The Crown - What It Really Is and Its Connection to the Roman Imperium

The transmission of imperial authority from antiquity to the modern constitutional State

1. Introduction - The wrong understanding of Rome

History has encouraged successive generations to understand the Roman Empire principally as a territorial entity.

Its existence is measured through conquest, geographical expansion, military occupation, political administration and eventual territorial disintegration.

But territory was the possession of Rome.

Imperium was the authority through which Rome commanded it.

The distinction is fundamental to understanding the historical origins of the Crown.

If one searches for the continuation of Rome exclusively through its geographical boundaries, armies and emperors, one will not find what they might expect.

If, however, one examines the transmission of its conception of sovereign authority through successive political, ecclesiastical and constitutional arrangements, a substantially different historical picture emerges.

The proposition advanced in this paper is that the Crown represents a constitutional descendant of the Roman *imperium*: an institutional expression of authority which has undergone centuries of reconstruction, redistribution and legal adaptation.

The connection is considerably more substantial than a mere resemblance between ancient and modern institutions.

To understand the Crown, one must first understand that which preceded it.

2. Imperium - Authority separated from the individual

Long before Augustus established the Roman Principate, Rome had developed a sophisticated understanding of constituted authority.

Imperium was not simply the possession of military strength. It was a legally recognised power of command, vested in designated officeholders and exercised within an established constitutional order.

A Roman consul possessed *imperium* by virtue of his office.

The individual might die, be replaced or otherwise cease to hold office, but the constitutional machinery through which *imperium* was conferred remained.

Rome had distinguished the human being from the authority exercised by that human being.

That distinction would become one of the most enduring characteristics of European constitutional development.

Under Augustus, the accumulation of exceptional powers transformed the constitutional character of Rome. Authority previously distributed among republican institutions became increasingly concentrated within the imperial office.

Augustus however, understood the importance of institutional continuity.

He did not immediately extinguish the constitutional vocabulary of the Republic. He retained much of it while fundamentally altering the distribution of authority beneath it.

Rome demonstrated that power could be reconstructed without necessarily destroying the institutional forms through which it was expressed.

That principle is essential to understanding the subsequent development of the Crown.

The authority and the form through which it is exercised are not necessarily the same thing.

Forms can change. Authority can be transferred, reconstructed and preserved.

3. The transmission of Roman authority

The deposition of Romulus Augustulus in AD 476 did not extinguish Roman civilisation, Roman jurisprudence or the political conception of Roman imperial authority. Nor did it extinguish the Roman Empire.

The Western Europe in particular developed political and ecclesiastical structures within a civilisation profoundly shaped by Rome.

The successor kingdoms did not emerge within a constitutional vacuum. They inherited populations accustomed to Roman administration, territories previously governed through Roman institutions, sophisticated legal traditions and a political vocabulary in which Roman authority retained enormous significance.

In AD 800, Pope Leo III crowned Charlemagne emperor in Rome.

The significance of that event lay not merely in the coronation of an individual, but in the assertion that Roman imperial legitimacy could be vested in a ruler centuries after what many believed was the disappearance of the earlier Western imperial administration.

The medieval concept of *translatio imperii* - the transfer of imperial authority became an important element of European political thought.

It supplied a means of understanding imperial authority as something capable of passing between rulers, dynasties and political entities.

According to that conception, Rome's territorial transformation need not entail the extinction of its imperial dignity.

The sovereignty of later European rulers could consequently be articulated through concepts originating within the Roman constitutional tradition.

Imperium had become something capable of appropriation and transmission beyond the geographical and political circumstances of its origin.

4. The Church - The institutional bridge

The Church is indispensable to understanding the historical relationship between Roman imperial authority and European monarchy.

Following the decline of Western Roman imperial government, ecclesiastical Rome retained an extensive institutional presence across Europe.

It preserved and developed systems of jurisdiction, hierarchy, scholarship, administration and authority which operated beyond the boundaries of individual kingdoms.

- Its language was Latin.
- Its legal development drew substantially upon Roman jurisprudence.
- Its offices possessed a continuity independent of their individual occupants.
- Its jurisdiction extended across populations governed by different secular rulers.

Through coronation, anointing and religious recognition, the Church also participated in the construction of monarchical legitimacy.

The medieval relationship between spiritual and temporal authority was consequently much more than a relationship between religion and government.

It concerned the constitutional foundation upon which authority itself was understood to rest.

European monarchs, ecclesiastical authorities and jurists inherited and reconstructed concepts developed within the Roman world.

Among those concepts was the perpetuation of authority through office.

