Royal Marriages – Constitutional Issues

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A series of legal restrictions on the religious beliefs which can be held by the spouse of the monarch were introduced following the Glorious Revolution in 1688. The monarch must join in communion with the Church of England, must declare him or herself to be a Protestant, and must swear to maintain the established churches in England and Wales. If he or she wishes to retain the title to the throne they cannot marry a Catholic. And by the same token, marriage to a Catholic automatically excludes anyone from the line of succession.

As well as restrictions on the religious beliefs of the spouse of the monarch, *The Royal Marriages Act 1772* requires the descendants of George II (other than the children of princesses married into 'foreign families') to seek consent of the monarch before marrying.

This note sets out the legal and historical background to the restrictions, and considers their application in the case of the marriage of Prince Charles to Camilla Parker Bowles.

Other Standard Notes of interest may be:

- SN/PC/00683, *The Act of Settlement and the Protestant Succession*
- SN/PC/00293, *Bill of Rights 1688*
- SN/PC/00435, *The Coronation Oath*

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1 Religious beliefs of the spouse of the monarch

1.1 Relevant statutes

A series of relevant statutes sought to ensure the Protestant succession following the Glorious Revolution of 1688.[1] These have a continuing influence on the religion of the spouse of the monarch.

The Bill of Rights 1688

This states:

> And whereas it hath beene found by experience that it is inconsistent with the safety and welfaire of this protestant kingdome to be governed by a popish prince or by any King or Queene marrying a papist the said lords spirituall and temporall and commons doe further pray that it may be enacted that all and every person and persons that is are or shall be reconciled to or shall hold communion with the see or church of Rome or shall professe the popish religion or shall marry a papist shall be excluded and be for ever uncapeable to inherit possesse or enjoy the crowne and government of this realme and Ireland and the dominions thereunto belonging or any part of the same or to have use or exercise any regall power authoritie or jurisdiction within the same…

The Act appears to prevent Roman Catholics from becoming the spouse to the monarch.[2]

Coronation Oath Act 1688

Where it is quite clear that monarch or heir must not only not be a Catholic but also join in communion with the Church of England, it would seem that the only restriction on the monarch or heir's spouse is that she cannot be a Catholic. So far as can be seen, the nearest requirement on a Queen consort to be a Protestant is under the *Coronation Oath Act 1688*. The wording seems to require the same promise of both King and Queen to maintain the established religion.[3]

The Act requires the King and Queen to swear, during the coronation ceremony, that they will to the utmost of their power:

> maintaine the Laws of God the true profession of the Gospell and the Protestant reformed religion established by law [...] and [...] preserve unto the bishops and clergy of this realm and to the churches committed to their charge all such rights and privileges as by law do or shall appertain unto them or any of them.[4]

On the other hand, section 4 of the Act appears to detract from this requirement although the wording is somewhat imprecise:

> **4. Oath to be administered to all future Kings and Queens**
>
> And ... the said oath shall be in like manner administred to every King or Queene who shall succeede to the imperiall crowne of this realme at their respective coronations by one of the archbishops or bishops of this realme of England for the time being to be

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1 In England before 1752, 1 January was celebrated as the New Year festival, but 25 March was the start of the civil or legal year. The *Calendar (New Style) Act 1750* introduced the Gregorian Calendar and moved the start of the civil year to 1 January. Therefore the years given in dates for Acts preceding 1752 are often recorded differently – depending on whether the old or new style calendar is used. In this note, the dates used in *Halsbury's Laws of England* have been used.

2 For the rest of this note, all references to 'Catholics' are references to 'Roman Catholics'.

3 *Coronation Oath Act 1688* (1 Will & Mar chap 6), s 3

4 *Coronation Oath Act 1688* (1 Will & Mar chap 6), s 3

> thereunto appointed by such King or Queene respectively and in the presence of all persons that shall be attending assisting or otherwise present at such their respective coronations any law statute or usage to the contrary notwithstanding.

The 1688 Act included the Queen, since William and Mary ruled as joint monarchs. This joint monarchy was unprecedented in English history and came about as part of unique circumstances. Mary was the sister of James II and her husband was Dutch. As part of the negotiations leading to the Glorious Revolution, William was approached for his opinion. According to the *Oxford History of England* William made clear to those who sought to bring him to power that he would not be regent or accept a subordinate position to his wife. The history notes "Both William and Mary formally accepted the offer of the throne made to them jointly, and with it the Declaration of Rights".[5]

Therefore as far as a Queen consort or wife of the heir to the throne is concerned, it is only Catholics who are specifically affected. However, if the speculation about the Coronation Oath is justified, there might be women of some Protestant denominations and non-Christian religions who would not wish to promise to maintain the established religion. (There is also the uncertainty over Holy Communion in the coronation service).

