waste) and other eye sores;
 - (c) providing public access;
 - (d) planting trees and shrubs;
 - (e) banning the use of chemicals on farm land;
 - (f) practising eco-farming;
 - (g) using land for the preservation of species (endangered animals and plants, as well as seed banks, re-introducing animals, plants, bees, butterflies *etc*);
 - (h) re-building ruined castles, houses, bringing buildings back into use *etc.*
 - **Commercial Activities.** These should be sold off (shopping malls *etc*) since the purpose of the Crown Estate is not (and can never be) the same as a commercial business. Not least, because the Crown Estate cannot go bankrupt and is handling national assets. Certainly, a higher rate of return would be gained if commercial assets were in the hands of commercial business.¹⁹⁴ The acquisition of commercial properties in the 1970's¹⁹⁵ should now be reversed, to improve national assets the Crown Estate will have title to.
 - **Devolve.** The Crown Estate should be devolved (to the extent this has not been effected) in respect of any estate in Scotland, Wales or NI. Such being in respect of royal parks, palaces, tidal waters and public rivers - but not in respect of royal collections, crown jewels, foreshore *etc* which are better operated as one unit by the Crown Estate.

By having all the above national assets in one body, considerable benefits and synergies might be achieved. Such could be an inspiration to other countries.

In short, there should be a statutory body corporate (perhaps, called the 'National Estate') which holds national assets and adopts the world's best environmental practice.

¹⁹² When the same has been built.

¹⁹³ See n 169. These were not '*flowers of the Crown*'. Thus, any right to franchise needs clear authorisation from the Crown (i.e. proof of some ordinance from the Great Council (*magnum concilium*) or Parliament).

¹⁹⁴ The Crown Estate, generally, makes a return on capital (ROC) of c. 7% pa. However, when wages are stripped out (since the state is paying them) - coupled with the fact that commercial entities would develop the assets more (and pay more corporation tax, as well as there being more income tax payable by more employees) - means that the benefit to the government (*vis-à-vis* taxable revenue) of the Crown Estate is poor, as compared to commercial entities (also, since the Crown Estate cannot go bust, it is less commercially oriented and lacks the acumen and drive of a business).

¹⁹⁵ See report of 1978, n 174, when this process commenced. Selling off such assets (many being of considerable value) would bring in much needed money to the government.

30. PRIVATE ESTATE OF THE SOVEREIGN

The 1760 Act (see 17) helped re-establish the Anglo-Saxon system of Crown land that could not be alienated. However, it only went part of the way since it did not express whether the sovereign could hold property (real or personal) *privately* and dispose of it, the same as any subject. The Crown Private Estate Act 1800 (the '1800 Act', see 18) sought to do this. However, this Act was unclear and it had to be (often) amended. There were various root problems.

(a) Private Estate but not Private Estate

'Private' landed estate should mean that the owner of the same holds in the body natural. That is, the same as any other subject. Thus, for example, Elizabeth Mountbatten-Windsor ('*Elizabeth Windsor*') - if she has private land - should have *no* sovereign, or Crown, prerogatives (privileges) in respect of it. However - despite the 1800 Act - there existed common law rules which created confusion. Thus, Halsbury (1st ed, 1909) stated:

in *some cases* private estates vested in the sovereign in the body natural are not affected with prerogative privileges¹⁹⁶ (*italics supplied*)

The problem was the word '*some*'. It should have been that *no* private estates held by the sovereign in the body natural had prerogatives, save where legislation expressly provided otherwise. For example, nonage should have applied to them - as well as death - which should be the position today (these can be cancelled out by legislation, anyway). However, criminal and civil immunity should, also, not apply (although this is a more moot point). Halsbury, also, noted:

Lands purchased before accession, or descending from collateral ancestors before or *after accession*,¹⁹⁷ vest in the sovereign in his natural capacity; *but if not granted away or devised, they descend with the Crown upon the demise of the sovereign and become vested in his successors in right of the Crown.*¹⁹⁸

The 1800 Act sought to cover the wording in italics, which is - really - a rule of construction (i.e. the intention must have been to give to the successor). Yet, lands descending *after* accession going to the body natural (and not the body politic) created another anomaly. Today, this anomalous common law position can be '*ironed*' out by legislation.¹⁹⁹ However, what should be noted is that the 1800 Act never got to grips with the problems latent in the common law position. As a result, it left things uncertain.

(b) Unclear Definition in the 1800 Act

The 1800 Act sought to draw a clear distinction between private estate and the Crown Estate (i.e. public estate). Thus, Halsbury stated in 1909 (I have divided things up to make easier reading):

With regard to real property, the *private estates* of the Crown, as statutorily defined, consist of such lands, hereditaments *etc* of any tenure as are [;]

[a] purchased out of moneys issued and applied for the use of the privy purse, or

[b] coming to the Crown in any manner from any ancestor or other persons not being kings or queens of the realm, or which

[c] belonging to the sovereign or any persons in trust for the sovereign at the time of his or her accession, might have been legally disposed of by gift, sale or devise.²⁰⁰ (*italics supplied*)

It would have been better to have indicated in the 1800 Act that '*private estate*' meant the estates referred to in a schedule. This would have cut out all uncertainty and fixed the position *pre*-1800. However, this was not done. It was a (great) pity, since later legislation simply compounded the confusion. That confusion can (and should) be remedied today by repealing the 1800 Act (and related additional legislation) and stating in a schedule to a *Crown Act* (and, later, in a *Constitution Act*) what comprises royal palaces and land and what not. And, if not royal palaces then, *ipso facto*, the same is (truly) private estate. For the reason given in (c) below, both Sandringham and Balmoral should be treated as royal palaces.²⁰¹ In this fashion, the uncertainty in the 1800 Act is reversed; the position is fixed.

¹⁹⁶ Halsbury (1st ed, 1909), vol 7, p 273. It continues: 'Thus, where land was vested in the sovereign in his natural capacity under a grant by a subject to Henry VII [1485-1509] and the heirs male of his body begotten, he was bound by statute and took a fee tail estate *per formam doni* [according to the terms of the gift]'.

¹⁹⁷ If *after* accession this is more understandable, because given or acquired by the sovereign in that capacity (in the body politic). Cf. Chitty, n 158, p 206.

¹⁹⁸ Halsbury (1st ed, 1909), vol 7, p 273. See, also, the 1800 Act, s 5 (see 31).

¹⁹⁹ Thus, if not abolished, the duchy of Lancaster can be held by the Crown Estate (which would not be affected by any Crown prerogatives anyway if a statutory corporation). And, provision should be made that all private estate of the sovereign is governed by the general law (including taxation). This, with a proviso (as above) that, where the same is not disposed of (by grant or will), the same will pass to the Crown Estate (as a residually intended gift to the nation, which would not seem inappropriate). Thus, no legal common law fictions are required. See also *Appendix B*.

²⁰⁰ Halsbury (1st ed, 1909), vol 7, p 274.

²⁰¹ Balmoral was purchased by Prince Albert in 1850 and Sandringham in 1861. M Sunkin & S Payne, *The Nature of the Crown* (1999), p 179. The key issue is from what monies these estates were acquired. And, whether taxes were paid from the privy purse that was not other than the

(c) What is the Privy Purse?

There was another problem with the 1800 Act. The ‘*Privy Purse*’ (PP) did not in 1800 - and still does not - comprise only the salary paid to the sovereign. Instead (as occurs today, even though the position has improved somewhat) other things were mixed in with it (see *Appendix A*). The problem with this was public money - which was not part of the *salary* of the sovereign (i.e. truly, her private money) - was (possibly) being used to buy property which became part of the sovereign’s ‘*private estate*’.²⁰² In effect, a back door way of ‘*enhancing*’ the salary of the sovereign. However, this was unfair to the taxpayer and simply created (and creates) confusion. The position may be seen from the perspective of the Civil List of Edward VII (1901-10) as stated by Halsbury in 1909 (see, also, *Appendix A*).²⁰³ An annual sum of £470k was paid to be applied as follows:

1. PP	110k ²⁰⁴
2. Salaries of royal household and retired allowances (pensions)	125.8k
3. Royal household expenses	193k
4. Works	20k
5. Royal bounty, alms and special services	13.2k
6. Unappropriated	8k

To the extent any money other than the PP (see nos 2-6) was applied to buy any private estate for the sovereign, this was public money (not the salary of the sovereign).

- Thus, today, any such property so acquired should not be treated as the ‘*private estate*’ of the sovereign in a *Crown Act* (and, later, a *Constitution Act*). Such should be treated as owned by the Crown Estate on behalf of the nation;
- However, the PP sum (see no 1) was, also, opaque since it covered sums paid by the taxpayer for things other than the salary of the sovereign.²⁰⁵ Thus, to the extent money used was not the latter, the same should apply.

As stated in (b), the confusion can (and should) be remedied today by repealing the 1800 Act (and related additional legislation) and stating in a schedule to a *Crown Act* (and, later, in a *Constitution Act*) what comprise royal palaces and what do not. And, if not royal palaces, then, *ipso facto*, the same is (truly) private estate.

- Both Sandringham and Balmoral appear may have been acquired by PP money not part of the actual salary of the sovereign. And, today, they are not maintained out of the actual salary of the sovereign (it seems). At least, in respect of running costs);
- Thus, on the demise of the same, they should become part of the Crown Estate. There may be other properties said to be part of the ‘*private estate*’ in a similar condition (‘*private estate*’ can be easily identified since it is invariably held by trustees for the sovereign).

(d) Tax position of Private Estates

This was, also, not wholly clear. Halsbury (in 1909) summarised the position:

Crown private estates are subject to all rates, taxes, duties, assessments, and impositions, parliamentary or parochial, in like manner as the property of any subject, and (whilst the private estates are vested in the sovereign or in any person in trust for the sovereign) such rates, taxes, and other charges are to be ascertained, rated, assessed, or imposed as in the case of the property of a subject. Accounts of the rates, taxes, and charges are directed to be returned to the person exercising the office of privy purse, *and are to be paid out of the privy purse and in no other manner*.²⁰⁶

The intent of the 1800 Act (ss 6 & 7, see **31**) - as well as ss 7 & 8 of the 1862 Act - see **33**) was clear. In the case of the ‘*private estate*’ the sovereign must pay the same taxes as if a subject. However, the ‘*weasel wording*’ lay in the reference to the PP. There should have been *no* such reference in order to prevent *public money* being used to pay these rates and taxes. Or, it should have been made clear that payment of the same was to be made from the ‘*salary*’ element of the PP only. Thus, given this loophole - in the past - the intent of the 1800 Act was (possibly) avoided by using PP money to pay rates and taxes on the private estate when the PP money used was not the

salary accorded to the sovereign. It appears that the Department of the Environment (in 1999) paid for heating and phone calls at these estates. Ibid, p 180, fn 59. Also, running costs appeared (in 1999) not to have been taxed. Ibid, p 188. MacDonagh, n 126, p 296 ‘[Sandringham]... was purchased... by the Prince Consort from the revenues of the duchy of Cornwall during the minority of the heir apparent.’

