**Old Monarchies in Old Europe. Anything new?**

**An Appetizer, with special reference to Liechtenstein**

From the perspective of foreign observers familiar with republican systems, European monarchies may appear as a strange, yet deliciously old-fashioned subject-matter. A totally different world, made up of pomp, legal intricacies (Bagehot’s famous distinction between the “dignified part” and the “efficient part” of the Constitution) and scandals regarding the royals’ private lives. Yet, in the so-called “Global Constitutional Law” literature, this topic is quite a blank spot. None of its handbooks dedicate a chapter or section specifically to monarchies, just as if all major issues related to that governance system – its process of democratization – had been definitively settled at the dawn of 20th century. As if on academic level, everything worth being said on monarchies had already been said in the 19th century literature and contemporary issues of monarchies were just similar to those of republics.

Such assumptions are, however, to a large extent erroneous. In this post, I shall a) present a fresh, necessarily incomplete look into the quite dynamic, and fascinating, research field of European monarchies; b) situate, in particular, the intriguing example of the 1921 Constitution of Liechtenstein, as modified in [2003](https://www.regierung.li/law#section14469), a must for whoever is keen to grasp the varieties of monarchies in the world, but which, unfortunately, is far too often ignored.

**Legal Antiquarianism of Monarchies: House Laws**

It is true that today’s monarchies are largely informed by ancient, supposedly “venerable” legal solutions. Many people might not even be aware of all of them. A good example is the legal source called “*[Fürstenrecht](https://archive.org/details/modernesfrstenr00rehmgoog)*[”](https://archive.org/details/modernesfrstenr00rehmgoog) (the princes’ law) or “*[Hausgesetze](https://www.deutsche-digitale-bibliothek.de/item/PS4BRQED7E5HDFN5YYJPENE7OVPV4ZEZ)*” (laws of the reigning house/family), expressions which are ignored by many global/comparative constitutional law scholars. The existence of this source goes back to the Holy Roman Empire, when, in the 14th century, the reigning families succeeded to enact their own special rules regarding both private law and public law matters (succession to the throne, titles, regency, the family’s fortune, marriages, adoption, the leadership of the head of the house, disciplinary rules, internal “judicial” appeals). In the 19th century, the autonomy of reigning houses, whose so-called “internal” rules remained traditionally secret, did not square easily with the new ideals of Enlightenment; but its existence was upheld, or implemented, in all [German Constitutions](https://www.lhlt.mpg.de/1994716/volume241) and in many monarchies in Europe (with some exceptions like the UK, Belgium, Denmark) or in the world (e.g. Constitution of Japan, 1889, article 2).

Today, among the ten European monarchies to be considered – Vatican is not a hereditary monarchy, Andorra is not a monarchy at all – *Hausgesetze* are still solidly embedded in the legal systems of [Liechtenstein](https://www.gesetze.li/konso/1993.100), [Monaco](https://www.legimonaco.mc/305/legismclois.nsf/ViewTNC/C648C8AEF12665D3C1257E62002EEDDB!OpenDocument) and, with some qualifications, in [Luxembourg](https://legilux.public.lu/eli/etat/adm/memorial/2012/51) ([a current reform of the Constitution aims to abolish those family laws which, until 2012, had remained secret](https://orbilu.uni.lu/handle/10993/16046)). Assessing their position in the hierarchy of norms (beneath the Constitution, at the same level, or even above as in Luxembourg during 19th century) is a rather tricky matter, which may even give rise to debates opposing monism and dualism. In Liechtenstein, the *Hausgesetz* of 1993 [(article 18](https://www.gesetze.li/konso/1993.100)) claims to be immunized against any external changes (by the Constitution or international treaties), a statement which is [not uncontroversial](https://www.liechtenstein-institut.li/application/files/2915/7434/9857/LIB_017.pdf). Generally speaking, *Hausgesetze* are a complex, often-forgotten element in debates on the real powers of monarchs and/or of reigning houses, and in debates on legal sources and hierarchy of norms.

Beyond this legal antiquarianism, European monarchies are undergoing – some more, others less – major changes. The modernization process is not over: new paths are being explored. It is this mixture of old, sometimes very old, and new, even radically new solutions which sparks the observers’ curiosity.