The coronation oath was not administered to Prince Philip, who is the consort of the current monarch. Only Elizabeth II took the oath. In contrast, the Queen's parents, George VI and Queen Elizabeth both took the coronation oath.[6] However, it is worth noting that the oath Elizabeth II took was modified without statutory authority. The present Queen swore to govern the peoples of her realms and territories according to their respective laws and customs and to maintain the established Protestant religion in the United Kingdom.[7]

If there were doubts about the religious affiliation of the spouse, it would not seem necessary for the spouse to take the formal coronation oath. The fact that the religious affiliation was non-Christian or pagan would not seem to be relevant, since the oath need not be administered to a spouse.

Act of Settlement 1700

The Bill of Rights established the succession to the heirs of Mary II, Anne and William III in that order. But by 1700 Mary had died childless, Anne's only surviving child had died and William was dying. The Stuarts still had claims to the throne. The *Act of Settlement* was passed, devolving the Protestant succession after Queen Anne (assuming no heir) on Princess Sophia the Electress of Hanover and her heirs, who were Protestants. The Act explained that it was "absolutely necessary for the safety, peace and quiet of this realm to obviate all doubts and contentions in the same by reason of any pretended titles to the crown"[8],

This Act in section 2 reiterated the exclusion of Catholics or persons married to Catholics and the requirement for the Coronation oath:

> **2. The persons inheritable by this Act, holding communion with the church of Rome, incapacitated as by the former Act, to take the oath at their coronation, according to Stat 1 W & M c 6**

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5 Sir George Clark *The Later Stuarts 1660-1714* second edition p145
6 See Halsbury's Laws of England Vol 12(1) The Crown, para 20
7 For further details see Library Note SN/PC/00435, *The Coronation Oath*
8 *Act of Settlement 1700* (12 & 13 Will 3 chap 2), in long title

> Provided always and it is hereby enacted that all and every person and persons who shall or may take or inherit the said crown by vertue of the limitation of this present Act and is are or shall be reconciled to or shall hold communion with the see or church of Rome or shall profess the popish religion or shall marry a papist shall be subject to such incapacities as in such case or cases are by the said recited Act provided enacted and established. And that every King and Queen of this realm who shall come to and succeed in the imperiall crown of this kingdom by vertue of this Act shall have the coronation oath administered to him her or them at their respective coronations according to the Act of Parliament made in the first year of the reign of his Majesty and the said late Queen Mary intituled An Act for establishing the coronation oath and shall make subscribe and repeat the declaration in the Act first above recited mentioned or referred to in the manner and form thereby prescribed.

At first the effect of this was to exclude all members of other churches. However, members of certain other Protestant churches may not now be debarred. Since 1972, by the Church of England's Admission to Holy Communion Measure,[9] and the [Church of England] Canon (B15A) that followed it, "baptised persons who are communicant members of other churches which subscribe to the doctrine of the Holy Trinity, and who are in good standing in their own Church" shall without further process be admitted to Holy Communion in Church of England churches.

This means, for instance, that a Methodist, Congregationalist, Church of Scotland, or Baptist member can take Anglican communion, though a Unitarian (who would reject the concept of the Trinity) could not. Hence in the strict sense of the wording of the Act of Settlement, members of these churches would *not* now be excluded. Members of Protestant denominations outside the Church of England do not generally object as a matter of faith to its established status and could thus subscribe to the requirements of the *Coronation Oath Act 1688*. Such a person could therefore "join in communion", as the words of the statute decree.

A Catholic would probably still be affected by this section, additionally to the specific disabilities quoted in s 2, since he or she could not remain "in good standing" in the Roman Catholic Church by taking communion from an Anglican minister.[10] This disability would appear to affect the spouse of a monarch who would be required to take the coronation oath. However, as seen above, the current monarch took a form of the coronation oath which differed in wording from the 1688 Act.

Act of Union with Scotland 1706

The position of the established Protestant Presbyterian Church of Scotland was safeguarded in the Act of Union with Scotland. Article II of the Articles of Union reiterated and confirmed the provisions of the Act of Settlement. It would need amendment should the Act of Settlement be abolished or amended.

