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## British Royal Succession and Marriages: Certain Past Laws and Changes in Modern Times

### I. INTRODUCTION

This study shall look at the legal instruments and their historical background regarding the succession to the thrones of England, Scotland and Ireland of William III of Orange and his wife Mary, and the eventual accession of the House of Hanover to the throne of Great Britain and Ireland up until the time of Queen Victoria. This shall include an overview of the 1689 Bill of Rights, the 1701 Act of Settlement, and the 1772 Royal Marriages Act, with a particular focus regarding the religious identity of the sovereign, as well as the marriages permitted for members of the royal family. The study shall also look at legislative reforms in modern times amending or repealing these laws (and also those relating to the issue of succession and gender) as a result of changing norms and values within the United Kingdom, specifically the passing of the 2013 Succession to the Throne Act. Additionally, part of this article will deal with the legal causes for the personal union between the United Kingdom and Hanover coming to an end at the time of Queen Victoria. As shall be seen, the Act of Settlement ultimately caused the Hanoverian dynasty to come to the British throne, while the Salic Law as it operated in Hanover led to the personal union between these territories coming to an end. Here it is worth noting that since the vote in favour of Brexit in 2016, there has been much debate as to what the future nature of relations between United Kingdom and the European Union should be. It is an episode which has drawn much from history and a sense of historical identity, and so it is not wholly inappropriate to look back to certain periods of the United Kingdom's relations with the nations of continental Europe (as shall be done here) to see how these have ebbed and flowed over the course of time.

## II. WILLIAM OF ORANGE, THE BILL OF RIGHTS AND THE ACT OF SETTLEMENT

James II of the Stuart dynasty ascended to the thrones of England, Scotland and Ireland after his brother Charles II's death on 6 February 1685.<sup>[1]</sup> He had converted to Catholicism in the 1660s, and during the course of his reign pursued a pro-Catholic policy and eventually a Catholic heir to the throne was born, that is, James Edward Stuart.<sup>[2]</sup> Such developments caused great concern among the Protestant establishment of the country and in response William of Orange was invited to invade England by certain leading members of the political class.<sup>[3]</sup> William was the Stadtholder of the Netherlands, and the son of the daughter of Charles I of England and was also married to James II's daughter, Mary.<sup>[4]</sup> The invasion was a success, with James II fleeing, and the Parliament offering William and Mary the throne,<sup>[5]</sup> an event that came to be known as the Glorious Revolution.<sup>[6]</sup> William and Mary accepted the offer of the crown,<sup>[7]</sup> and when the offer was formally made by the Parliament, the Declaration of Rights was read out to William and Mary, a document which contained the rights of subjects and the Parliament, which were later contained in the 1689 Bill of Rights.<sup>[8]</sup> For the purposes of this study, the most important provisions of the Bill of Rights related to religion. The Bill states that "And whereas it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince, or by any king or queen marrying a papist, the said Lords Spiritual and Temporal and Commons do 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 profess the popish religion, or shall marry a papist, shall be excluded and be for ever incapable to inherit, possess or enjoy the crown and government of this realm and Ireland and the dominions thereunto belonging or any part of the same, or to have, use or exercise any regal power, authority or jurisdiction within the same."<sup>[9]</sup> Thus, the Bill of Rights prohibited both the monarch being a Roman Catholic or being married to one.

Later, in December 1694, Queen Mary died without having any children, and then in July 1700 Princess Anne's (Mary's sister) only child, the Duke of Gloucester, also passed away, which then made the Catholic James Edward Stu-

[1] House of Commons Information Office: *The Glorious Revolution...*, 2010, 2.

[2] Kenyon, 1994, 198.

[3] Kenyon, 1994, 198.

[4] Kenyon, 1994, 362.

[5] Kenyon, 1994, 362.

[6] House of Commons Information Office: *The Glorious Revolution...*, 2010, 1.

[7] Clark, 1956, 146.

[8] UK Parliament: *The Convention and Bill of Rights*.

[9] *Bill of Rights 1689*.

art heir to the throne.<sup>[10]</sup> In response to these developments, Parliament passed the Act of Settlement in June 1701.<sup>[11]</sup> The Act of Settlement confirmed the principle contained in the Bill of Rights that no Roman Catholic or individual married to a Roman Catholic could inherit the throne.<sup>[12]</sup> It also stated “That whosoever shall hereafter come to the Possession of this Crown, shall joyn in Communion with the Church of England as by Law established.”<sup>[13]</sup> Additionally, the Act stipulated that after King William III himself and the then Princess Anne, the succession would fall upon Princess Sophia, Electress of Hanover and granddaughter of King James I, “and the Heirs of her Body, being Protestants”.<sup>[14]</sup>