**The First Facet of Modernization of Monarchies: The Power Question**

Regarding the separation of powers, the classic technique of eroding the monarchs’ discretion amounts to what I call the “two-voices-normativity-solution”: it is based on the coexistence and contradiction between, on the one hand, a first series of legal norms that grant a large variety of competencies to the monarch as state organ and, on the other, a second series of norms of diverse nature, legal or non-legal, whose aim is to restrain or abolish the discretion of the incumbent of the throne. The latter signs many legal texts but is not supposed to decide. Applied in almost all European monarchies, this approach is, however, not entirely watertight. The content of the second type of norm may be all but clear, as shows the uncertainty, in various jurisdictions (in particular in the UK), whether the monarch should never refuse royal assent or could/should do so on demand of the government. To illustrate the pitfalls and surprises of this traditional system, I also refer briefly to events such as [the veto of Queen Juliana of Netherlands](https://www.bloomsbury.com/uk/role-of-monarchy-in-modern-democracy-9781509931033/) (at the time undisclosed) in 1972, the creation of a totally new understanding of denial of royal assent by King Baudouin in 1990 or [the still mysterious veto of Grand-Duke Henri of Luxembourg in 2008](https://orbilu.uni.lu/handle/10993/42544).

Today, the two-voices-normativity-solution is contested in Europe in two ways. One the one hand, in order to make things as plain and democratic as possible, Sweden invented, in 1974, a radically new model, the “Swedish Model”: the King does not sign anything; the organ that decides (Parliament, government) is also the one that formally enacts. On the other hand, there are the current Constitutions of Liechtenstein (1921/2003) and Monaco (1962) which still grant, systematically, a political role to the monarch. The Prince, in both principalities, signs legally binding documents and, also, decides upon the matter. The rule of countersignature plays a minor role. The Prince may, at his whim, dismiss the government (Li: article 80; Mc: articles 46 and 50). He still has the personal prerogative to refuse his assent to bills approved by Parliament (Li: articles 9 and 65; Mc: article 66), a prerogative which, in contrast to Monaco, the *Fürst* of Liechtenstein has [used or threatened to use several times since 1921](https://verfassung.li/Art._9).

Each of these two “political” monarchies has, however, its own identity. In Vaduz, but not in Monaco, the government is accountable also to Parliament (*Landtag*), the latter playing also a key role in its appointment (articles 79 and 80). Whereas Monaco remains, to a certain extent, stuck in classic authoritarian 19th century solutions - a key debate is, still, MPs’ right to initiate legislation: [articles 66 and 67](https://catalogue.bnf.fr/ark:/12148/cb45163698h) – the Liechtenstein Constitution, since its reform (some would say, “backsliding”) of 2003, is a much more innovative mixture of old and new ideas. It confirms, and reinforces, a traditional dualist setting (article 2). Yet, interestingly, the strengthening of the monarchical element in the ordinary political process is legitimized ultimately by a last say of the people, that, however, is rather hypothetical in practice. Article 96 of the Constitution provides for a possible referendum in order to arbitrate a conflict between *Fürst* and *Landtag* on the recruitment for a judicial position. More radically, article [113 of the Constitution](https://verfassung.li/Art._113) empowers 1500 citizens to launch a referendum on the introduction of a Republican Constitution, without being subject to princely sanction (thus, the *Kompetenz-Kompetenz* or, to put it differently, the “sovereignty” belongs in that regard to the *Volk* exclusively, notwithstanding the wording of article 2 of the Constitution). Furthermore, in contradiction to the classic rule of immunity, the Prince is also politically accountable, not to Parliament, but, first, to his family ([on behalf of article 14 of the 1993 *Hausgesetz*](https://www.gesetze.li/konso/1993100000), the Family Council may dismiss the *Fürst*) and, secondly, in some way, to the *Volk*. Indeed, 1500 citizens may trigger a referendum of no-confidence against the Prince ([article 13ter of the Constitution](https://verfassung.li/Art._13ter)). If approved, the referendum would, however, not lead automatically to the latter’s dismissal. As stated by [article 16 of the House Law](https://www.gesetze.li/konso/1993100000), it would be up to all (male) members of the Princely House to decide upon the matter. But, if the majority of the people would express their distrust, the House may well be inclined to sacrifice the reigning *Fürst* in order to save the throne. From an historical and comparative point of view, this system of accountability of the monarch is unique: it is a surprising combination of the Swiss spirit of direct democracy (recall) and the Austrian precedent of 1848, when the Imperial House pushed *Kaiser* Ferdinand I, and his brother, to abdicate in favor of the younger Franz Joseph.