1.2 Recent examples

There are two recent examples where the marriage of someone in line to the throne to a Roman Catholic has resulted in their removal from the line of succession.[11] The Earl of St Andrews and HRH Prince Michael of Kent both lost the right of succession to the throne

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9 GSM no.2, 1972. The canon is reprinted in *Canons of the Church of England,* 5th ed 1993 (loose leaf publication)

10 With certain minor exceptions, [RC] Canon 844; *Code of Canon Law*, 1997 ed.

11 A list of the first 40 in line to the throne is available at http://www.royal.gov.uk/output/page5655.asp (last viewed 22 August 2008)

through marriage to Roman Catholics. Any children of these marriages remain in the succession provided that they are in communion with the Church of England.

In 2008 it was announced that Peter Phillips would marry his partner, Autumn Kelly. It emerged that she had been baptised as a Catholic. Ms Kelly was accepted into the Church of England before the marriage took place and Peter Phillips retains his place in the line of succession.[12]

2 The Royal Marriages Act 1772

This Act requires the descendants of George II (other than the children of princesses married into 'foreign families') to seek consent of the monarch before marrying.[13] The Act applies also to marriages celebrated abroad and makes such marriages without consent void.[14] Under the *His Majesty's Declaration of Abdication Act 1936* the 1772 Act was disapplied for any heirs of the Duke of Windsor. A descendant aged over 25 who persists in his/her wish to marry without consent, may do so unless both Houses of Parliament expressly disapprove of the marriage. There is no reference to the religion of the intended spouse.

There have been suggestions that the *Royal Marriages Act 1772* contravenes human rights legislation in requiring virtually all descendants of George II permission from the crown for their marriages, although controversy remains about its full extent.

Robert Blackburn has explained the idea of constitutional control over who becomes the spouse of the reigning of future monarch as follows:

> The logic behind this idea is that the personality and personal life of the individual who is or may become head of state is a matter of profound public interest to the well-being of the government and the country. The head of state's consort is inter-woven into this public interest in good governance, for he or she not only has considerable de facto official, ceremonial and diplomatic functions to perform, but normally will be the father or mother of the subsequent heir apparent. A comparative glance at monarchies elsewhere in the world indicates that similar notions often operate there too. Both Spain and Sweden, for example, have constitutional provisions debarring from the throne those who proceed with a royal marriage which is not approved by the government.[15]

3 Attempts to change the law

The arguments in favour of changing *The Royal Marriages Act 1772* have been set out in an article by Dr Stephen Cretney, an emeritus fellow of All Souls College, Oxford, who quotes a 1955 civil service brief prepared for the Prime Minister in relation to a Parliamentary Question:

> 1. "It is inherently unsatisfactory that personal and constitutional questions of such high importance should still depend on the operation of an 18th Century Statute which was admittedly passed hurriedly, and in the face of considerable opposition, to deal with an *ad hoc* situation created largely by the unsatisfactory conduct of King George III's brothers."

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12 "Fiancée secures royal succession by abandoning her Catholic Faith', *The Times,* 1 May 2008

13 "The Royal Marriages Act 1772" *Modern Law Review* Vol 14 Jan 1951 suggests that descendants of Queen Elizabeth II do not come within the Act, as she was a princess marrying into a foreign family

14 *Sussex Peerage Case* (1844) 11Cl and Fin 85

15 Blackburn, *King and Country: Monarchy and the Future King Charles III,* 2006, p171

> 2. The legal interpretation of the Act is uncertain; but it seems that "its ambit is now far too wide. It extends, or may extend to classes of persons whose connection with the Throne is very remote. Some think it should at least be confided to The Sovereign's children and grand-children and the Heir Presumptive."
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> 3. "Although many approve in principle of control of marriages which are likely to affect the succession to the Throne, it can reasonably be argued that the sanctions against marriage without consent imposed by the Act of 1772 are too strong. A marriage without consent if void and the offspring of the union bastardised…"
>
> 4. "The provision of the Act which requires an applicant over the age of 25 who has been refused consent to give notice to the Privy Council and then wait a year, during which either House of Parliament may prevent the marriage by passing a resolution is contrary to modern ideas of propriety and fair-dealing".[16]

The *Legitimacy Act 1959* introduced the doctrine of the putative marriage into English law. As a result of that Act the child of a marriage void under the *Royal Marriages Act 1772* will usually be treated as the legitimate child of the parents.