²⁰² As Kantorowicz noted, n 31, p 178, in the 12th century, the privy purse (*sacculus regis*), originally, had the meaning of the sovereign’s private purse (money) but soon came to be associated with the ‘*public*’ purse. Thus, there was uncertainty of definition which even existed in the 1800 Act.

²⁰³ Halsbury (1st ed, 1909), vol 7, p 271. See also Maitland, n 29, p 438.

²⁰⁴ In 1901, Edward VII paid income tax (‘*IT*’) on his private income (as to income from the PP this is unclear). In any case, in 1910, he was relieved from IT on the civil list, see Bogdanor, n 165, p 191.

²⁰⁵ Thus, was the salary paid to Edward VII for acting as king £110k per year? (i.e. all of the privy purse sum, see *Appendix A*). This is possible, but it may be less. Possibly, the salary for George IV (1820-30), William IV (1830-7) and Victoria (1837-1901) was £60k pa (but it may have been less). Maitland, n 29, p 437 ‘Only [£60k] is allotted to HM’s privy purse, and we may say that this is the only sum paid by the nation to the queen over which she has an absolutely unfettered power’ (she would, also, have received money from the Duchy of Lancaster).

²⁰⁶ Halsbury (1st ed, 1909), vol 7, pp 276-7.

personal salary of the sovereign.²⁰⁷ That is, public money was used to pay the same. As it is, the real intent of the 1800 Act - including the payment of inheritance tax by the sovereign on her private estate - should prevail. The above sections of the 1862 Act, also, seems to have been re-interpreted in rather extraordinary fashion. Thus, Sunkin & Payne noted in 1999:

Barlett, in his extensive analysis of royal tax, argued that the Inland Revenue [the 'IR'] is extraordinarily generous to the Crown in its apparent interpretation of the [Crown Private Estates] legislation. This interpretation appears to be that ss 8 and 9 of the 1862 Crown Private Estates Act are not regarded as imposing on the Crown any burden of central taxation and that the only tax which falls to be paid is rates... The key to the [IR's] argument was that the 1862 Act (like the 1800 Act before it) did not seek to make the Queen subject to tax: rather, it sought to make the private estates subject to tax...²⁰⁸

If so, such suggests a degree of dishonesty in the IR since it would seem manifest that the whole point of the 1800 Act (and thereafter) was to view the private estate of the sovereign to be land held by her in a wholly private capacity. That is, in the body natural (as Elizabeth Windsor) and not in the body politic (i.e. *qua* sovereign). Otherwise, all the legislation was pointless.²⁰⁹ Further, it seems clear (as glass) that 'rates' and 'taxes' in the 1800 and 1862 Acts refer to different things.

(e) Later Crown Private Estates Act

As will be seen, later Acts were passed to and cure problems with the 1800 Act.

- Thus, the Act of 1862 was designed to end doubts as to the application of the 1702 Act *re* alienation (see 16) in respect of the private estate. Both Acts are, now, not required and should be repealed;
- The 1862 Act was, also, designed to provide that private estates undisposed of at the death of sovereign were to be treated as Crown Estate (in effect, upholding the common law position, see 30);
- The 1873 Act was designed to cover private estate transferred by the sovereign to a person who later became sovereign. Thus, this extended the 1800 Act - but only where the 1862 and 1873 Acts applied.²¹⁰ This made the situation more complex.

31. CROWN PRIVATE ESTATE ACT 1800

This Act is entitled '*An Act concerning the disposition of certain real and personal property of [HM] his heirs and successors; and also of the real and personal property of [HM], and of the Queen consort for the time being*'. It contains a long preamble (not provided here). It also contains the following sections:

S 1. None of the provisions in the recited Acts shall extend to manors, etc. purchased by [HM], his heirs or successors, out of monies not appropriated to any publick service, nor to manors, etc. which have come to [HM] or shall come to him or his heirs or successors from any person not being kings or queens of the realm. Enactment to operate as from the birth of [HM].

None of the provisions or restrictions contained in the [1702 Act] shall extend to any manors, messuages, lands, tenements or hereditaments, of whatsoever tenure the same may be, which have at any time heretofore been purchased by [HM] or shall at any time hereafter be purchased by [HM], his heirs or successors, out of any monies issued and applied for the use of his or their privy purse, or with any other monies nor appropriated to any publick service, or to any manors, messuages, lands, tenements or other hereditaments, of whatsoever tenure the same may be, which have come to [HM] or shall or may come to him or his heirs or successors by the gift or devise of or by descent or otherwise from any of his, her or their ancestors, or any other person or persons, not being kings or queens of this realm; and the intent of this enactment is that the same shall operate to all intents and purposes as from the birth of his present Majesty. [i.e. from [1738]].

S 2. (Such copyhold or leasehold manors, etc. so purchased, etc. shall be vested in the Earl of Cardigan in trust, and such as shall be purchased, etc. shall be vested in such trustees as [HM] shall appoint. Trustees to be admitted to the lands according to the nature of the estate therein, and shall be deemed the tenants).²¹¹

²⁰⁷ Indeed, it seems the personal salary of the Queen from the privy purse may not have been taxed, *pre*-1993 and thereafter. Sunkin & Payne, n 201, p 187 'According to the memorandum, the monies that the Queen receives from the civil list will continue not to be taxed.' For the memorandum of understanding see HC (1992-93) 464.

²⁰⁸ Sunkin & Payne, n 201, (in 1999) p 185 referring to RT Barlett, *Taxation and the Royal Family - I* (1983) British Tax Review 99 and *Taxation and the Royal Family - II* (1983) British Tax Review 138.

²⁰⁹ The whole point was that - in 1800 - the sovereign was enabled to acquire and alienate (dispose of) land as if she were a subject (i.e. in the body natural) something not possible for her to do in the body public. De Smith, n 23, p 133 'In 1800 the sovereign was able to hold land in a *private* capacity; this is alienable and is taxable.'

²¹⁰ *Ibid.*

²¹¹ And all and singular the manors, lands, tenements and hereditaments of copyhold or customary tenure or of leasehold tenure, which have been purchased by [HM] as aforesaid, or which have come to [HM] by the gift or devise of or by descent or otherwise from any of his ancestors, or any other persons, not being kings or queens of this realm, whether the same have been surrendered or assigned to [HM] or to any person or persons in trust for [HM], shall be and the same are hereby vested in James Earl of Cardigan, his heirs, executors and administrators, according to the tenure of such manors, lands, tenements, and hereditaments respectively, in trust nevertheless for [HM]; and all such copyhold or customary and leasehold lands, tenements, and hereditaments respectively, as shall be purchased in manner aforesaid by [HM], his heirs or successors, or shall come to [HM], his heirs or successors, by the gift or devise of or by descent or otherwise from any of his or their ancestors, or any other persons, not being kings or queens of this realm, shall be vested in some trustee or trustees for [HM], his heirs and successors,

S 3. (*Grants already made by [HM] not to be defeated by this Act*). Provided always, that nothing herein contained shall extend to defeat or impeach any grant or disposition which hath been already made by [HM], or by his direction, of any manors, messuages, lands, tenements or hereditaments so purchased by [HM] as aforesaid, and conveyed, surrendered, or assured to or in trust for [HM]; but all such grants and dispositions respectively shall be valid and effectual to all intents and purposes as the same would have been, if they had been made after the passing of or were conformable to the provisions in this Act contained.

S 4. (*[HM], his heirs and successors, may sell or devise such estates as [HMs] subjects may like estates belonging to them. Trustees shall convey such estates as [HM] etc. shall direct. Provisions for conveyance of trust estates by infants shall extend to trustees for [HM].*)²¹²

S 5. (*If no disposition of such estates be made by [HM], or a disposition be made which shall not exhaust the whole, the estate undisposed of shall descend as if this Act had not been made, subject to certain provisions*). Freeholds which shall so descend shall be subject to the restrictions of the recited Acts. And if no disposition by grant, will or otherwise shall be made in pursuance of this Act by [HM], his heirs or successors, of any such manors, messuages, lands, tenements and hereditaments as aforesaid, or if any disposition which shall be so made shall not exhaust the whole estate or interest of [HM], his heirs or successors respectively, in the same, then and in every such case all such manors, messuages, lands, tenements and hereditaments, whereof no such disposition shall be made as aforesaid, or so much of the estate and interest therein respectively as shall not have been so disposed of, shall descend and go in such and the same manner, on the demise of [HM], his heirs and successors respectively, as the same would have descended and gone if this Act had not been made, subject nevertheless to the provisions herein-after contained as to so much thereof as shall be personal estate of [HM] and his successors; and all and every of such manors, messuages, lands, tenements and hereditaments, being of freehold tenure in fee simple, which shall so descend on the demise of [HM], or any King or Queen of this realm, shall be subject to all the restrictions in the said recited Acts contained, in the same manner as the same would have been subject thereto if this Act had not been made.

S 6. (*Estates so vested in [HM] or in trustees shall be subject to all taxes*). And all and every of such manors, messuages, lands, tenements and hereditaments, whether of freehold or copyhold or customary or leasehold tenure, which shall be so as aforesaid from time to time vested in [HM], his heirs or successors, or in any person or persons in trust for [HM], his heirs and successors respectively, shall from time to time be subject and liable to all such taxes, rates, duties, assessments and other impositions, parliamentary and parochial, as the same would have been subject and liable to, if the same had been the property of any subject of this realm; and all such rates, taxes, assessments and impositions shall, so long as the said manors, messuages, lands, tenements and hereditaments shall be vested in [HM], his heirs or successors, or in any person or persons in trust for [HM], his heirs or successors as aforesaid, be ascertained, rated, assessed or imposed thereon, in the same manner and form in all respects as if the same manors, messuages, lands, tenements and hereditaments respectively were the absolute and beneficial estate of any of [HM's] subjects; but nevertheless such rates, taxes, assessments and impositions shall be paid and payable in the manner herein-after directed, and not otherwise.

S 7. (*Taxes, etc. charged upon such estates to be paid out of the privy purse*). And so long as any such manors, messuages, lands, tenements or hereditaments shall be or remain vested in [HM], his heirs and successors, or in any trustee or trustees for [HM], his heirs or successors as aforesaid, freed and discharged from the provisions and restrictions in the said recited Acts respectively, all taxes, rates, duties, assessments, impositions, rents and other annual payments, fines and other outgoings, which shall from time to time be charged and chargeable upon or be or become due and payable in respect of all such manors, messuages, lands, tenements and hereditaments respectively, shall be paid and discharged out of the privy purse of [HM], his heirs and successors respectively,

from time to time to be respectively named or appointed by instrument in writing under the sign manual of [HM], his heirs and successors respectively; and the said James Earl of Cardigan and such other trustee or trustees as aforesaid shall be duly admitted to such copyhold or customary lands, tenements or hereditaments as aforesaid by the lords or ladies of the manor or manors of which the same shall be holden, according to the nature of the estate therein, on payment of such fines and subject to such rents, services and customs as of right shall be due and accustomed in respect thereof; and the said James Earl of Cardigan and such other trustee or trustees as aforesaid shall be deemed, as in respect of the lords or ladies of such manors respectively, and all other persons whatsoever, to be the true and only tenants of such copyhold or customary lands, tenements and hereditaments respectively, so that no lord or lady of any manor nor any other person or persons shall be prejudiced thereby.

