

Succession to the Crown Bill: Possible Untoward Effects?

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This Comment asks whether, in the light of early parliamentary proceedings, the Succession to the Crown Bill risks any untoward, unintended practical consequences, and considers what, if any, may be among the longer-term, less direct implications for Church establishment in England.

DIRECT EFFECTS

The short Bill contains three provisions: gender-neutral primogeniture to be retrospective from the date of the 2011 agreement with the fifteen other Commonwealth realms at the Commonwealth Heads of Government Meeting; heirs to be enabled to marry Roman Catholics without disqualification; and prior sovereign marriage approval to be restricted to the first six in line where marrying without approval entails disqualification from succession without invalidation of marriage.

The Bill does *not* disturb the requirements that no Catholic may succeed and that the heir must be in communion with the Church of England, must make declarations on accession that swear to uphold the Church of Scotland and must express fidelity to the Protestant faith, and must swear at coronation to uphold the Church of England. It is therefore the case that heirs who become Catholics are still barred from the throne.

This only partial removal of Catholic disabilities is why Catholic reception of the change has been one of muted joy – muted, that is, in England: Scottish Catholics have customarily been more outspoken. It is also why Catholic MPs challenged the position in the Commons: ‘As the discrimination on the grounds of sex is no longer necessary, or can no longer be argued for logically, nor can exclusions on the grounds of religion.’¹

The Prime Minister, David Cameron, made the government’s position clear at the conclusion of the Heads of Government meeting on 28 October 2011:

1 Jacob Rees-Mogg MP, HC Deb 28 January 2013, col 697.

The great strength of our constitutional approach is its ability to evolve. Attitudes have changed fundamentally over the centuries and some of the out-dated rules – like some of the rules of succession – just don't make sense to us any more.

... we have agreed to scrap the rule which says that no-one who marries a Roman Catholic can become monarch. Let me be clear, the monarch must be in communion with the Church of England because he or she is head of that church. But it is simply wrong that they should be denied the chance to marry a Catholic if they wish to do so. After all, they are already quite free to marry someone of any other faith.²

CATHOLIC MARRIAGES

Concern has been expressed in both Houses of Parliament and in the press³ about the implications of the requirement in Catholic 'mixed' marriages that the children should be brought up as Catholics. The general concern is that somehow the way would be opened to Catholic succession. Such a result would conflict with the requirement that the sovereign is automatically Supreme Governor, and Church establishment in England would be threatened accordingly.

It seems uncertain just how far Catholics in 'mixed' marriages *are* obliged by Catholic canon law to insist that any children must be brought up in the Catholic faith. A *Catholic Herald* article⁴ was emphatic that this was the case but, although the present writer cannot pretend to be an authoritative interpreter of the relevant Catholic canons, they do not seem as emphatic as the *Catholic Herald* has claimed.⁵ On the other hand, there is no doubt that any heirs who professed the Catholic faith would be excluded from the throne. There would be no need for the sovereign to withhold marriage consent to prevent a Catholic succeeding because the law would in any case prevent it. A clash of the kind envisaged would

2 'Prime Minister unveils changes to succession', 28 October 2011, available at <<http://www.number10.gov.uk/news/prime-minister-unveils-changes-to-royal-succession/>>, accessed 8 February 2013.

3 Commons Political and Constitutional Reform Select Committee, 11th Report 2010–2012; Lords Select Committee on the Constitution, evidence session, 9 January 2013; *Daily Mail*, 7 January 2013, which purported to voice concerns of the Prince of Wales but without any evident authority. See also Parliamentary proceedings on the Succession to the Crown Bill.

4 'Why shouldn't there be a Catholic "Supreme Governor" of the Church of England?', *Catholic Herald*, 31 October 2011, <<http://www.catholicherald.co.uk/commentandblogs/2011/10/31/why-shouldnt-there-be-a-catholic-supreme-governor-of-the-church-of-england/>>, accessed 17 January 2013. The article overlooks the significance of the requirement that the heir has also to be 'in communion with' the Church of England. Because no Catholic could therefore succeed to the throne under Mr Cameron's proposals, much of the article's relevant argument is vitiated.

5 See F Cranmer, 'Succession to the Crown Bill: *La Reine (ou le Prince) le veult?*', 9 January 2013, <<http://www.lawandreligionuk.com/2013/01/09/succession-to-the-crown-bill-la-reine-ou-le-prince-le-veult/>>, accessed 17 January 2013.

not therefore be possible. It is very likely, too, that, unless they positively wish to disqualify themselves, Windsor family members within shouting distance of succession will continue to be careful to remain in communion with the Church of England themselves and – to avoid any possible complications – choose Protestant brides or grooms.