Dr Cretney writes:

> Materials now in the public domain demonstrate that there were two main options for reform of the Royal Marriages Act. [*Footnote: In 1955 (when it had been thought that Princess Margaret might renounce her rights of succession on marrying Group Captain Peter Townsend) draft documents were prepared…*] The first was to amend the Act by confining its application to a comparatively narrow class (for example, the current Monarch's descendants). The second was to repeal the 1772 Act, and substitute an Act retaining the need for the Sovereign's consent to the marriage and those close to the throne, but restriction the sanction for failure to obtain that consent to disqualification from the line of succession and from any financial provision from the Civil List. Bills were drafted by counsel to give effect to these alternatives. But by 1964 all enthusiasm for reform seems to have evaporated. Approval of those Commonwealth countries which were monarchies seems to have been an especially weighty factor, and on July 13 1964 Home Secretary Henry Brooke decided "not to proceed with legislation… at the moment". Forty years later, there has still been no Government action to introduce the legislation…"[17]

Lord Dubs introduced the *Succession to the Crown [HL] Bill* in the 2004-5 Session. Clause 2 of Lord Dubs's Bill attempted to allow spouses of the King/Queen to be a Catholic, but did not attempt to repeal the *Act of Settlement* itself. Nevertheless, the Bill faced opposition on its second reading from the Bishop of Winchester:

> …if the Bill became law and made in time for a Roman Catholic consort, in a generation we could therefore have a Roman Catholic heir to the throne who could not join in communion with the Church of England. Although I pray earnestly for that reconciliation of the Roman Catholic and Anglican Churches which for me is the only proper solution to the admitted embarrassments and misunderstandings which the Bill seeks to resolve, I doubt very much whether it is wise for your Lordships' House or the

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16 Dr S Cretney QC, 'Royal Marriages: Some Legal and Constitutional Issues', *Law Quarterly Review,* April 2008, pp235-237

17 Dr S Cretney QC, 'Royal Marriages: Some Legal and Constitutional Issues', *Law Quarterly Review,* April 2008, pp238-239

> other place either to bank on the timing of that reconciliation or to seek to bring pressure to bear on its achievement.[18]

Also in the 2004-05 Session Ann Taylor introduced the *Succession to the Crown (no 2) Bill* in the Commons, but the bill did not make progress.[19] Edward Leigh presented his ten minute rule bill *Royal Marriages (Freedom of Religion) Bill* on Tuesday 8 March 2005. He argued that amending the law in relation to the spouse of a monarch was a much less complex process than removing the anti-Catholic nature of the *Act of Settlement.*

The then Lord Chancellor, Lord Falconer responded to Lord Dubs's Bill. He stated that although the *Act of Settlement* and other associated Acts that exclude Roman Catholics from the succession could be seen as 'discriminatory', he remained opposed to what would be a complex and controversial procedure to change them:

> To bring about changes to the law would be a complex and controversial undertaking, raising major constitutional issues which would involve the amendment or repeal of a number of pieces of related legislation. Legislation that would need to be reviewed includes the Bill of Rights 1688, the Coronation Oath Act 1688, the Union with Scotland Act 1707, the Princess Sophia's Precedence Act 1711—I hope no one will intervene on that one—the Royal Marriages Act 1772, the Union with Ireland Act 1800, the Accession Declaration Act 1910, and the Regency Act 1937. I recognise that my noble friend's Bill deals with obvious aspects of the Union with Scotland Act and, indeed, the parallel Union with England Act of the pre-Union Scottish Parliament, but it has not addressed any of the issues raised by the other Acts to which I have referred.
>
> I should make it clear that this Government stand firmly against discrimination in all its forms, including discrimination against Catholics, and will continue to do so. The Government would never support discrimination against Catholics, or indeed any others, on the grounds of religion. The terms of the Act are discriminatory, but we should be clear that for all practical purposes, its effects are limited…
>
> There is a difference between applying new legislation such as the Human Rights Act to existing legislation, and altering legislation which is part of the backbone of our constitutional arrangements. Indeed, this legislation is interwoven within the very fabric of the constitution and has evolved over centuries. It is not a simple matter that can be tinkered with lightly. While we would wish to remove all forms of discrimination, for a variety of reasons that have been well understood in the course of this debate, this is not the appropriate form.[20]

He said:

> There is an argument for amending the Act to remove the need for all descendants of George II having to obtain the Queen's consent before marrying. The longer the current provisions remain on the statute book, the more couples there will be who are covered by the requirements of the Act. Noble Lords should draw their own conclusions from the procedural description that I have just given. However, given the Government's current legislative programme, the issue cannot be seen as urgent and would, again, have to be part of any larger examination of constitutional issues, such as the Act of Settlement.