**The Second Facet of Modernization: Royals as Human Rights Holders**

To achieve this overall picture of current European monarchies, one also needs to study the human rights dimension, a facet of modernization of monarchies which, often, is overlooked. Are all royals including the monarch, as individuals, holders of fundamental rights? The question is not entirely new – the French Revolution and some famous 19th century liberals like the Germans Robert Mohl, Hermann Schulze or Hermann Rehm gave, at least regarding (male) princes, a positive answer. Conservative authors, however, firmly rejected such thesis, which would have subverted the strict disciplinary regime inside reigning families. Today, even monarchs happen to claim some of those rights, as did Baudouin in 1990 (freedom of conscience), Hans-Adam in 2002 (right to initiate a referendum) or Henri, in Luxembourg, in 2004 (right to vote).

Constitutions and/or human rights treaties never, or very rarely, address specifically the situation of royals, a silence which may be interpreted as an implicit inclusion. The transformative (explosive) potential of this inclusion is developing, slowly but surely. Gender equality is one example: in most European monarchies male predominance is over. Exceptions are Monaco (article 10 of the Constitution) and, more radically, Liechtenstein. In Vaduz, it is the *Hausgesetz* (Articles 9 and 12), which absolutely excludes all female royals both from the governance of the House and from access to the throne. Various other issues are popping up or are doomed to pop up. Is the traditional rule of the monarch’s immunity compatible with Article 6 of the European Convention on Human Rights? Is the criminal offense of *lèse-majesté* compatible with freedom of expression? The [Belgium Constitutional Court denied it recently](https://www.const-court.be/public/f/2021/2021-157f.pdf). Does the compulsory belonging of royals to the state church comply with freedom of conscience? Does the consort of the monarch have the right to openly criticize the political situation of the country, a topic which is currently quite sensitive in Luxembourg? How does the ancient rule of authorization of marriages, and even the more restrictive rule of *Ebenbürtigkeit* (equal rank), square with freedom of marriage? Are royals entitled to same-sex marriages as the Dutch prime minister [recently affirmed](https://nos.nl/artikel/2401389-rutte-amalia-kan-ook-koningin-worden-als-ze-met-een-vrouw-trouwt) (see his official [statement of 12 October 2021](https://www.rijksoverheid.nl/ministeries/ministerie-van-algemene-zaken/documenten/kamerstukken/2021/10/12/antwoorden-op-kamervragen-over-begrip-wettige-nakomelingen-en-over-boek-amalia-de-plicht-roept)), a perspective which the house laws in Liechtenstein or Luxembourg clearly exclude?

In this context the question of the political rights also arose, in particular in Liechtenstein. In a republic, obviously, the holder of the presidency, as individual, as well as her/his partner and all other family members are entitled to vote and even to stand for election. [What about royals in monarchies](https://orbilu.uni.lu/handle/10993/47026)? In the 19th century, dualism amply justified their (implicit) exclusion. Today, in some monarchies, all or some royals are still barred from civic rights, on the basis of the malleable principle of “neutrality” (Denmark, Japan, UK; [see also the debate in 2019 in Thailand](https://www.reuters.com/article/us-thailand-election-idUSKCN1Q000L)). Yet, in most European monarchies, the opposite view prevails currently. The intellectual father of that new inclusive trend was [Sieyès](https://www.persee.fr/doc/arcpa_0000-0000_1875_num_8_1_4952_t2_0592_0000_6) in 1789; the forerunner, in practice, were the Netherlands after 1917/19, followed by Luxembourg in 1945 ([regarding only some royals, but not the grand-duke, nor his wife](https://www.larcier.com/fr/le-citoyen-monarque-2013-9782879743448.html)), Italy (1946), Spain, Sweden, Belgium and Norway. In Liechtenstein, in 2002, notwithstanding the dualist system, Hans-Adam and his son, Alois, successfully claimed their political rights as ordinary citizens with the approval of the Administrative Court – [the first judicial precedent on this matter in the world](https://www.gerichtsentscheidungen.li/default.aspx?z=ekI9dveaG0dHQaBsndrqqtCKMBS4oarb5mNUwenQrDHP1pWAlmeZKyGdu3q6Hh73nQ0b9DPJcBpkthiI0F6NRpkfu1GyZjv3jGU1). Thus, with the support of other citizens, they were entitled to submit to a (successful) referendum – 64.3 % of Yes-votes – their controversial reform draft of the Constitution, that had been previously blocked in Parliament.

In light of all these observations, and of some others I have not mentioned, it appears that “Old” European monarchies form quite a lively research field, calling for new academic insights. In this regard, the global constitutional law literature needs to take monarchies into account for it to be truly global.

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