INDIRECT EFFECTS

This section considers possible consequences for the monarchy on the one hand and the Church of England on the other. The monarchy's survival is the prime example of the effects of the relative absence of discontinuity in our constitution. Occasional *Guardian* squibs aside,⁶ it is difficult to believe that the monarchy will be adversely affected by the Bill at all. On the contrary, for those who are conditioned to accept the illogicality of the monarchy in the first place, a little apparent 'modernisation' can seem proof of the institution's protean qualities in a situation where its lack of any real executive functions silently makes it politically acceptable. And, until further notice, it will remain a Protestant monarchy. Gerald Howarth MP stated this view clearly: 'I believe that the established Church and the Crown are indissolubly linked.'⁷

For the Church of England, the position is in fact somewhat more complicated. While there is an obvious dissonance between a monarchy that operates on a basis of gender equality and a Church that cannot yet bring itself to do so, current difficulties arising from the Church's troubles over female bishops should not be allowed to mask profounder issues. The truth is that the threats to the Church's status come less from the legislature than from larger societal changes. The Church has hitherto shown great sensitivity about its established character: that is, the degree of its direct involvement with the state and its associated privileges/duties. Though far from moribund, it survives – in England alone – as the last remains of the confessional state mostly dismantled in the nineteenth century.

Inadvertently perhaps, in voicing its concern about the future of the supreme governorship, the *Daily Mail* put its finger on an important point: there may be religious *freedom* in the UK but there is not yet, because of the English establishment, religious *equality*. In a country where about half the population are now prepared to say that they belong to no religion, where active church affiliation is very much a minority sport and where important and growing minorities practise non-Christian religions, the gap between the formal position – the Church is there to serve the whole English community – and the reality has continued to

6 T Gold, 'Britain's voodoo monarchy: the succession bill puts a ludicrous spin of equality on an institution that is inherently unequal', *The Guardian*, 11 January 2013.

7 HC Deb, 22 January 2013, cols 252–253.

grow. Some members have for some time been asking whether sundering the remaining ties with the state might be good for both: a former diocesan bishop, for example, has questioned the continuing relevance of establishment.⁸

One of the reactions of the Church to this pluralisation and secularisation has been to claim that it has somehow a protective role in respect of all religious believers. The present sovereign has apparently aligned herself with this position. At what was one of the first of the Diamond Jubilee engagements, the Queen said at a multi-faith event at Lambeth Palace on 15 February 2012:

Here at Lambeth Palace we should remind ourselves of the significant position of the Church of England in our nation's life. The concept of our established Church is occasionally misunderstood and, I believe, commonly under-appreciated. Its role is *not* to defend Anglicanism to the exclusion of other religions. Instead, the Church has a duty to protect the free practice of all faiths in this country.

It certainly provides an identity and spiritual dimension for its many adherents. But also, gently and assuredly, the Church of England has created an environment for other faith communities and indeed people of no faith to live freely. Woven into the fabric of this country, the Church has helped to build a better society – more and more in active co-operation for the common good with those of other faiths.⁹

Reflective of current episcopal claims expressed in the House of Lords from time to time, this language must have been, in the usual way, uttered on advice, presumably that of the Church itself. (If government ministers had been consulted, would they have approved?) Even bearing in mind the nature of the particular occasion, the language would be regarded – particularly by some other Christian denominations – as controversial. The synecdoche of 'England' for the 'United Kingdom' apart, the notion of the Church as the protector of other faiths is clearly new doctrine in the sense that the role is one that the Church has only recently sought to assume. Moreover, the language suffers from the same difficulty as that of the coronation oaths: the Church is no more able to protect anyone any more than the sovereign can preserve the Church by virtue of a coronation oath – an oath that did not prevent disestablishment in Ireland or Wales. Perhaps the language used on this occasion will fall to be regarded as the high water mark of the claims of a Church that nowadays accepts religious freedom but does not wish to concede religious equality.

8 P Selby, 'Mis-establishment: locating, and re-locating, the Church of England', Eric Symes Abbot Memorial Lecture, 10 May 2012, available at <http://static.westminster-abbey.org/assets/pdf_file/0004/57532/ESA-lecture-2012-ii.pdf>, accessed 7 March 2013.