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18 HL Deb 14 January 2005 c501
19 Bill 36 of 2004-5
20 HL Deb 14 January 2005, cc510-511

> The Government have not said that the laws we have considered today should never be changed. They do not rule out change in the future, but we have no immediate plans to legislate in this area.
>
> As has been pointed out in the past, it is a complex undertaking and we must be careful not to embark on it before proper consultation with all parties involved. [21]

Lord Falconer pointed out that there are 22 people in the line of succession to the throne after the Prince of Wales who have not been affected by the *Act of Settlement's* anti-Catholic provisions, so the chances of a successor being the victim of the Act are slight.[22] It is necessary to have 'victim status' under the *Human Rights Act 1998* to bring a case. In general, a hypothetical case would not be entertained by the courts, so would be very unlikely to progress to a hearing.

Courts are not entitled to strike down primary legislation as a result of the *Human Rights Act 1998*. Instead courts will make a declaration of incompatibility in accordance with s4 of the *Human Rights Act.* This does not force Parliament to amend the law, but Parliament runs the risk of having an offending piece of legislation brought before the European Court of Human Rights if it does not replace the piece of legislation.

4 The marriage of Prince Charles to Camilla Parker Bowles

The marriage of Prince Charles to Mrs Parker Bowles in 2005 raised many questions about the constitutional issues involved in royal marriages.

4.1 Princess Consort

The official announcement from Clarence House noted that if Charles were to succeed to the throne, Mrs Parker Bowles would become Princess Consort:

> Mrs Parker Bowles will use the title HRH The Duchess of Cornwall after marriage.
>
> It is intended that Mrs Parker Bowles should use the title HRH The Princess Consort when The Prince of Wales accedes to The Throne.[23]

Although Prince Philip and Prince Albert were described as consorts to the British queens they married, this appears to be the first time that the title Princess Consort has been used. In response to a PQ from Andrew Mackinlay, the DCA has indicated that the marriage is not morganatic.[24] Another parliamentary answer indicated that permission for the marriage, under the *Royal Marriages Act 1772* had been granted at a Privy Council meeting on 2 March 2005.[25]

In 1820 Princess Caroline of Brunswick attempted to ensure that she would be crowned alongside George IV, her estranged husband. George IV persuaded the then Prime Minister, Lord Liverpool, to introduce a bill into the House of Lords to deprive her of her rank and dissolve the marriage. The Bill was withdrawn after it only received a narrow majority at

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21 HL Deb 14 January 2005 c511
22 HL Deb 14 January 2005 c511
23 See Prince of Wales, Press Release, 10 February 2005 http://www.princeofwales.gov.uk/mediacentre/pressreleases/announcement_of_the_marriage_of_hrh_the_prince_of_wales_and__167.html (last viewed 22 August 2008)
24 HC Deb 17 March 2005 c462w
25 HC Deb 17 March 2005 c462w

second reading. Princess Caroline tried to enter Westminster Abbey for the coronation in July 1821, but was not successful. She died the following month.[26]

David Pannick QC has noted possible legal implications if Camilla Parker-Bowles did not use the title of queen. His comments are as follows:

> Assuming that a valid marriage takes place, Mrs Parker Bowles may, in many years' time, have an important constitutional function to perform. The Regency Act 1937 regulates what would happen if the Sovereign were to become incapacitated. If King Charles III were to spend all of his time talking to plants, so that he is "by reason of infirmity of mind or body incapable for the time being of performing the royal functions", Prince William would become Regent. Charles could be declared to be so incapacitated by three or more of the following: his "wife", the Lord Chancellor, the Speaker of the House of Commons, the Lord Chief Justice and the Master of the Rolls…There is no Act of Parliament regulating whether Camilla must be called Queen if and when Charles becomes King. But there are possible legal implications if she does not have that title. The Treason Act 1351 states that the offence of treason is committed if a person "doth compass or imagine the death of our lord the King, or of our lady his Queen". Halsbury's Statutes helpfully adds that there is an "alternative version of the original text", substituting "wife" for "Queen"….There is a potential financial advantage for Camilla in becoming Mrs Wales. Section 6 of the Civil List Act 1952 states that in the event of the death during the present reign of the Duke of Cornwall (one of the Prince's titles) his widow shall be paid during her life an annual sum (at present set at Pounds 60,000).[27]

Dr Stephen Cretney has argued that Mrs Parker Bowles's status will be that of queen, despite the use of the title princess consort.[28] The Department for Constitutional Affairs (as it was at the time) confirmed that no amendment is planned to the *Civil List Act* 1952.[29] A spokesman for Clarence House said that Mrs Parker Bowles may use the title Princess Consort rather than Queen without a change in the law. He said: 'Legislation would only be required if it was deemed necessary to confirm formally that that she should not have the title and status of queen.'[30] It is likely that alterations to the royal succession would require consent from Commonwealth countries under the Statute of Westminster 1931.[31] However, no consent would seem necessary for a marriage which does not affect the succession.