²¹² And notwithstanding any thing in the said recited Acts contained, or any other statute, law, custom or usage to the contrary, it shall be lawful for [HM], his heirs and successors, from time to time, by any instrument under his and their royal sign manual attested by two or more witnesses, or by his and their last will and testament in writing, or any writing in the nature of a last will or testament, to be signed and published by [HM], his heirs and successors respectively, in the presence of and to be attested by three or more witnesses, at his and their free will and pleasure, to grant, sell, give or devise all and every or any of the manors, messuages, lands, tenements and hereditaments, so purchased or to be purchased by or which have or shall so come to [HM], his heirs or successors as aforesaid, whether of freehold or copyhold or customary or leasehold tenure, and whether conveyed or assured to or otherwise vested in [HM], his heirs or successors, or to or in any person or persons in trust for [HM], his heirs or successors as aforesaid, unto any person or persons, for any estate or estates, or for any intents or purposes, [HM], his heirs or successors respectively shall think fit, as any of [HM's] subjects may grant, sell, give or devise any the like manors, messuages, lands, tenements and hereditaments respectively, belonging to such subjects respectively, by their respective deeds or other instruments or last wills and testaments respectively; and all and every person and persons who shall be seised or possessed of or entitled to any such manors, messuages, lands, tenements or hereditaments respectively, or any estate or interest therein respectively, in trust for [HM], his heirs or successors respectively, shall convey, surrender, assign or otherwise assure the same, in such manner as [HM], his heirs or successors, under his or their royal sign manual respectively, to be attested as aforesaid, shall direct; and all and every of the provisions made by law for the conveyance of trust estates by infants, idiots and persons of unsound mind, shall extend to such persons as are or shall be a trustee or trustees for [HM], his heirs and successors respectively, and such trust estates shall be conveyed, surrendered and assured by such infants, idiots and persons of unsound mind, or the committees of such idiots or persons of unsound mind accordingly.

and accounts thereof shall from time to time be returned to the person or persons for the time being executing the office of [HM's] privy purse, or his or their deputy, who shall, by and out of any monies in his or their hands applicable for the use of [HM], pay and discharge the same.²¹³

S 9. (as also any Queen of this realm during the joint lives of the King and such Queen consort. Act not to enable [HM] or any Queen consort to dispose of any palace, etc. belonging to the King in the right of the crown, vested in her for life).²¹⁴

S 10. (Monies for the privy purse or not appropriated to any publick service, or effects which shall not come to [HM], or to his successors in right of the crown shall be deemed personal estate, and subject to disposition by will in writing and shall be liable to all debts payable out of the privy purse). And whereas it is [HM's] most gracious desire that all such personal estate and effects as [HM] shall be possessed of or entitled to at the time of his demise, and over which he shall have the full and absolute power of disposition by his last will and testament, should be subject and liable to the payment of all such debts of [HM] as shall during his lifetime be properly payable out of his privy purse: And whereas it is reasonable that all such personal estate and effects as any of [HM's] successors, kings or queens of this realm, shall be possessed or entitled to in like manner should also be subject and liable to the like charge; and it is expedient to fix and regulate what personal estate and effects of [HM] and his successors are subject to such testamentary disposition, and in what form such disposition shall be made: Now therefore be it further enacted and declared, that all such personal estate of [HM] and his successors respectively, as shall consist of monies which may be issued or applied for the use of his or their privy purse, or monies not appropriated to any publick service, or goods, chattels or effects which have not or shall not come to [HM] or shall not come to his successors respectively with or in right of the crown of this realm, shall be deemed and taken to be personal estate and effects of [HM] and his successors respectively subject to disposition by last will and testament; and that such last will and testament shall be in writing, under the sign manual of [HM] and his successors respectively, or otherwise shall not be valid; and that all and singular the personal estate and effects, whereof or whereto [HM] or any of his successors shall be possessed or entitled at the time of his and their respective demises, subject to such testamentary disposition as aforesaid, shall be liable to the payment of all such debts as shall be properly payable out of his or their privy purse; and that, subject thereto, the same personal estate and effects of [HM] and his successors respectively, or so much thereof respectively as shall not be given or bequeathed or disposed of as aforesaid, shall go in such and the same manner on the demise of [HM] and his successors respectively, as the same would have gone if this Act had not been made.

In respect of s 1 it may also be noted that - prior to this Act - it was unclear whether the Act of 1702 (see 16) which prohibited the alienation of Crown land prevented the sovereign from granting to others property which was part of his own pocket money (i.e. that part of the privy purse which constituted his own salary). Thus, Maitland stated:

It was at least a serious question whether lands which king George [III, 1760-1820] had bought out of his own pocket money were not subject to that restraint on alienation that was imposed in 1701 [i.e. the 1702 Act]. So in 1800 Parliament enabled the king to hold land in a private capacity. Land purchased by him out of money devoted to his privy purse was to be held by him with all that liberty of alienation that a subject has; he was, for example, to have power to devise them by his will. However, a good many other statutes have been required to make this clear, and I think that it is not until 1862 that we find in the statute book such a phrase as '*the private estates of [HM]*'.²¹⁵

One would agree.

32. CROWN LANDS ACT 1823

This Act is entitled '*An Act concerning the disposition of certain property of [HM] his heirs and successors.*' It extended the 1800 Act to the manors in possession of the sovereign (George IV, 1820-30) at the time of his accession to the Crown.

²¹³ Section 8 is spent.

²¹⁴ 'And it shall be lawful for any Queen for the time being of this realm, being the consort of [HM] or any of his successors, in like manner, at any time or times during the joint lives of the King and such Queen consort for the time being, by deed under her hand and seal, or by her last will and testament in writing, to be respectively executed, signed, published and attested as aforesaid, to grant, convey, alien, dispose of, give or devise any manors, messuages, lands, tenements and hereditaments, which shall be purchased by or in trust for her, or which shall come to or devolve upon or vest in her or any person or persons in trust for her, for any estate of inheritance or freehold or any copyhold or customary estate, under and by virtue of any deed, gift, will or otherwise, for all or any part of such estate, right and interest as she or such person or persons in trust for her shall have in any such manors, messuages, lands, tenements or hereditaments, and also by her last will and testament in writing to give and bequeath all such her chattels, whether real or personal, and personal estate whatsoever, to any person or persons and for any intents and purposes she shall think fit, as fully and effectually in all respects as if she were sole and unmarried: Provided always, that nothing in this Act contained shall extend to enable [HM] or any Queen consort of this realm to make any grant, conveyance or disposition of any palace or capital mansion house, gardens, lands or hereditaments, belonging to his Majesty or any of his successors in right of the crown, which now are or hereafter shall be vested in [HM] or in any such Queen consort for her life, as and for her jointure or otherwise, under any letters patent of [HM] or any of his successors or by Act of Parliament, or to make any grant, conveyance or disposition, which [HM] and such Queen consort could not make, if sole and unmarried.

²¹⁵ Maitland, n 29, p 432-3.

33. CROWN PRIVATE ESTATES ACT 1862

This Act is entitled ‘*An Act to remove doubts concerning, and to amend the law relating to, the private estates of [HM], her heirs and successors.*’ The purpose of this Act, in particular, was to exclude the 1702 Act applying to the private estate of the sovereign in Scotland and Ireland.²¹⁶ This Act contains the following sections:

S 1. (*Interpretation of the expression ‘private estates of [HM], etc.’*). In the construction of this Act the expression “*private estates of [HM], her heirs or successors,*” shall mean (unless controlled or confined to a more limited sense by express words or the context)

any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be, whether situate or arising in England, Scotland or Ireland, or in any other part of [HM’s] dominions, which have at any time heretofore been purchased or acquired by [HM],

or shall at any time hereafter be purchased or acquired by [HM], her heirs or successors, out of any monies issued and applied for the use of her or their privy purse,

or with any other monies not appropriated to any public service, and any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be, whether situate or arising in England, Scotland, or Ireland, or in any other part of [HM’s] dominions, which have come to [HM], or shall or may come to [HM], or her heirs or successors, by the gift or devise or disposition of, or by descent, inheritance, or succession,

or otherwise from, any of her or their ancestors, or any other person or persons not being Kings or Queens of this realm, and any manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be, and whether situate or arising in England, Scotland, or Ireland, or in any other part of [HM’s] dominions, which did or shall belong to [HM], or her heirs or successors, or to any person or persons in trust for her or them, at the time of her or their respective accessions to the Crown of this realm, and which before such accession she or they respectively might have legally granted, sold, given, devised, disposed, or conveyed. (*wording divided for ease of reference*)

S 2. (*Restrictions of [1702 Act,] not to extend to the private estates of the Sovereign*). None of the provisions or restrictions contained in the [1702 Act] or in any other Act or Acts of Parliament relating to any manors, messuages, lands, tenements, leases, or hereditaments, or other real or heritable property or estate vested in or belonging to [HM], her heirs or successors, in right of the Crown of this realm, do or shall extend to the private estates of [HM], her heirs or successors.

S 3. (*Private leasehold estates (except in Scotland) to be vested in trustees*) Leasehold estates (other than in Scotland) to be vested in trustees. Such private estates of [HM], her heirs or successors, situate or arising in any part of [HM’s] dominions, except Scotland, as are or shall be of leasehold tenure, shall be vested in some trustee or trustees for [HM], her heirs and successors respectively, from time to time to be respectively named or appointed by instrument in writing under the sign manual of [HM], her heirs and successors respectively, in the same manner as if the [Crown Private Estate Act 1800, s 2] had extended to all such estates.

S 4. (*Private estates of the Sovereign in Scotland held under a superior or in lease to be vested in trustees*). Such private estates of [HM], her heirs or successors, situate or arising in Scotland, as are or shall be held feudally directly under the Crown as superior, may lawfully be held by [HM], her heirs or successors, of and under herself or themselves as Sovereign or Sovereigns of this realm and feudal superiors, and the *dominium utile* thereof shall not become *ipso facto* consolidated with the *dominium directum*; and such private estates of [HM], her heirs or successors, situate or arising in Scotland, as are or shall be held feudally under a subject superior, or as are or shall be held in lease, shall be vested in some trustee or trustees for [HM], her heirs and successors respectively, from time to time to be respectively named or appointed by instrument in writing under the sign manual of [HM], her heirs or successors respectively, in the same manner as if the second section of the Crown Private Estate Act 1800, had extended to all such estates.

S 5. (*As to testamentary disposition of the private estates of the Sovereign other than in Scotland*). The private estates of [HM], her heirs or successors, situate or arising in any part of [HM’s] dominions (except Scotland), may be disposed of by [HM], her heirs or successors, in manner provided by the [Crown Private Estate Act 1800, s 4]: Provided always, that a will or other testamentary disposition by [HM], her heirs or successors, of or concerning any such private estates as aforesaid, shall not require publication; and every such will or testamentary disposition shall be valid and effectual, if signed by the testator or testatrix, or by some other person in his or her presence, and by his or her direction, in the presence of two witnesses: Provided also, that every will or other testamentary disposition by [HM], her heirs or successors, of any such private estates as aforesaid, made under the authority of this Act and of the Crown Private Estate Act 1800, or either of them, and whether made before or after the passing of this Act, shall be construed with reference to the property comprised in such will or testamentary disposition, to speak and take effect as if it had been executed immediately before the death of the testator or testatrix, unless a contrary intention shall appear by the will or other testamentary disposition.

