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Religious Tests and the British Monarchy

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Last month the Succession to the Crown Act of 2013 formally went into effect in the United Kingdom. It made a number of tweaks to the British monarchy, in large part to make it a rather more liberal institution. Most notably, succession now follows a rule of primogeniture rather than male primogeniture, so the eldest child – male or female – of the monarch is next in line. Under previous law, women were only in the line of succession when there were no male heirs.

The law also touched on marriage and religion. From 1689 to the present, marriage to a Catholic kicked one out of the succession, a response to the marital choices of the Stuarts. British royals may now marry Catholics without losing their place in the succession. They may not, however, be Catholics themselves (more on this anon). Also, the Royal Marriages Act of 1772 has at long last been repealed. Under that law, all of the descendants of George II, regardless of how remote they were from the succession had to obtain royal approval before getting married. In theory, thousands of marriages by remote descendants of George II were legally questionable. The requirement of royal approval now applies only to the first six in line to the succession.

The king or queen, however, still may not be a Catholic and must be in communion with the Church of England, which would disqualify everyone from Jews to atheists from ascending the throne. The justification for this rule is that the King or Queen is the titular head of the Church of England, and so really must be an Anglican. Frankly, however, this argument strikes me as weak.

First, while the CofE is an established church, it is less established than many assume. It is only the established church in England. Elsewhere within the United Kingdom – i.e. Scotland, Wales, Northern Ireland, the Isle of Man – it is not the established church. Furthermore, the King or Queen of England is also the monarch of fifteen other states from Canada to Australia to St. Kitts. None of these countries have the Church of England as their established religion. It seems rather Anglo-centric to require these other nations to suffer a religious restriction on their monarch for the sake of a purely English establishment.

Second, the King or Queen is the Head of the Church of England only because of an act of parliament, specifically the Act of Supremacy of 1534. There is no reason that Parliament couldn't pass a law making someone other than the monarch head of the church in the event that he or she was not in the Anglican Communion. For example, the Archbishop of Canterbury could become Supreme Head of the church (to use the language of the 1534 Act). Alternatively, parliament could make the person closest to the throne still in communion with the church its Supreme Head. And so on.

One might object that it would violate norms of religious freedom and church autonomy for parliament to redefine the ecclesiology of the Anglican Church. However, it is only through acts of parliament that that the Church of England was initially established and the King declared its Supreme Head. It seems rather too late for Anglicans to complain now of parliamentary interference. Thus, it seems to me, that the Church of England is in a different position than would be the Roman Catholic Church were parliament to attempt to define who shall or shall not be the supreme pontiff.

In short, the case for a religious test for the British monarchy strikes me as rather weak.

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