The Church was not simply an unchanged continuation of Roman imperial government, but it was a principal institutional bridge connecting the Roman world with the constitutional order of medieval Europe.

Through that bridge, important elements of Roman authority continued to shape the political architecture from which the Crown emerged.

5. The diffusion of Imperium among European sovereigns

Perhaps the most important development in the transmission of Roman imperial authority was the emergence of the medieval jurisprudential maxim:

Rex in regno suo est imperator - The king is emperor within his own kingdom.

The proposition was constitutionally significant.

It asserted that a monarch could possess within his own realm an authority comparable in supremacy to that claimed by an emperor.

Imperial authority was no longer necessarily understood as exclusively belonging to a single ruler exercising universal jurisdiction.

It could be asserted independently by sovereigns within their respective territories.

The medieval revival of Roman law contributed directly to this development in European statecraft. The maxim supplied jurists and monarchs with a conceptual foundation upon which to resist the superior jurisdiction claimed by emperors and popes.

This is the point at which the relationship between Roman *imperium* and the Crown becomes particularly significant.

The emerging sovereign kingdoms of Europe did not simply imitate Roman imperial authority. They appropriated its constitutional character.

The concept of imperial supremacy was progressively incorporated into the authority claimed by territorial monarchies.

What had once been associated with Roman imperial jurisdiction could now be claimed as an inherent attribute of sovereign kingship.

The political unity of the original Roman imperial order had fragmented.

Its conception of supreme authority had not disappeared. It had become capable of multiple constitutional expressions.

6. The Imperial Crown of England - The primary evidence

The clearest statutory evidence of this development within England is contained in the Act in Restraint of Appeals of 1533.

Its preamble expressly declared:

“this realm of England is an empire”

It identified the King as possessing:

“the dignity and royal estate of the imperial crown of the same”

These words appear in an Act of Parliament, not in a retrospective historical interpretation.

Their significance cannot properly be reduced to ceremonial terminology.

The legislation asserted the jurisdictional supremacy of the English realm and sought to exclude external authority from the final determination of matters falling within it.

England was claiming the constitutional characteristics of imperial sovereignty.

The historical scholarship concerning the preparatory Tudor documents, particularly the *Collectanea satis copiosa*, is especially revealing.

The arguments developed within those materials treated *imperium* as vested in the Crown, with the King's authority deriving from his possession of that Crown rather than being an exclusively personal attribute.

This is a critical distinction.

The King possessed the Crown. The Crown embodied the *imperium*.

The constitutional authority of the King consequently arose from his position as the holder of that enduring institution.

England's break with papal jurisdiction was not, in this respect, a repudiation of the Roman conception of sovereign authority.

It was an appropriation of imperial supremacy within an independent territorial jurisdiction.

The Tudor Crown was employing a constitutional doctrine descending from Roman jurisprudence and medieval imperial thought to establish its independence from external ecclesiastical authority.

The paradox is remarkable.

In asserting its independence from Rome, England expressly constituted that independence through the language of empire and the authority of an imperial Crown.

7. The Crown as the enduring repository of authority

The doctrine of the King's two bodies subsequently provided one of the clearest expressions of the distinction between the monarch and the institution of sovereign authority.

The King possessed a natural body and a political body. His natural body was mortal. His political body represented the enduring constitutional office.

The death of the human being did not extinguish the authority associated with that office.

This doctrine, examined extensively by Ernst Kantorowicz in *The King's Two Bodies*, reflected centuries of interaction between Roman jurisprudence, medieval political theology and European constitutional development and the Crown consequently acquired a legal and constitutional existence distinguishable from the individual sovereign.

This represents a development of the institutional principle already identifiable within Roman *imperium*: authority is not necessarily the personal possession of the individual through whom it is exercised. The authority survives the individual.

The significance of hereditary succession lies, in part, in providing a predetermined mechanism through which occupation of the sovereign office continues.

The death of a monarch does not bring about the dissolution of government, the termination of judicial jurisdiction or the extinction of the State's authority. The Crown continues.

It is therefore the institution, rather than the individual, which must occupy the centre of any serious examination of constitutional power.

The monarch is temporary. The authority represented by the Crown possesses institutional continuity.

8. The redistribution of Imperium

The development of parliamentary government did not extinguish the Crown. It fundamentally altered the distribution and exercise of authority historically associated with it.

The constitutional settlements of the seventeenth century, together with subsequent parliamentary and democratic developments, progressively restricted the personal exercise of monarchical power. Nevertheless, the Crown remained embedded within the constitutional structure.

Legislation continued to be enacted through the Crown in Parliament.

Executive government continued to operate in the name of the Crown.

Criminal justice continued to be administered through institutions historically associated with the Crown.