S 6. (*As to disposition of the private estates of the Sovereign in Scotland*). The private estates of [HM], her heirs or successors, situate or arising in Scotland, may be disposed of by [HM], her heirs or successors, by dispositions or conveyance, either special

²¹⁶ Amos, n 163, p 219. It may be noted that Gladstone ‘held that no danger need be apprehended from an excessive accumulation of property in the hands of the sovereign. If any such existed, the House [of Commons] had the opportunity of considering the sovereign’s position at the beginning of each reign.’ Ibid, p 220. This should now be undertaken.

or general, granted either mortis causa or inter vivos; and all dispositions, conveyances, deeds of appointment, commissions, powers of attorney, wills, deeds of settlement, and other deeds or instruments to be made or granted by [HM], her heirs or successors, of or relating to the private estates of [HM], her heirs or successors, situate or arising in Scotland, shall be valid and effectual, although not executed according to the forms of the law of Scotland, if the same shall be under the sign manual attested by two or more witnesses; and every such disposition or conveyance, if granted mortis causa, shall be valid and effectual, whether the same shall be under the sign manual as aforesaid, or shall be signed by some other person in the presence of the granter, and by his or her direction in the presence of two or more witnesses, who shall attest the same, although the same shall not be executed according to the forms of the law of Scotland.

S 7. (*Descent of the private estates of the sovereign*). On the demise of [HM], her heirs or successors, the private estates of [HM], her heirs or successors, shall, subject and without prejudice to any disposition which shall have been made thereof under the authority of the Crown Private Estate Act 1800, or of this Act, descend or go in manner prescribed by, and (according to the nature thereof) be subject to, the provisions and restrictions respectively referred to in the [Crown Private Estate Act 1800, s 5].

S 8. (*Private estates of the sovereign to be subject to taxes etc*). The private estates of [HM], her heirs or successors, shall be subject to all such taxes, rates, duties, assessments, and other impositions, parliamentary and parochial, as the same would have been subject to if the same had been the property of any subject of this realm; and all such rates, taxes, assessments, and impositions shall, so long as such private estates shall be vested in [HM], her heirs or successors, or in any person or persons in trust for [HM], her heirs or successors as aforesaid, be ascertained, rated, assessed or imposed thereon in the same manner and form in all respects as if the same estates were the absolute and beneficial estate of any of [HM's] subjects; but nevertheless such rates, taxes, assessments, and impositions shall be paid and payable in manner herein-after directed, and not otherwise.

S 9. (*Taxes etc to be paid out of the privy purse*). So long as the private estates of [HM], her heirs or successors, shall remain vested in [HM], her heirs or successors, or in any trustee or trustees for [HM], her heirs or successors as aforesaid, freed and discharged from the provisions and restrictions aforesaid, all taxes, rates, duties, assessments, impositions, rents, and other annual payments, fines, and other outgoings, which shall from time to time be charged and chargeable upon or be or become due and payable in respect of all or any of such private estates, shall be paid and discharged out of the privy purse of [HM], her heirs or successors; and accounts thereof shall from time to time be returned to the person or persons for the time being executing the office of privy purse of [HM], her heirs or successors, or to his or their deputy, who shall by and out of any monies in his or their hands applicable for the use of [HM], her heirs or successors, pay and discharge the same.

S 10. (*Extension of the Trustee Act 1850 to the private estates of the sovereign (except in Scotland), and to the personal estate of the sovereign*). The Trustee Act 1850 shall extend to a trustee or trustees of the private estates of [HM], her heirs or successors, situate or arising in any part of [HM's] dominions, except Scotland, and to any trustee or trustees of any personal estate of [HM], her heirs or successors; and any petition or other proceeding for obtaining the benefit of that Act for or on behalf of [HM], her heirs or successors, shall be by and in the name or names of any person or persons authorized in that behalf by [HM], her heirs or successors, by any instrument in writing under the sign manual.

S 11. (*Legal proceedings etc respecting private estates in Scotland*). All suits and actions, either real or personal, respecting the private estates of [HM], her heirs and successors, in Scotland, and which may not be vested in a trustee or trustees, may be sued, in Scotland, on behalf of [HM], her heirs and successors, by and in the name or names of any person or persons to be from time to time for that purpose appointed by [HM], her heirs or successors, by any writing under the sign manual; every such appointment to continue only during the pleasure of [HM], her heirs and successors; and all suits and actions in Scotland respecting such private estates at the instance of other parties may be sued and carried on by summons or process directed against such person or persons; and [HM], her heirs or successors, shall at all times be entitled to require any trustee or trustees who may be vested in or possessed of any of the private estates of [HM], her heirs and successors, in Scotland, to convey and dispone the same to [HM], her heirs or successors, or to any new trustee or trustees to be named or appointed by [HM], her heirs or successors, by writing under the sign manual; and in the event of the failure, delay, or inability of any such trustee or trustees so to convey or dispone the same, or in the event of the said trustee or trustees having died, it shall be competent for any person or persons authorized in that behalf by [HM], her heirs or successors, by writing under the sign manual, to apply by petition to the Court of Session to declare that the trust conveyance subsists for the benefit of [HM], her heirs and successors, and that [HM], her heirs and successors, are entitled to have the same transferred, and further to adjudge such private estates in Scotland which shall be specified and described in the petition from such trustee or trustees, or his or their heirs or heir, and to decern and declare the same to belong to [HM], her heirs or successors, or to such new trustee or trustees as may be so named and appointed, as the case may be; and the Court of Session shall pronounce decreet in terms of the prayer of such petition; and such decreet shall be held to be and shall have the effect of a valid conveyance and disposition in due and usual form of such private estates as shall be specified and described in the decreet in favour of [HM], her heirs and successors, or of such trustee or trustees, as the case may be; and it shall be competent to register such decreet in the general...register of sasines in terms of and to the effect authorized by *the Titles to Lands (Scotland) Act 1858 and the Titles to Lands (Scotland) Act 1860*. [rep]

S 12. (*Saving of the Rights and Remedies of the Sovereign*). Provided that nothing in this Act contained shall take away or interfere with any right or remedy by any law or statute competent to Her Majesty, her heirs or successors, in regard to the private estates of [HM], her heirs or successors, or in regard to any trusts of such estates, or against any trustee or trustees, his or their heirs, executors, administrators, and assigns.

34. CROWN PRIVATE ESTATES ACT 1873

This Act is entitled '*An Act to explain and amend the Crown Private Estates Act 1862*.' It contains the following sections:

1. (*Crown Private Estates Act 1862 extended to manors etc devised by HM etc*). All the provisions of the Crown Private Estates Act 1862 and of this Act, concerning the private estates of [HM], her heirs or successors, shall extend and apply to all manors, messuages, lands, tenements, leases, and hereditaments, and other real or heritable property and estate, of whatsoever tenure the same may be, whether situate or arising in England, Scotland, or Ireland, or in any other part of [HM's] dominions, which, under or by virtue of any gift, devise, or disposition made by [HM], or by any of her heirs or successors, of any part of her or his private estates, shall become vested in any person who may at the time of such vesting, or at any time afterwards, be or become king or queen of this realm, unless in or by the instrument whereby such gift, devise, or disposition shall be made, an intention shall be expressed that such manors, messuages, lands, tenements, leases, hereditaments, or other property or estate shall not be, or after the accession of any person entitled thereto to the Crown of this realm, continue to be held as such private estates.

2. (*Inheritance Act 1833 extended to private estates of HM*). [The Inheritance Act 1833, s 3] shall extend and apply to the private estates of [HM], her heirs or successors, and to any devise or assurance by [HM], her heirs or successors, of such private estates.

3. (*Crown Private Estates Act 1862 extended to certain private estates of HM*).²¹⁷

4. (*Saving Rights of HM*). *Provided that* nothing in this Act contained shall take away or interfere with any right or remedy by any law or statute competent to [HM], her heirs or successors, in regard to the private estates of [HM], her heirs or successors, or to her or his privy purse, or to any personal estate or effects subject to disposition by her or his last will and testament.

35. SIMPLIFYING THE CROWN PRIVATE ESTATES LEGISLATION

The present position is less clear than mud and one wonders whether the sovereign herself knows what's what. However, there is a simple way to cut the Gordian knot. One to the benefit of both the sovereign and the nation. All this old legislation should be repealed and a *Crown Act* (and, later, a *Constitution Act*) should provide as indicated in *Appendix B*. In short, all the complexities of the past can be unravelled by making it clear (whether in the reign of the present sovereign or successor) what land is Crown Estate. That, then, definitively settles the past, with all its issues. Further, what is, at present, 'private estate' should be relatively easy to determine due to the fact that, since 1800, all private estate had been held by trustees (royal trustees) and not by the sovereign in her body natural (i.e. in the name of Elizabeth Windsor) or as sovereign (under her title of Elizabeth II). Thus:

(a) **Personal Property of the Sovereign**. Any personal property that the sovereign has - such as stocks and shares, jewels, art work, cars *etc* - should be subject to all taxes (including IHT);²¹⁸

(b) **Repealing all Legislation**. In the case of older legislation, this should all be repealed. However, a review is necessary to determine what *private estates* and person property (jewels *etc*) have been acquired from the privy purse when the same included other than the personal salary of the sovereign.²¹⁹ If so, these residences (and other property) have been, in effect, funded by the state (including the payment of all taxes) even though the property was termed part of the 'private estate'. Such belong to the nation. Thus, on the demise of the present sovereign one would suggest that residences such as Sandringham and Balmoral pass to the Crown Estate.

In this way, a clean break can be made with the past and it will become wholly transparent as to what is owned by Elizabeth Windsor and what is owned by the nation. Otherwise, controversy (and unfairness) will remain. Further - as noted before - both the sovereign (and the dukes of Lancaster and Cornwall) must pay all taxes - no different to any subject.

36. CONTINUATION OF THE MONARCHY

In modern times, the continued existence of the monarchy is (certainly) not a given. The world of 1800 or even 1900 is very different to that of today and the world, itself, is changing rapidly. Further, it is suggested that there is a future (indeed, a bright one) for the monarchy if the path ahead is clearly mapped out - and a whole mass of unnecessary legislation and legal anomalies is removed. Ones which actually impede the monarchy's survival. Thus, in the legal field, one would suggest that a way ahead would be:

- **Role of the Sovereign**. The sovereign is recognised as a titular head of State (and of the Commonwealth);
- **Salary**. The sovereign is paid an annual salary for executing the role of sovereign. So too, the Duke (Duchess) of Cornwall.
- **Sovereign Grant**. This legislation should be abolished. Instead, provision should be made in legislation for the Crown Estate to pay the salaries and pensions of the royal household in respect of royal palaces which are no longer

²¹⁷ 'The provisions contained [in the Crown Private Estates Act 1862, s 11] relating to suits and actions, shall extend and apply to the private estates of [HM], her heirs or successors, which may not be vested in a trustee or trustees, wheresoever the same be situate or arising; and any suit, action, or other proceeding in any part of [HM's] dominions relating to any debt or liability to, or any claim or demand by [HM], or any of her heirs or successors, in right or respect of her or his privy purse, or of any personal estate or effects, subject to disposition by her or his last will and testament, may be sued, brought, prosecuted, and taken on behalf of [HM], her heirs or successors, by and in the name or names of any person or persons to be from time to time for that purpose appointed, in manner prescribed by the [Crown Private Estates Act 1862, s 11]'.