Prince Philip was not styled Prince Consort, but was granted the style and patent of a Prince of the United Kingdom by letters patent of the Queen on 22 February 1957.[32] *Halsbury's Laws* notes that the common law relating to the husband of a queen is not as developed as the wife of a King, due to the rarity of a Queen regnant in British history. A Queen consort has distinct prerogatives, which are now largely of historical significance, but remains a private citizen and has no right to be crowned.[33] Following her divorce from Prince Charles, Princess Diana was no longer styled Her Royal Highness, but Diana, Princess of Wales. This indicates the extent to which the royal prerogative can be used to reach an acceptable official status, without parliamentary involvement.

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26 Ed John Cannon and Ralph Phillips *The Oxford Illustrated History of the British Monarchy,* 1988, pp537-8
27 "Imagine it: Camilla calls a couple of judges and says, Let's oust him", *The Times,* 22 February 2005,
28 "Dr Stephen Cretney" *The Times,* 22 February 2005
29 HC Deb 17 March 2005 c461-2
30 "Prince and Camilla 'do not want her to be called queen" 23 March 2005 *Daily Telegraph*
31 See Library Standard Note SN/PC/683 *The Act of Settlement and the Protestant Succession* for further details
32 Halsbury's Laws Vol 12(1) para 28
33 *Queen Caroline's Claim to be Crowned (1821)* 1 State Trials NS 949

The *Regency Act 1953* specifically nominated the spouse of Queen Elizabeth, Prince Philip, to be Regent in the event that it was necessary and that either she has no child or grandchild, or all such persons are disqualified.[34] Similar arrangements might be expected for Prince Charles, should he succeed, but these are not necessarily automatic.

4.2 The Civil Ceremony

In his book, *King and Country,* Robert Blackburn stated that:

> From a purely legal perspective, the most astonishing aspect of the royal events of spring 2005 was the decision for the Prince of Wales and Camilla Parker Bowles to get married in a civil register office in England. This flew in the face of any conventional reading of the statute book on marriage law, which expressly excludes members of the royal family from marriage by way of civil registration. It flew in the face of the standard legal textbooks and works for reference, which also clearly state that members of the royal family are excluded from marriage by way of civil registration. It flew in the face of two famous royal occasions in living memory, 1936 and 1955, when everyone accepted that members of the royal family could not marry by way of civil registration. this was, after all, an accepted legal position which had fuelled the abdication crisis and driven Edward III from the throne, and been a major factor in the painful termination of Princess Margaret's high-profile romance with a divorcee. The proposal put forward in spring 2005 directly contradicted the official legal advice that members of the royal family could not contract a legal marriage through a civil registry service, which had been given by previous Lord Chancellors to previous Prime Ministers and monarchs.[35]

Following some weeks of speculation about the applicability of the law on civil marriages to marriages contracted by the royal family, the Lord Chancellor, Lord Falconer of Thoroton, made the following written ministerial statement on 23 February 2005:

> The Government is satisfied that it is lawful for the Prince of Wales and Mrs Parker Bowles, like anyone else, to marry by a civil ceremony in accordance with Part III of the Marriage Act 1949.
>
> Civil marriages were introduced in England by the Marriage Act 1836. Section 45 said that the Act:
>
> "… shall not extend to the marriage of any of the Royal Family".
>
> But the provisions on civil marriage in the 1836 Act were repealed by the Marriage Act 1949. All remaining parts of the 1836 Act, including section 45, were repealed by the Registration Service Act 1953. No part of the 1836 Act therefore remains on the statute book.
>
> The Marriage Act 1949 re-enacted and re-stated the law on marriage in England and Wales. The Act covered both marriage by Church of England rite, and civil marriage. It did not repeat the language of section 45 of the 1836 Act. Instead, section 79(5) of the 1949 Act says that:
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> "Nothing in this Act shall affect any law or custom relating to the marriage of members of the Royal Family."
>
> The change of wording is important, and the significance is not undermined by the fact that the 1949 Act is described as a consolidation Act. The interpretation of any Act of

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[34] See Halsbury's Laws Vol 12(1) para 13

[35] Robert Blackburn, *King and Country: Monarchy and the Future King Charles III,* 2006, p54