9 Available at <<http://www.archbishopofcanterbury.org/articles.php/2358/hm-the-queen-attends-multi-faith-reception>>, accessed 11 February 2013.

In this situation, finding firm ground for the Church has been difficult. Its current 'official' position, judging from the evidence of the archbishops to the Houses' Joint Committee on the Future of the House of Lords, is to hold on to what it has, including the 26 bishops in the House of Lords whose departure would not in fact effect disestablishment. In the context of the current Bill, great importance has been attached to keeping the sovereign 'in communion with' the Church to avoid any inconsistency with that person also being Supreme Governor – a role nowadays devoid of any significant executive function. It is nonetheless that position that the government has endorsed in the Bill by seeking to remove only the Catholic prohibition least threatening to the Church. Significantly, the Church's own response to that provision included the following: 'Its proposed removal is a welcome symbolic and practical measure consistent with respect for the principle of religious liberty.'¹⁰

This emphasis on liberty rather than equality does not prevent one asking the question whether it is right to keep the remaining anti-Catholic prohibitions and whether the Church should not contemplate more flexible and nuanced positions. If the Supreme Governorship were to become regarded more as a kind of super patronage role for any head of state in recognition of the Church's historic role in England, would the religious affiliation of the sovereign be crucial? In a similar fashion, *Fidei Defensor* (handily without a definite article) could be reinterpreted, as the Prince of Wales has suggested, as a slogan/totem of religious freedom – and equality. Despite Gerald Howarth's claim, Church and monarchy *could* be separated for the benefit of all, the thinking perhaps behind Chris Bryant's remark: 'I do not want to disestablish the Church of England, but I think it could be established in a different way.'¹¹

At present the Church might abhor a Catholic in the office of Supreme Governor because of the theological offence involved. But if the office's character were changed to reflect what actually occurs, a non-contentious link with the monarchy could remain if wanted – a possibility that the Prince of Wales seems to have envisaged.¹² After all, the Church already in fact controls all appointments to its senior posts, and legislates for itself under an admittedly advantaged procedure but one not wholly different from that for private bills. Even royal peculiars could keep a special status, though one more completely distanced perhaps from the person of the sovereign. In such a situation, the sovereign could be free like everyone else to adopt any faith or none. Such pathways seem more

10 'Church of England briefing – Succession to the Crown Bill', <<http://www.churchofengland.org/our-views/the-church-in-parliament/briefing-bills/succession-to-the-crown-bill.aspx>>, accessed 30 January 2013.

11 HC Deb, 22 January 2013, col 233.

12 'I really can't think why we can't have Catholics on the throne': quoted remark from the memoirs of Lord Ashdown, noted in R Blackburn, *King and Country: monarchy and the future King Charles III* (London, 2006), p 119.

promising than making unhistoric and vapid claims of faith protection. Coronations – which recognise rather than make sovereigns – could rise to new challenges in what Andrew Brown has called an ‘emotional or effective establishment, where the church is a natural theatre of society’s self-understanding’.¹³

CONCLUSION

The relative complexity – emotional, political, legal, administrative – of these issues is no doubt glimpsed by government. Of course, the Government does not wish to plunge into these deep waters. It wants a quick, limited fix without too much argument. Commentators are right that there has been too little public discussion, but not all the blame can be laid at the Government’s door. What is needed is fresh, bound-breaking thinking and most of that can best come only from within the Church itself.

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Religious Symbolism and Conscientious Objection in the Workplace: An Evaluation of Strasbourg’s Judgment in *Eweida and others v United Kingdom*

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The judgment of the European Court of Human Rights in *Eweida and others v United Kingdom*¹ related to two pairs of cases.² The first pair concerned a British Airways check-in clerk and a nurse, each of whom complained that

13 A Brown, ‘Church of England traditionalists are running out of hiding places’, *The Guardian*, 18 December 2012, <<http://www.guardian.co.uk/commentisfree/andrewbrown/2012/dec/18/church-of-england-traditionalists-hiding-places?INTCMP=SRCH>>, accessed 13 January 2013.

1 *Eweida and others v United Kingdom* App Nos 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013, Fourth Section).

2 The author acted for the Bishop of Chester, the (then) Bishop of Blackburn and the Premier Christian Media Trust, who were among those granted permission to intervene in the proceedings. This Comment is based upon a paper delivered as part of Francis Taylor Building’s *Breakfast Briefing*