²¹⁸ Estate duty (now IHT) was introduced in 1894. It seems that Queen Victoria did not pay it, Sunkin & Payne, n 201, p 181, fn 67. Capital Gains Tax was introduced in 1965. The Queen, it seems, was exempted. *Ibid*.

²¹⁹ Phillips, n 98, p 314, n 90 (written in 2001) 'The Queen does not, in fact, draw the money allocated to her privy purse and her personal expenditure is paid from her own resources'. If so, there is no need for the concept of a 'privy purse'.

required. And for the Treasury to pay those for royal palaces still required. These parties should submit annual accounts for the review of Parliament. Such will simplify things greatly.

- **Crown Prerogatives (CPs).** All obsolete CPs in respect of the sovereign (and any franchise) should be abolished and any still required should be expressly provided for in legislation. This will enable all common law CPs to be abolished, so that clarity is wholly obtained. An essential CP for the sovereign to be retained is criminal and civil immunity. However, as the corollary to the same, the sovereign - when acting in a *public capacity* should:
 - (a) employ no one;
 - (b) take all actions *under advice*;
 - (c) not commit misconduct;
 - (d) have no personal legislative privileges - save for essential ones.
- **Politics & Religion.** The sovereign should be above politics²²⁰ and religion.²²¹ Also bear the titular military rank of C-in-C (if at all);
- **Royal Family (RF).** The extended RF was a source of scandal in Victorian times (and before) as well as today. It should be wholly slimmed down to embrace only the direct line of descent²²² and no styles, titles, medals or ranks (including military ranks) should be given to any others. The present extended RF should retire.
- **Retirement.** Perhaps, there should be a statutory retirement age for the sovereign (and the Duke/Duchess of Cornwall). Supreme Court judges retire at 75, CoE bishops at 70 *etc.* Thus, perhaps, 75 or 80 should be sufficient. Or else the monarchy becomes increasingly out of touch with modern society.

As it is, one would suggest that the modernisation of the monarchy in legal terms should have occurred, at least, 35-40 years ago. This would have avoided many problems and scandals. More particularly, the issue of a royal salary is essential to this. Such is now considered.

37. ROYAL SALARY & SLIMMING DOWN THE ROYAL FAMILY

(a) Royal Salary

Queen Victoria (and her successors) came in for much scandal which could have been avoided.²²³ In part, this has been remedied.

- Thus, for example, the Civil List 1952, s 3 provided for the Duke of Edinburgh to be paid a specific fixed salary of £359k (as from 1990). This was, in effect, to perform the royal duties which he did. Things were very clear;
- They were also (once) clear (or almost clear)²²⁴ in the case of the Duke of Cornwall (later, the Prince of Wales). Under the Civil List Act 1901, s 3(1) he received £20k as an annuity.

Thus, specifying a fixed royal salary does work and there is precedent.

- Today, the only people who should receive a royal salary should be: (a) the sovereign; and (b) the Duke of Cornwall and no one else. Further, all taxes (including IHT) should be paid by the same. Thus, the tax position should be no different to any subject (even though the sovereign is not a subject) including the payment of IHT;
- *As to how much the royal salary should be*, Parliament should fix this. Once it is properly informed of the true wealth of the sovereign and the Duke of Cornwall. Obviously, there is a massive difference between the true wealth of the sovereign being, say, £1bn or more or it being a more modest (say) £30m.²²⁵ So too, in the case of the Duke of Cornwall.

(b) Royal Family

Since the time of Queen Victoria (1837-1901) there have been attempts to slim down the RF and reduce the payment of annuities. In the time of Edward VIII (1903-11), for example, payments were made to:

- (a) his wife (Queen Alexandra, £70k during her life, in the event of surviving him);
- (b) the Prince of Wales;
- (c) the wife of the same (£10k, during her marriage; and £30k if she survived the Prince);

²²⁰ Thus, any present crown prerogative to appoint a PM - or to award any orders of knighthood, decorations or medals - should be removed since these CPs embroil the sovereign in controversy, with no concomitant benefit.

²²¹ The Church of England is not a state church because the sovereign is head of it (rather, it is because it is regulated by legislation). Thus, if the sovereign gives up the role of supreme governor (and any role with regard to the Church of Scotland) - as well as any right of patronage - it would be irrelevant whether the sovereign was a catholic (or a jew or an atheist *etc.*)

²²² i.e. the sovereign, prince Charles (and consort), prince William (and consort) and children of the latter.

²²³ This was mainly due to having so many members of the royal family that were profligate (or of dubious repute) for whom Parliament regularly had to allocate vast sums to get them out of debt.

²²⁴ One says '*almost clear*', since the Duke also received revenues from the principality of Scotland revenues, see Halsbury, (1st ed, 1909), vol 7, pp 270-1 and would have received monies as Duke of Cornwall. See also, Sunkin & Payne, n 201, p 182 (position in 1999).

²²⁵ See also Sunkin & Paine, n 201, p 177, fn 177, n 43 (a guesstimate of the sovereign's worth at £341 in 1991).

(d) a trust fund for the sovereign's daughters (£18k pa during the joint lives of them (or £12k on death of each)).²²⁶

Today, it would seem apposite that the RF be slimmed down. Perhaps, to comprise: the Queen, the Duke of Cornwall (and consort) and Prince William (and consort) only. Other members of the royal family are now elderly²²⁷ and there would seem no ground for paying salaries or annuities to the same. Nor to younger members of the Royal Family for whom, it is presumed, the Queen will make (ample) provision in her will.²²⁸

In conclusion, only the sovereign and the Duke of Cornwall should be paid a salary, which should be fixed and which can (obviously) be changed by Parliament in light of events.

38. A BRIGHT FUTURE FOR THE MONARCHY?

A sovereign exercising the titular (non-executive) role of Head of State - and being Head of the Commonwealth - would enable the latter to expand which, surely, it should. This would enable the UK to work with some 54 countries at present and to greatly increase the same (perhaps, adding another 30 countries or more). This powerful organisation could, then work together to promote some vital things around the globe (not least, to help the survival of the human race which is beginning to look a little precarious). Thus, an expanded Commonwealth could be an organisation founded on, and dedicated to:

- Democracy;
- The rule of law;
- A common language (*lingua franca*) (English);
- A common legal system.

An expanded Commonwealth would, also, be able to:

- oppose civil and military dictatorships;
- promote the preservation of the environment;
- promote education, human rights *etc.*

The sovereign as the titular head of the same would be both useful and apposite - by virtue of the fact that there is no vested interest. Nor, interest in exploiting the position. Nor, a political agenda. Thus, surely, this should be a major focus for the sovereign in the future. The days of endless shaking hands, polite conversation *etc.*, are not substantive arguments for the preservation of the monarchy, as such.

Appendix A: History of the Civil List ('CL')

Charles II (1660-85)	On the resumption of the Crown in 1660, an Act Abolishing Feudal Tenures 1660 abolished military tenures and the revenue flowing therefrom (they had actually been abolished anyway in 1645). In return for the loss of revenue, Charles II received - as a 'civil list' - the following revenues in order to run his government: <ul style="list-style-type: none"> (a) excise (ended by 1787);²²⁹ (b) the old hereditary revenue from Crown lands;²³⁰ (c) from 1685, post office fines from portage²³¹ see Post Office Act 1660;²³² (d) a hearth tax (imposed 1660, abolished in 1689);²³³ (e) customs duties on certain West Indian islands (ended, William IV);²³⁴ (f) tannage and poundage (ended by 1787).²³⁵
James II (1685-8)	Same. ²³⁶

²²⁶ Civil List Act 1901, see also Halsbury, (1st ed, 1909), vol 7, pp 271-2. For exemptions granted, see Sunkin & Payne, n 201, p 182.

²²⁷ Prince Michael of Kent is 79, Princess Michael is 77, the Duke of Gloucester is 77, Princess Alexandra is 85, Princess Anne is 71. See also tax exemptions on annuities to the Duke of Gloucester and to Princess Anne in 1971, Sunkin & Payne, n 201, p 182.

²²⁸ For example, Prince Andrew is 62 and Prince Edward is 58.

²²⁹ Act Abolishing Feudal Tenures 1660 (12 Cha 2 c 24) (excise on ale, beer cider, perry, mead, spirits, coffee, tea, chocolate. Also, import duties on ale, beer, cider, perry, spirits). See also Stephenson, n 133, pp 563-7.

²³⁰ These were, mainly: (a) revenue from Crown lands; (b) 'flowers of the crown' (estray, treasure trove *etc.*).

²³¹ See Post Office Act 1660 (12 Cha c 35). Also Stephenson, n 133, pp 537-8. W Anson, *The Law and Custom of the Constitution* (1935, ed, AB Keith), vol 2, part 2, p 154 'In 1787...all existing excise duties were repealed, and therewith the hereditary excise.'

²³² Part was diverted in 1787. See *AB Keith, The Privileges and Rights of the Crown* (1936), p 96.

²³³ See generally, MA Thomson, *A Constitutional History of England 1642 to 1801* (1938), pp 199-200.

²³⁴ Keith, n 232, p 96.

²³⁵ Feilden, n 164, p 192. These comprised customs on wine and merchandise. By 12 Car II c 4 (1660) they were granted to Charles II for life and by 1 Jac II c 1 (1685), to James II for life. See also Anson, n 231, pp 150-1. The tannage was on wine, poundage was on imported or exported goods. There was also a duty on wool. See also Hearn, n 10, pp 363-4 and Blackstone, n 26, vol 1, p 278.