> Parliament, even when it consolidates previous legislation, must be based on the words used in the Act itself, not different words used in the previous legislation. In our view, section 79(5) of the 1949 Act preserves ancient procedures applying to Royal marriages, for example the availability of customary forms of marriage and registration. It also preserves the effect of the Royal Marriages Act 1772, which requires the Sovereign's consent for certain marriages. But it does not have the effect of excluding Royal marriages from the scope of Part III, which provides for civil ceremonies. As the heading to section 79 indicates ("Repeals and savings") it is a saving, not an exclusion.
>
> We are aware that different views have been taken in the past; but we consider that these were over-cautious, and we are clear that the interpretation I have set out in this statement is correct. We also note that the Human Rights Act has since 2000 required legislation to be interpreted wherever possible in a way that is compatible with the right to marry (article 12) and with the right to enjoy that right without discrimination (article 14). This, in our view, puts the modern meaning of the 1949 Act beyond doubt.[36]

A Clarence House spokesperson was quoted in newspapers at the time as stating that: "Legal advice was taken from four different sources and all agreed that it is legal for a member of the Royal Family to marry in a civil ceremony in England".[37]

A number of commentators had drawn attention to opinions suggesting that the *Marriage Act 1949* did not apply to any royal marriage.

Dr Stephen Cretney suggested that the *Marriage Act 1836* could render the Royal union 'illegal'. In his view, the legislation which created civil marriages in English law did not permit members of the Royal Family to contract a civil wedding under the procedures originally created in 1836. While the act was amended by parliament in 1949, that statute makes no mention of the Royals.[38] However, in Dr Cretney's view it would be impossible to argue that the wedding was invalid: the decision whether to allow the ceremony to go ahead was entrusted by law to the Registrar-General and he decided to grant a licence.

A 1956 Aide Memoire addressed to the Lord Chancellor noted that:

> Marriages of members of the Royal Family are not in the same position as marriages of other persons. The statutory facilities for civil marriages are not available in England, but are available in Scotland. In England such marriages are governed by the Common Law.[39]

Similarly a Home Office memo in July 1964 stated:

> … marriages of members of the Royal Family are still not in the same position as marriages of other persons. Such marriages have always been expressly excluded from statutes about marriage in England and Wales and marriages abroad, and are therefore governed by the common law. This means that in England and Wales such a marriage can be validly celebrated only by a clergyman of the Church of England. A civil marriage before the registrar, and marriage according to the rites of any church other than the Church of England, are not possible.[40]

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36 HL Deb 23 February 2005 also available at http://www.dca.gov.uk/pubs/statements/royalmarriage.htm
37 Joshua Rozenburg, "Prince's civil marriage will be legal, say aides", *Daily Telegraph*, 15 February 2005
38 *Ibid*
39 Royal Marriages – Aide Memoire, 10 February 1956
40 *The Royal Marriages Act 1772*, 8 July 1964, para 3

The earlier statement followed discussions about Princess Margaret. At the time, there was speculation that she might marry Group Captain Peter Townsend, who had divorced his first wife. In the event Princess Margaret decided not to marry him:

> The following personal message was issued by Princess Margaret from Clarence House last night:-
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> "I would like it to be known that I have decided not to marry Group Captain Peter Townsend. I have been aware that, subject to my renouncing my rights of succession, it might have been possible for me to contract a civil marriage. But, mindful of the Church's teaching that Christian marriage is indissoluble, and conscious of my duty to the Commonwealth, I have resolved to put these considerations before any others.
>
> "I have reached this decision entirely alone, and in doing so have been strengthened by the unfailing support and devotion of Group Captain Townsend. I am deeply grateful for the concern of all those who have constantly prayed for my happiness."

The message, signed "Margaret," was dated Monday, October 31.[41]

Lord Falconer's statement suggests that this interpretation was unduly restrictive. The *Human Rights Act 1998* applies to all existing legislation, not just legislation passed after 1998. S3 states:

> So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

But section 3(2) (b) states:

> [this act] does not affect the validity, continuing operation or enforcement of any incompatible primary legislation

However, not all commentators accepted the position outlined by Lord Falconer. David Pannick QC stated:

> Section 79(5) of the 1949 Act added that nothing in that legislation "shall affect any law or custom relating to the marriage of members of the Royal Family". The whole of the 1836 Act was then repealed by the Registration Service Act 1953. The problem is that there was in 1949 a custom (based on previous law) of members of the Royal Family only marrying in church. It is very doubtful that this custom has ceased to exist, and so Section 79(5) of the 1949 Act still prevents a civil ceremony. To avoid a royal flush of embarrassment, the Prince and Mrs Parker Bowles need to find an archbishop, or a vicar, who is available at short notice.[42]

For Lord Falconer, the legal row over did not come as much of a surprise. His inner circle insisted last night that he had been prepared "early last week" to make a statement outlining his view that a civil ceremony was legitimate. After consulting Tony Blair and other senior Cabinet colleagues, the written statement was put out on Wednesday. The statement was a precis of Lord Falconer's advice deemed fit for public consumption rather than the advice itself. In essence, it breezily argues that the Prince can marry Mrs Parker Bowles under the 1949 Marriage Act, which updated the law on civil marriages. If there were any doubt, he added, the Human Rights Act of 2000 gave any couple, Royal or commoner, the right to a civil ceremony "without discrimination".