Military authority retained important constitutional connections to the Crown.

The relationship between ecclesiastical and temporal authority remained visible through the established Church of England.

The constitutional transformation was substantial, but it was not a complete abandonment of the earlier institutional framework.

The authority once concentrated more extensively within the sovereign office became distributed among ministers, Parliament, courts and other constitutionally recognised institutions. This development illustrates the capacity of inherited constitutional structures to survive profound changes in the practical exercise of power.

The authority associated with the Crown is now subject to statutory restrictions, constitutional conventions, parliamentary accountability and judicial supervision.

Those limitations are real and are important. They demonstrate that Roman-derived conceptions of sovereign authority have been transformed through constitutional development, not that the earlier conceptual inheritance has ceased to exist.

9. What the public sees and what the Crown represents

The public is accustomed to seeing the Crown through its ceremonial manifestations.

- Coronations.
- Royal residences.
- Processions.
- Hereditary succession.
- Regalia.

But none of those things, individually or collectively, adequately explains the constitutional nature of the Crown.

The Crown is a legal and institutional construction through which considerable aspects of State authority are expressed.

Its presence is discernible throughout government, legislation, criminal justice, military administration and constitutional law.

The monarch provides the institution with a visible human embodiment, but the constitutional significance of the institution extends considerably beyond the individual who embodies it.

This is where the historical connection with Roman *imperium* becomes particularly instructive.

Rome developed an understanding of constituted authority that could exist independently of its temporary holder.

Medieval Europe reconstructed that understanding through imperial claims, ecclesiastical jurisdiction and sovereign kingship.

The English Crown expressly appropriated the language and constitutional character of imperial sovereignty.

The modern constitution redistributed the exercise of that authority while retaining the Crown as an enduring institution.

The connection is historical, jurisprudential and institutional.

The ceremonial Crown is the visible representation of that considerably deeper constitutional inheritance.

10. The question of legitimacy

The historical origins of authority must remain distinguishable from the contemporary justification of authority.

The fact that constitutional arrangements have endured for centuries does not, of itself, resolve questions concerning their legitimacy.

Equally, establishing that an institution derives elements of its constitutional character from antiquity does not establish that its modern operation is identical to that of its historical predecessors. Nevertheless, an informed understanding of contemporary constitutional

arrangements requires an informed understanding of their origins.

The Crown was not created by nature and neither was Roman *imperium*. Both represent human constructions through which authority was constituted, organised, legitimised and exercised.

Their historical development demonstrates the capacity of human institutions to preserve their identity across successive generations, even where their practical operation undergoes profound transformation.

Whether the contemporary distribution of constitutional authority remains appropriate is a separate question requiring examination of democratic legitimacy, legal accountability, institutional transparency and the effective operation of the rule of law.

History explains how authority arrived at its present position. It does not necessarily determine where authority ought to reside in the future.

11. Conclusion - From Imperium to Crown

The Roman Empire is ordinarily examined as something belonging to the distant past, whereas the Crown is

ordinarily examined as something belonging to the constitutional present.

Between them lie centuries of political, ecclesiastical and jurisprudential development which are too frequently considered in isolation from one another.

When those developments are examined together, a coherent historical progression becomes visible.

Roman *imperium* established a sophisticated conception of legally constituted command. The imperial office developed the concentration and transmission of supreme authority.

Medieval political thought recognised the possibility of transferring and appropriating imperial legitimacy.

Roman jurisprudence supplied European monarchs with concepts through which sovereign jurisdiction could be asserted.

The Church provided an important institutional medium through which Roman legal and political thought was preserved and reconstructed.

English legislation expressly asserted the sovereignty of an imperial Crown.

Subsequent constitutional developments redistributed the exercise of that authority without extinguishing the institution itself.

The Crown can therefore be understood as one of the constitutional descendants of the Roman conception of *imperium*. Not because a Roman emperor continues to govern Britain and not because the modern British constitution is identical to that of Imperial Rome, but because the constitutional conception of authority developed in Rome passed into the European political and jurisprudential tradition from which the imperial Crown of England emerged.

The evidence of that inheritance is not confined to historical speculation. It is manifest in the constitutional language adopted by England itself in 1533.

Perhaps the greatest obstacle to recognising the relationship has been the tendency to search for Rome through territory rather than authority.

- Territory can be lost.
- Dynasties can disappear.

- Religions can change.
- Governments can be reconstructed.

However, the underlying conception of constituted authority can survive through successive institutional transformations.

The monarch is not the Imperium. The Crown is a constitutional embodiment of an inherited conception of sovereign authority and within the historical foundations of that conception, we find Rome.

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