²³⁶ *Ibid.*

William III (1688-1702)	When he came to throne he received (a)-(c) above. ²³⁷ Also, Parliament granted him and Mary a further excise for their joint lives. ²³⁸ In 1698, an Act (9 Will III c 23) was passed with the intention that he receive £700k pa (but no more). William died in debt. ²³⁹
Anne (1702-14)	Same sum as William - £700k pa. This changed in 1700. She was given (b) and (c) above. Also, certain excise and customs duties. ²⁴⁰ In debt in 1713, Parliament permitted her to borrow £500k on the pledge of certain duties. ²⁴¹ By 1702, the ability of the Crown to alienate any hereditary revenues had ended. ²⁴² So too, to alienate any Crown land. ²⁴³
George I (1714-27)	Same as Anne - £700k pa. In 1715, he also received £120k to pay for the royal household the royal family and other necessary expenses. ²⁴⁴ This money was to come from an aggregate fund. The maximum he was to receive was 700k pa. Thus, George was the ' <i>first king to have a fixed income</i> '. ²⁴⁵ In 1721, Parliament permitted him to borrow £500k on security. More steps were taken by Parliament to assist George in 1725. ²⁴⁶
George II (1727-60)	Same as George I - but £800k pa. In 1745, Parliament paid off an accrued debt of £456k. ²⁴⁷
George III (1760-1820)	He surrendered most of the old hereditary revenues ²⁴⁸ save for a few, ²⁴⁹ for a fixed sum of £800k pa . This sum was designed to cover: (a) the royal household; (b) the expenses and salaries of the civil service, judges and ambassadors. In 1792, hereditary revenues of Ireland were, also, surrendered. ²⁵⁰ In 1769, Parliament paid off a debt of over £500k. Also, in 1777, Parliament paid off a debt of £600k and give George an additional £100k a year (i.e. to £900k). ²⁵¹
1782	The Economical Reform Act (22 Geo III c 82) abolished a number of Crown offices. The Treasury was given control over expenditure in the royal household. CL expenses were to be listed under classes in order of priority. ²⁵²
George IV (1820-30)	Same as George III - but received £850k pa. Payment was made from a consolidated fund. ²⁵³ The CL still included the salaries of judges, ambassadors and commissioners of the treasury. Part of this CL was £60k pa ' <i>pocket money</i> '. ²⁵⁴
William IV (1830-7)	Same as George IV - but only received £510k pa. However, the salaries of judges and ambassadors were excluded from the civil list. ²⁵⁵ Also, surrendered were: (i) the hereditary

²³⁷ Bogdanor, n 165, p 181 'Grants for the support of the monarchy were made in 1660, and in 1689 parliament voted an annual sum of [£600k] to William and Mary to finance the civil government. The first Civil List Act was in 1697. It granted to the sovereign various hereditary revenues together with customs and excise duties, estimated to yield around [£700k pa]. This was expected to cover not only the expenses of the sovereign, the sovereign's family, the royal household, and annuities to members of the royal family, but also the salaries and pensions of ministers, judges, and other public officials, and the maintenance of the royal palaces and parks, together with various other pensions and salaries.' See also Sunkin & Payne, n 201, p 178.

²³⁸ Thomson, n 233, pp 200-1. See also Hearn, n 10, p 391.

²³⁹ Parliament had deliberately kept him short of funds. Thomson, n 233, p 201. It may also be noted that the revenue from Crown lands had shrunk to a pitiful £6k pa. Anson, n 231, pp 169.

²⁴⁰ Maitland, n 29, p 435.

²⁴¹ Thomson, n 233, p 202.

²⁴² Anson, n 231, p 154 'At the commencement of Anne's reign, the right of the Crown to alienate the hereditary revenues was limited by the statute [1702 Act] which granted a civil list to the queen.' Ibid, p 169 'When Anne succeeded to the throne, the Act which settled the revenue for her reign restrained the Crown, for that and all future reigns, from alienating the Crown lands.' This seems correct. After 1702, there appears to have been no franchise of '*flowers of the crown*' Also, dissipation of Crown land ended. Both these events were indicative of these being owned by the Crown.

²⁴³ See 16.

²⁴⁴ Maitland, n 29, pp 435-6. See also Thomson, n 233, p 202.

²⁴⁵ Thomson, n 233, p 203 who also noted 'Nor was any attempt made to regulate its expenditure'.

²⁴⁶ Ibid, p 341.

²⁴⁷ Feilden, n 164, p 176.

²⁴⁸ Maitland, n 29, p 436 'the king gave up for his life the greater part of the hereditary revenues of the Crown including the crown lands, many of the minor prerogatives and the hereditary excise... In return the sum of [£800k] was to be paid to him yearly out of the 'aggregate fund'.

²⁴⁹ Thomson, n 233, pp 341-2 '*droits* of the Crown and Admiralty, the Scottish hereditary revenue, the four and a half per cent duties, the duchies of Cornwall and Lancaster and a few other minor sources.' He also noted that there was the Irish hereditary revenue.

²⁵⁰ AB Keith, *The King and the Imperial Crown* (1936), p 392.

²⁵¹ Thomson, n 233, p 342. See also Sunkin & Payne, n 201, p 178.

²⁵² Ibid, p 343 'In 1782 Parliament decisively asserted their right to control civil list expenditure.' See also, Keir, *The Constitutional History of Modern Britain* (1969, 9th ed), p 384 'those of the Treasury and Exchequer coming last in order to encourage [their] officials to insist on due economy in all the prior charges.'

²⁵³ Maitland, n 29, p 436.

²⁵⁴ Ibid 'there is now set apart, as what is to be the king's pocket money in the narrowest sense, [£60k pa].'

²⁵⁵ Ibid, p 436.

	revenues of Scotland (except the principality); (ii) West Indian customs duties; (iii) <i>droits</i> of admiralty and <i>droits</i> of the crown. ²⁵⁶
Victoria (1837-1901)	Same as William IV - but only received £385k pa. ²⁵⁷ From the CL, pensions for £75k ²⁵⁸ and £10k for the secret service were removed. Also, surrendered was: (iv) any hereditary <i>excise</i> (which appears to have gone long since anyway). ²⁵⁹ From the CL was allotted: <ul style="list-style-type: none"> (i) privy purse £60k²⁶⁰ (ii) royal household - salaries & pensions £131.2k²⁶¹
Edward VII (1901-10)	CL was £470k pa. He was, also, given the privilege of franking letters; also, sending letters on public business free of charge. ²⁶² From the CL was allotted: <ul style="list-style-type: none"> (i) privy purse of £110k (£33k for queen) (ii) royal household - salaries & pensions £125.8k (iii) royal household - expenses £193k (iv) royal bounty, alms & special services £13.2k (v) works £20k (vi) unappropriated £8k²⁶³ <p>With additional pensions and annuities, the grand total came to £543k pa.²⁶⁴ Edward, also, gave up Osborne House to enable it to be used for public purposes.²⁶⁵</p>
George V (1910-36) ²⁶⁶	CL was £470k pa. As to this: <ul style="list-style-type: none"> (i) privy purse £110k²⁶⁷ (ii) royal household - salaries & pensions £125.8k (iii) royal household - expenses £193k (iv) royal bounty, alms & special services £13.2k (v) works £20k (vi) unappropriated £8k²⁶⁸
Edward VIII (1936)	CL was £410k pa. It was allotted as follows: <ul style="list-style-type: none"> (i) privy purse £110k (ii) royal household - salaries & pensions £134k (iii) royal household - expenses £152.8k (iv) royal bounty, alms & special services £13.2k

²⁵⁶ Ibid, n 29, p 436. See also Keir, n 252, p 389 and Keith, n 250, p 392.

²⁵⁷ Keith, n 250, p 393. This was because she was unmarried. Amos, n 163, p 231 (sum later increased, with £30k to Albert, p 239). She was also the recipient of a bequest from a Mr Nield of £500k. And £1m from the Prince Consort (Albert). Keith, n 250, p 393.

²⁵⁸ Instead, HM could grant pensions annually of up to £1.2k. Presently, this is handled by the PM. See also Hearn, n 10, p 394.

²⁵⁹ Maitland, n 29, p 437.

²⁶⁰ For the popular belief that Victoria had amassed savings of £5m, see MacDonagh, n 126, p 164.

²⁶¹ Maitland, n 29, p 437 'this is the only sum paid by the nation to the Queen over which she has an absolutely unfettered power.' He also noted that she received duchy of Lancaster revenues. Ibid, p 438.

²⁶² Keith, n 250, p 394.

²⁶³ See also D Chalmers & C Asquith, *Outlines of Constitutional Law* (1922), pp 121-2. Also, Maitland, n 29, p 438 and Halsbury, (1st ed, 1909), vol 7, p 271.

²⁶⁴ Keith, n 250, p 394.

²⁶⁵ Ibid, p 397 'the Queen [Victoria] had intended that Balmoral Castle...and Osborne House...should be kept as family possessions. As, however, the king had Buckingham Palace and Windsor Castle and Sandringham, he determined...to dedicate Osborne to public purposes.'

²⁶⁶ Civil List Act 1910 10 Edw 7 & 1 Geo V c 28. Also, Keith, n 250, p 395.

²⁶⁷ MacDonagh, n 126, p 49 noted that the sovereign also received £60k from the duchy of Lancaster.

²⁶⁸ Keith, n 250, p 395 and Keith, n 232, p 100. See also Chalmers, n 263, pp 121-2 and EW Ridges, *Constitutional Law of England* (5th ed, AB Keith), p 120. The royal bounty was £1200 (for females in distress). £3k was administered by the Royal High Almoner and £9k by the PM.

Because Edward was unmarried, the first 2 items were reduced by £33k & £7k.²⁶⁹ Edward, also held the duchies of Lancaster and Cornwall and the principality of Scotland and received revenues from same.²⁷⁰

George VI (1936-52)

CL was the same as for Edward and allotted as above.

Elizabeth (1952-)

CL was £410k pa. It was allotted as follows:

(i) privy purse	£60k
(ii) royal household - salaries & pensions	£185k
(iii) royal household - expenses	£121.8k
(iv) royal bounty, alms & special services	£13.2k
(v) supplementary provision	£ 95k

The Future?

Abolish:

- (a) the Sovereign Grant;
- (b) all hereditary revenues surrendered at the outset of each reign;²⁷¹
- (c) any hereditary revenue payable to the sovereign as: (a) Duke of Cornwall; (b) Duke of Lancaster; (c) Prince of Scotland; or (d) Prince of Wales;²⁷²
- (d) any hereditary revenue payable to the Duke of Cornwall, *re* (c);²⁷³
- (e) any annuity payable to any member of the present royal family;²⁷⁴
- (f) privy purse;²⁷⁵
- (g) honorific pensions.²⁷⁶

Appendix B: Crown Act

1. National Estate

- (1) (*Statutory Corporation*). There shall be a statutory corporation aggregate called the National Estate (the 'NE').
- (2) (*Board of Directors*). The NE shall have a board of directors comprising a CEO and six other directors.
- (3) (*Ownership*). The NE shall hold own various assets which belong to the nation as listed in *Schedule 1* ('National Assets' or 'NA').
- (4) (*Powers etc*). Provision for all matters relating to the NE and the NA shall be set out in a SI, including the:
 - (a) powers of the NE in respect of NA;
 - (b) management, and operation, of the NE and NA;
 - (c) philosophy, and approach, to be adopted in respect of (b);
 - (d) making of regulations in respect of the NE and NA;
 - (e) lease of any NA;
 - (f) reports and accounts concerning the NE.
- (5) (*Transfer and Devolution*). The NE may:
 - (a) transfer (whether by way of sale, grant, gift or exchange); or
 - (b) devolve,
 any NA where indicated in *Schedule 1*, with the consent of Cabinet.

²⁶⁹ Ibid, pp 395-6. Keith also noted 'The Treasury assumes the cost of buildings, and the salaries of the Treasurer, the Comptroller and the Vice-Chamberlain of the Household (these being the essential political offices of the household)'. Also, 'A considerable saving of public money will be secured by the decision of the king to use the revenues of duchy of Cornwall in relief of the taxpayer.' See also Keith, n 232, p 100.

²⁷⁰ Ibid, p 395. These were never included in the surrenders made, although Lord Brougham in 1837 argued that they were the property of the people.

²⁷¹ Most of the smaller revenues are obsolete anyway.