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41 "Statement by Princess Margaret", *The Times*, 1 November 1955

42 "Camilla calls a couple of justices and says, Let's oust him", *The Times,* 22 February 2005

Both Lord Falconer's senior officials and Downing Street told The Sunday Telegraph that they could see "no need" for a simple two-clause Bill to "clear up" the confusion, although they admitted that, constitutionally, they were in "unknown territory" and that no one could pronounce with any certainty on the likely outcome of any legal challenge to the forthcoming wedding, were one to be launched.[43]

Eleven objections to the wedding were made, under s29 of the *Wedding Act 1949.* Objections are made to the local registrar's office,[44] or the office at which the ceremony will be officiated. The relevant superintendent general is duty bound to carry out an investigation. Reverend Paul Williamson of St George's Church, Hounslow announced that he had completed an official 'caveat'.[45] He is an outspoken representative of the evangelical wing of the Church of England.

The superintendent registrar cannot issue the wedding certificate or proceed with the wedding until "he has satisfied himself that there is not sufficient evidence of the alleged impediment" or the caveat is withdrawn altogether. Caveats when received are examined by the Registrar General. An objector can seek judicial review if he disagrees with the decision of the Registrar General, but review would only be granted on fairly narrow grounds.[46]

Len Cook, Registrar General found that the objections should not be sustained:

> The Superintendent Registrars for Chippenham and Cirencester have received and referred to me 11 caveats objecting to the marriage of The Prince of Wales and Mrs Parker Bowles. The principal grounds of objection are that the law does not allow The Prince of Wales to marry in a civil ceremony because:
>
> members of the Royal Family are a special category;
>
> special rules apply to this category; and,
>
> section 79(5) of the Marriage Act 1949 states that 'Nothing in this Act shall affect any law or custom relating to the marriage of members of the Royal Family' and the provisions of the 1949 Act governing civil marriages do not therefore apply to marriages of members of the Royal Family.
>
> I have examined into this matter and I am satisfied that it ought not to obstruct the issue of a certificate because:
>
> the natural reading of section 79(5) is that it preserves, for example, the Royal Marriages Act 1772, and the custom of the Royal Family to maintain a Royal Marriage Register; but
>
> does not exclude members of the Royal Family from Part III of the 1949 Act (as amended, in particular by the Marriage Act 1994);
>
> a reading of the 1949 Act which prevented The Prince of Wales and Mrs Parker Bowles from contracting a civil marriage would interfere with their rights under the European Convention on Human Rights ('the Convention'); and,
>
> section 3 of the Human Rights Act 1998, which requires legislation to be interpreted and given effect to in a way which is compliant with Convention rights, is a strong

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43 "So whose head will roll?" *Daily Telegraph,* 27 February 2005

44 For Camilla Parker-Bowles, this is Chippenham

45 "Charles: the British have no pity", *Observer,* 27 February 2005

46 "Royal challenge", *The Times,* 5 March 2005

> obligation which supports the conclusion that The Prince of Wales and Mrs Parker Bowles can rely on the provisions of Part III of the 1949 Act.
>
> A number of other points have also been mentioned in the caveats and I have investigated whether any of these amount to a legal impediment to marriage under the Marriage Act 1949. I am satisfied that none of these objections should obstruct the issue of a certificate. [47]

The Shadow Attorney General, Dominic Grieve, said that the Opposition would support any legislation which might be necessary to clarify the status of the civil wedding.[48] The former Attorney General, Sir Nicholas Lyell called for such legislation and David Pannick stated that a legal challenge would be necessary to test the argument on the implications of human rights act legislation.[49]

The date of the wedding was changed from 8 April 2005 to 9 April 2005 following the death of Pope John Paul II, to enable Prince Charles to attend the Pope's funeral in Rome on 8 April.[50]

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47 "Statement from Len Cook, Registrar General for England and Wales" 8 March 2005

48 "Tories back Bill to dispel legal doubts over royal wedding" 25 February 2005 *Times*

49 "Charles relies on rights law he despised to validate marriage" 24 February 2005 *Times*

50 "HRH Prince Charles to attend funeral of Pope John Paul II" 4 April 2005 *Prince of Wales website* at http://www.princeofwales.gov.uk/news/2005/04.apr/pope_funeral.php