²⁷² Ibid.

²⁷³ The Civil List Act 1952, s 1(2) provides for the hereditary revenues of the Crown in relation to Scotland - being *bona vacantia*, *ultimus haeres* and treasure trove - to be paid to the Scottish Consolidated Fund.

²⁷⁴ With the death of the Duke of Edinburgh it is unclear whether any annuity is paid (and, if paid, paid from public funds). See also Bogdanor, n 165, p 192.

²⁷⁵ This money, mainly, came from the Duchy of Lancaster and was used to pay royal household staff and their pensions (including those at Balmoral and Sandringham), see also Bogdanor, n 165, p 188.

²⁷⁶ See Civil List Act 1837, s 1.

- (6) (*Management and Operation*). The NE may transfer the:
- (a) management; or
 - (b) operation of,
- any NA where indicated in *Schedule 1*, with the consent of the Treasury.
- (7) (*Obligation to Acquire*). The NE has the obligation to acquire those NA:
- (a) referred to in *Schedule 1* (g) to (i);
 - (b) in accordance with the terms of a SI.
- (8) (*World's Best Environmental Practice*). In managing and operating NA, the NE shall:
- (a) in the case of *Schedule 1*, the NA referred to in (d)-(j);
 - (b) adopt the best environmental practice in accordance with a SI.

2. Private Estate of the Sovereign

- (1) The general law, including taxation, shall apply to the private estate of the sovereign.
- (2) The sovereign may transfer, by SI, any private estate to the NE without any taxation.
- (3) Any private estate of the sovereign not allocated on death shall:
 - (a) immediately become part of the NE, without taxation, and
 - (b) such shall be evidenced in a SI.

3. Royal Household

- (1) The salaries and pensions of the members of Royal Household shall be paid
 - (a) by the Treasury; or
 - (b) such other Ministry as Cabinet
 - (c) shall determine from time to time.
- (2) The Treasury shall submit an annual report to Parliament in respect of:
 - (a) the management and operation
 - (b) of the Royal Household.

4. Civil List²⁷⁷

- (1) A civil list shall take effect in accordance with *Schedule 2*.

5. Definitions

'*Royal Household*' means staff and employees employed at any Royal Palace referred to in *Schedule 4(a)*.

6. Abolition

- (1) The following are abolished, the concepts of:
 - (a) privy purse; and a
 - (b) civil list.
- (2) The following are abolished:
 - (a) any hereditary revenue paid to the sovereign at the onset of each reign;
 - (b) *any revenue paid to the sovereign from the Duchy of Lancaster*;²⁷⁸
 - (c) any revenue paid to the sovereign or to the Duke of Cornwall from the Duchy of Cornwall;
 - (d) any revenue paid to the sovereign or to the Duke of Cornwall from the principalities of (a) Wales; or (b) Scotland.

7. Repeals

- (1) The legislation in *Schedule 3* is repealed.

Schedule 1 - List of National Assets

- (a) Crown Jewels;
- (b) Royal Palaces listed in *Sch 4*;
- (c) Royal Collections listed in *Sch 4*;
- (d) *Duchy of Lancaster*;
- (e) Duchy of Cornwall;
- (f) Royal parks listed in *Sch 4*;

²⁷⁷ A more modern alternative would be 'royal salary'. This is already mentioned in McBain, n 1, art (a)(*Crown Act*), p 70.

²⁷⁸ A previous article has suggested that the duchy of Lancaster be abolished (it no longer has any *jura regalia* of any worth) and that it become part of the Crown estate. See McBain, n 1, art (a)(*Crown Act*), p 54.

- (g) UK foreshore (seashore);
- (h) UK tidal waters (including the riverbed, the *fundus*);
- (i) UK public rivers (including the river bed, the *fundus*);
- (j) Other assets (woods, forests, parks, mountains, hills, rivers, lochs, buildings *etc*) as set out in a SI;
- (k) Royal yacht.

Schedule 2 - Civil List

- (a) The following only shall receive an annual royal salary for the performance of their royal duties, the:
 - (i) Sovereign - £ [].
 - (ii) Duke (or Duchess) of Cornwall, when not (a) - £ [].
- (b) The salary in (a) may be amended by a SI.

Schedule 3 - Repeals

(a) Civil List

Civil List Act 1937

Civil List 1952

Sovereign Grant Act 2011 ²⁷⁹

(b) Crown Land

Crown Lands Act 1623²⁸⁰

Crown Lands Act 1702²⁸¹

Crown Private Estate Act 1800

Crown Lands Act 1823

Crown Lands Act 1833

Crown Lands Act 1851

Commissioners of Works Act 1852

Crown Private Estate Act 1862

Crown Private Estate Act 1873

Works and Public Buildings Act 1874

Commissioners of Works Act 1894

Crown Lands Act 1894

Crown Lands Act 1906

Crown Lands Act 1927

Crown Lands Act 1936

Crown Estate Act 1961

Schedule 4: Royal Palaces and Royal Collections

(a) Royal Palaces²⁸²

- Hampton Court Palace * (George II (1727-60) was last occupant)
- Hillsborough Castle * (residence of Elizabeth II in Northern Ireland)
- Kew Palace (with Queen Charlotte's cottage)*
- The Banqueting House, Whitehall *
- Kensington Palace *
- Tower of London *

Historic Royal Palaces is an independent charity which manages (it says on behalf of the 'Queen in right of the Crown') the palaces marked with an *. Title to the same should pass to the Ministry of Culture or to the charity.

- Also, Bagshot Park (residence of Prince Edward)
- Thatched House Lodge (residence of Princess Alexandra)

²⁷⁹ This is already mentioned in McBain, n 1, art (a)(*Crown Act*), pp 80-4. However, the intention is that provision for the royal household be simplified since the privy purse and the sovereign will no longer be involved. Matters should be set out in a SI. There is no need for a reserve fund.

²⁸⁰ This is already mentioned in McBain, n 1, art (a)(*Crown Act*), p 95.

²⁸¹ *Ibid*, p 96.

²⁸² It would seem appropriate for some of these to be no longer operating palaces.

The Royal Lodge	(residence of Prince Andrew)
St James' Palace	(royal family residence)
Frogmore House	(royal family residence)
Palace of Holyroodhouse	(residence of Elizabeth II in Scotland)
Buckingham Palace	(residence of Elizabeth II in England)
[Osborne House] ²⁸³	(see Osborne Estate Acts 1902 & 1907)
[Balmoral] ²⁸⁴	
[Sandringham] ²⁸⁵	

It is suggested that all the above could be decommissioned and be managed by Historic Royal Palaces, so as to be open to the public. Title to the same should pass to the Ministry of Culture or to the charity.

Windsor Castle

(b) Royal Collections

Collections administered by the Royal Collections Trust

Royal Philatelic Collection

Royal Carriages

(c) Royal Parks²⁸⁶

Saint James's Park *

Hyde Park *

Green Park *

Kensington Gardens *

Regent's Park (and Primrose Hill) *

Greenwich Park *

Richmond Park & Green *

Bushey (Bushy) Park*

Royal Parks is an independent charity which manages (it says on behalf of the 'Queen in right of the Crown') the parks marked with an *; also Brompton Cemetery and Victoria Tower Gardens.

Also,

Chelsea Garden

The Treasury Garden

Parliament Square Garden

Victoria Park

Battersea Park

Kew Gardens, Pleasure Grounds & Green

Kew Road

Richmond Road

Hampton Court Gardens, Green & Road

Hampton Court Park

Holyrood Park (now transferred to Scottish Ministers)

It is suggested all these could be removed from the Crown Estate, to the extent the same has not yet occurred.

Appendix C: Timeline of the Concept of the Crown

As noted in this article, reference to the Crown was, in early times, to the sovereign sitting in Parliament (and before that, the Great Council (*Magnum Concilium*) and before that the *Witan Gemote*). That is, the reference to the 'Crown' is to the legislative body (with the sovereign being head of the same). How this eventuated with regard to; (a) Crown land; and (b) the civil list, is chronologically summarised as follows:

Early Germanic Custom *Assembly of the Tribe (the Folk, the people)* 'On matters of minor importance only the chiefs debate, on major affairs the whole community...they assemble on fixed days...they take their seats fully armed...Then

²⁸³ This is held by the nation. However, it may be better if it were to pass to the National Trust or other body.

²⁸⁴ It would seem appropriate for the same to pass to nation, see 30(c).

²⁸⁵ Ibid.

²⁸⁶ Although listed in the Crown Lands Act 1851 (see 23) only those marked with a * are classified now, it seems as 'royal' parks.

- such hearing is given to the king or chief as age, rank, military distinction or eloquence can secure...If a proposal displeases them, the people roar out their dissent; if they approve, they clash their spears.²⁸⁷
- Early Anglo-Saxons *Assembly of Local Councils*. Likely, large numbers of the folk (the people) attended shire councils held in the open air at familiar locations (called *folk moots*, i.e. assemblies of the people (folk), the folk shouting 'aye' or 'nay' in assent (or dissent)).²⁸⁸
- Anglo Saxons (post 928 AD) *Assembly of the Witan*. Probably, there was, soon, a national assembly. Thus, a charter of 934 AD described a meeting in Winchester attended by 92 people with the charter executed with '*tota populi generalitate*'.²⁸⁹ Presumably, the larger (national) *witan gemotes* were presided over by the king his council, and representatives of the *volk* (people) attending at which, dooms (legislation) was passed.²⁹⁰ There was also an assembly of the nation outside London on 15th September 1052.²⁹¹
- After the Norman Conquest 1066, likely, large gatherings of all the people (the folk) ended, not least, because of the military situation prevailing in his time.
- William I (1066-87) *Meetings of the Great Council*. The Anglo-Saxon *witan gemotes* seem to have continued, but they were not called such. Rather, the assembly (parliament) was called a Great Council (*Magnum Concilium*) such as, possibly, in 1072.²⁹² Probably, meetings of the Great Council were not dissimilar save that the meeting may have been in the king's palace (*hus, palacio*) and fewer (if any) of the common people attended.
- c. 1113 *The Laws of King Henry I* (1100-35) refer to the king's land and treasure. And, to certain rights of the king to: treasure trove, wreck, flotsam *etc.* These were, later, termed '*flowers of the Crown*'. Probably, at this time, the sovereign was asserting that Crown land belonged to him.²⁹³
- 1189 The legal text, Glanvill, refers to 'laws' decisions made by the Great Council which were assented to by the sovereign, such being a reference to the supreme legislative body. Glanvill, also, refers to the '*Crown of the lord king*' suggesting that certain criminal pleas had been allocated by the '*Crown*' (the legislative body) to the king's courts and not to other courts.²⁹⁴
- 1215 Great Assembly held at Runymede to pass Magna Carta. The location appears to be a field where the *witan gemote* assembled in Anglo-Saxon times. Meeting from 15th-19th June, with the sovereign on one side and the nation (in arms) on the other, headed by the barons.²⁹⁵
- c. 1250 The legal text, Bracton, refers to 'laws' commands decided on by the magnates (later, the lords) with the general agreement of the people (*the res publica*, nation) after the assent of the sovereign. Also, that fiscal things (i.e. *res quae sacrae, res publicae*, public things, national things) belonged to the Crown. Such could not be alienated. However, certain Crown rights could be alienated by the sovereign (later, termed '*flowers of the Crown*'). Also, Bracton indicated that estates and lands belonged to the Crown but they could be alienated if the Crown was 'strengthened.' Also, that the sovereign was subject to the law(s).²⁹⁶
- 1259 Possibly, the last great assembly of the London folk, by command of Henry III (1216-72) at St Paul's Cross.²⁹⁷ This seems to have been the general place for London folk moots.
- After 1259, it is suggested that matters of state were handled by the Great Council (or the courts of the king) and no longer at open-air assemblies (whether in London or elsewhere). That is, the Great Council handled such matters on the basis of being the representative body of the nation (the *folk*, in its totality).
- 1275 The Statute of Westminster 1275 distinguished between the sovereign and the Crown.²⁹⁸

²⁸⁷ Tacitus (56-120 AD), n 7, pp 109-110. These assemblies would have been in the open air, at night, with only men and boys over 12 attending.

²⁸⁸ See Kemble, n 5, vol 2. See also GL Gomme, *Primitive Folk Moots* (1880), pp 51-2. Ibid, p 52 'instances occur where it may incontestably be asserted that the whole free population of a district took part in the acts of the council'. Ibid, pp 55-6.

²⁸⁹ Gomme, n 288, p 51.

²⁹⁰ See generally, FL Attenborough, *The Laws of the Earliest Kings* (1963). e.g., p 37 'I, Ine...king of Wessex, with the advice of [certain bishops], and with all my ealdormen, and the chief councillors of my people, and with a great concourse of the servants of God command etc.' See also AJ Robertson, *The Laws of England from Edmund to Henry I* (1925).

²⁹¹ Gomes, n 288, p 71 (the *fickle gemots or great council*).

²⁹² Ibid, pp 75-6 'the great folk-moot held upon Penne den Heath, in Kent, in 1072, when three days were employed in discussing the adverse rights of Odom, bishop of Bayeux, and Lanfranc, archbishop of Canterbury.' Ibid, pp 77-9.

²⁹³ See 7(a).

²⁹⁴ See 7(b).

²⁹⁵ Gomme, n 288, pp 72-5. He noted that: 'Matthew of Westminster (1215) records that Runymede was the field of council where...the Anglo-Saxons were wont to meet and consult on the welfare of the state...'

²⁹⁶ See 7(c).

²⁹⁷ Gomme, n 288, p 157.

²⁹⁸ See 8.

- 1275 Edward I (1272-1307) may have given a coronation oath in which he promised to do nothing that touched the Crown, without the consent of the Great Council.²⁹⁹
- c. 1290 The legal text *Britton* said that sovereigns could not alienate rights of the Crown or of their royalty (sovereignty). However, they could grant franchises of flowers of the crown.³⁰⁰
- c. 1290 The legal text, *Fleta*: 'It is not lawful to the king to alienate the ancient manors or rights annexed to the Crown (*antiqua maneria, vel iura corone annexa*), and every king is bound to resume those things alienated from his Crown.' Also, 'a king is created by law (*per legem factus est rex*). Also, 'the Crown is a symbol (*et ideo corona insignitur*) that he [the king] will rule the people subject to him by a process of law (*per indicia populum regat sibi subiectum*).' Also, judges, sheriffs and other ministers to swear that 'they will not consent to the alienation of such things as belong to the ancient demesne of the 'Crown.' Also, 'counsellors ...shall swear...that they will not...ask any of the council, or any in attendance on the king, to procure that the king shall give them anything that belongs to the Crown in such wise that they may retain it for themselves'. *Fleta* may have been a judge.³⁰¹
- In conclusion, by 1290, it seems clear that legal texts were asserting that Crown land could not be alienated by the sovereign.
- 1311 New Ordinances (laws) of 1311 were forced on Edward II (1327-77). These, *inter alia*, repealed (cl 7) all gifts given to the damage of the king and the diminution of the Crown in the period 1308-11.³⁰²
- 1322 The Ordinances of 1311 were revoked by the Ordinance of 1322. Art 4 provided that matters relating to the: (a) estate of the sovereign; or (b) estate of the Crown were to be decided on by Parliament. Art 4, also, referred to: (c) the royal power of the sovereign. Thus, 3 categories.
- In conclusion, it seems clear that, by 1322 at the latest, there was a:
- distinction drawn between the *sovereign* and the *Crown* (i.e. the legislature, the sovereign in Parliament).
 - recognition that Parliament held all Crown rights (prerogatives). And, that none of these could be alienated by the sovereign (including Crown land), save for certain '*flowers of the crown*' which the sovereign could alienate (farm out) to obtain revenue to fund his running of government. Also, that the sovereign had *use* of Crown land (i.e. he could farm it out) but he could not alienate the same.
 - recognition of 3 categories of Crown rights (prerogatives): *viz.* (a) royal powers; (b) fiscal rights; (c) flowers of the Crown, the revenues of which could be used to run government. (a) and (b) were inalienable.
- 1327 Edward II (1307-27) deposed.
- c. 1330 *Modus Tenendi Parliamentum*. 'the king is head, the beginning and end of Parliament.'³⁰³
- 1337 Grandisson, bishop of Exeter: 'the substance of the nature of the Crown is found chiefly in the person of the king as head and of the peers as members.'
- 1365 Thorpe CJ, 'Parliament represents the body of the whole realm'.
- 1399 Richard II (1377-99) deposed. He lost everything, including all Crown prerogatives.
- 1401 At the close of Parliament in 1401, the speaker indicated that the Lords spiritual and temporal, the Commons and the sovereign formed a trinity. He, then, compared this body politic with the holy trinity.
- 1483 Russell, a former Chancellor - in a sermon at the opening of Parliament in 1483 - discussed the body politic of England as comprising 3 estates with the sovereign at its head, such being the body politic (mystical) body of the realm.
- 1522 Fineux CJ, 'the Parliament of the king and the lords and the commons are a corporation.'
- 1533 'this realm of England is an empire [nation]...governed by one supreme head and king, having the dignity and royal estate of the imperial Crown of the same unto whom [i.e. which is] a body politic compact of all sorts and degrees of people divided in terms and by names of spirituality and temporality be bounden [bound together]...'
- 1542 Henry VIII (1509-47) 'We be informed by our judges that we [the sovereign] at no time stand so highly in our estate royal [sovereignty] as in the time of Parliament [our presence in this assembly], wherein we as head and you as members are conjoined and knit together in one body politic [i.e. the Crown or the Crown in Parliament or Parliament].'
- 1543 Fortescue, former Chief Justice, 'the kingdom issues from the people, and exists as a body mystical [*corpus mysticum*], governed by one man as head...just as the head of the physical body is unable to change its sinews, or to deny its members proper strength and due nourishment of blood, so a king who is head of the

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² See 9.

³⁰³ For this, and the other quotations up to 1562-5, see 11 & 12.

body politic is unable to change the laws of that body, or to deprive the same people of their own substance uninvited or against their wills.’

1562-5 Queen Elizabeth’s ambassador to France ‘the prince (king) is...the head, and the authority of all things that be done in this realm of England’, which he also described as a ‘Commonwealth’.

In conclusion, from c. 1330, the ‘*Crown*’ is conceptualised as a body aggregate - one comprising the sovereign (as head) and parliament (the members, body). In short, the *Crown* in Parliament foreshortened to ‘*Parliament*.’

1559 *Willion v Berkley* (1559) Southcote (counsel) ‘the king has two capacities, for he has two bodies, the one whereof is a body natural...the other is a body politic, and the members thereof are his subjects, and he and his subjects together compose the corporation...and he is incorporated with them, and they with him, and he is the head, and they are the members, and he has sole government of them.’

1561 *Duchy of Lancaster Case* (1562) ‘the king has in him two bodies, viz a body natural, and a body politic. His body natural...is a body mortal, subject to all infirmities that come by nature or accident, to the imbecility of infancy or old age, and to the like defects that happen to the natural bodies of other people. But his body politic is a body that cannot be seen or handled, consisting of policy and government, and constituted for the direction of the people, and the management of the public weal [good], and this body is utterly void of infancy, and old age, and other natural defects and imbecilities...’³⁰⁴

In conclusion, from 1559, the ‘*Crown*’ is conceptualised as a body aggregate by the courts. One comprising the sovereign (as head) and parliament (the members, body). In short, the ‘*Crown in Parliament*’ foreshortened to ‘*Parliament*.’

1623 Crown Lands Act 1623 refers to ‘*Crown Lands*’. And, s 2, when the sovereign grants lands where the reversion, remainder or estate is (or shall be) in ‘*the King’s Majesty, or his successors, in the right of the Crown*’. Seems clear statutory acceptance that the ownership of Crown land is, that of *the Crown* (not in the sovereign in the *body natural*, nor the sovereign in the *body sole*).

1702 Crown Lands Act 1702, s 5 ‘the necessary expenses of supporting the Crown, or the greater part of them, was formerly defrayed by a land revenue, which hath, from time to time, been impaired and diminished by the grants of former kings and queens of this realm, so that [HM’s] land revenue at present can afford very little towards the support of her government.’ S 5 refers to grants of land *etc* made by the sovereign, her heirs or successors ‘*in right of the Crown*’. S 8 referred to debts due to the ‘*Crown*’. It seems clear statutory acceptance that the ownership of Crown land is that of *the Crown* (not in the sovereign in the *body natural*, nor the sovereign in the *body sole*). Further, this Act prevented the alienation of Crown land.³⁰⁵

In conclusion, legislation in 1623 and 1702 recognised that Crown land could not alienated.

1760 George III (1760-1820) surrendered hereditary Crown revenues for £800k pa (a civil list) to: (a) run government; (b) run the royal household; and (c) have a personal salary (from the privy purse).

1800 A Crown Private Estates Act permits the sovereign to own private estate - implicitly accepting that no Crown land (or the duchies of Lancaster or Cornwall) had been private estates in the past.³⁰⁶

In conclusion, legislation in 1800 enabled the sovereign to own real (and personal) property privately.

1961 A Crown Estates Act 1961 (still extant) provided for the management of Crown land (the Crown Estate). Also, s 1(2) for the Crown estate commissioners to manage Crown land (Crown Estate) as if the Crown Estate were the owner.

1952 Elizabeth I (1952 -) surrenders hereditary Crown revenues for £410k pa to: (a) run the royal household, and (b) have a personal salary (from the privy purse, possibly, the sum of £60k).

2011 Sovereign Grant Act makes provision for monies to run the royal household. The civil list is abolished.

In conclusion, as from 2011, the need for the concept of hereditary revenues of the Crown (and the surrender of the same) ended (also, the concept of a privy purse). All should be abolished - since it is simply one part of government paying another part of government. Also, any revenues from the duchies of Lancaster, Cornwall and principates of Wales and Scotland, should be abolished. Instead, the sovereign and the Duke (Duchess) of Cornwall should be paid a royal salary on which tax is paid.

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³⁰⁴ For these cases, see 12.

³⁰⁵ For these Acts, see 15 & 16.

³⁰⁶ For this Act, see 31.