### III. ACCESSION OF THE HOUSE OF HANOVER TO THE THRONE OF GREAT BRITAIN AND IRELAND

William III died in March 1702<sup>[15]</sup> and then Anne, the last Stuart monarch, ascended to the thrones of England, Scotland and Ireland (and became Queen of Great Britain in 1707).<sup>[16]</sup> She died on August 1714<sup>[17]</sup> and was succeeded by George of Hanover, the son of the abovementioned Sophia of Hanover, who, like Anne, had died in 1714.<sup>[18]</sup> King George I did not speak English and had more concern for his Hanoverian domain than his British possessions.<sup>[19]</sup> Furthermore, as one commentator put it, “He came from a country with institutions and a form of government as different as could be conceived from those of his new realm.”<sup>[20]</sup> Perhaps most notably from among these differences was the fact that Hanover was an absolute monarchy.<sup>[21]</sup> However, as shall be seen, the most relevant difference for the subject of this study and which would have important consequences for the future relates to the issue of Salic Law as it operated in Hanover at that time.

One important legal development that occurred during the Hanoverian period was the Royal Marriages Act of 1772. The immediate historical context of the passing of this law was that King George III’s younger brothers had taken

[10] UK Parliament: The Act of Settlement. After the last of her children died, Anne consented to the Act of Settlement and the succession of the House of Hanover to the throne. See Kenyon, 1994, 16.

[11] UK Parliament: The Act of Settlement.

[12] Act of Settlement (1700), Chapter 2, Section II.

[13] Act of Settlement (1700), Chapter 2, Section III.

[14] Act of Settlement (1700), Chapter 2, Section I.

[15] Holmes, 1993, 247.

[16] Kenyon, 1994, 16.

[17] Macleod, 1999, 357.

[18] St. John Parker, 2014, 26.

[19] Burke, 1976, 172.

[20] Williams, 1962, 11.

[21] Lloyd, 1996, 65.

wives which he thought unsuitable, and so the Act was passed due to the fear that his sons might eventually do the same.<sup>[22]</sup> This legislation gave the monarch authority with regards to the marriages of his family members, with the Preamble of the Marriages Act stating that “Whereas your Majesty, from your paternal affection to your own family, and from your royal concern for the future welfare of your people, and the honour and dignity of your crown was graciously pleased to recommend to your Parliament to take into their serious consideration, whether it might not be wise and expedient to supply the defect of the laws now in being, and by some new provision more effectually to guard the descendants of his late Majesty King George the Second (other than the issue of princesses who have married, or may hereafter marry, into foreign families) from marrying without the approbation of your Majesty, your heirs or successors, first had and obtained,...” Thus, the Act goes on to stipulate that no descendant of George II (the grandfather of George III)<sup>[23]</sup> (apart from princesses that married or shall marry foreign husbands) “...shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs, &c. signified under the great seal, declared in council, and entered in the Privy Council books. Every Marriage of any such descendant, without such consent, shall be null and void.”<sup>[24]</sup> However, the Act contains what has been described by one commentator as “a loophole of escape”,<sup>[25]</sup> stating that any descendant of George II over the age of 25, who “shall persist to contract a marriage disapproved of by his Majesty, such descendant, after giving 12 months’ notice to the Privy Council, may contract such marriage; and the same may be duly solemnized, without the previous consent of his Majesty; and shall be good; except both Houses of Parliament shall declare their disapproval thereof”.<sup>[26]</sup>

In 1830 William IV ascended to the thrones of the United Kingdom and Hanover, and would be the last monarch to rule both those kingdoms simultaneously, which he did until his passing in 1837.<sup>[27]</sup> He died with no legitimate children and so was succeeded by his niece Victoria, the daughter of his brother Edward, Duke of Kent, who ascended to the throne at the age of 18.<sup>[28]</sup> This event would lead to the end of the personal union of the United Kingdom and Hanover due to the operation of the Salic Law in the latter.<sup>[29]</sup> The legal code known as the Salic Law, or Lex Salica, was written down during the reign of Clovis, King of the Salian Franks, who ruled between 476 and 496 AD.<sup>[30]</sup> Though not the oldest example of Germanic customary law in our possession (this would appear to be King Euric

[22] Farran, 1951, 54.

[23] Kenyon, 1994, 149.

[24] Royal Marriages Act 1772, Chapter 11, Section 1.

[25] Farran, 1951, 55.

[26] Royal Marriages Act 1772, Chapter 11, Section 2.

[27] St. John Parker, 2014, 28.

[28] St. John Parker, 2014, 28.

[29] Heinzen, 2007, 262.

[30] Taylor, 2006, 543.

the West Goth's codex), it is certainly one of the oldest.<sup>[31]</sup> Having undergone revision and expansion during the periods of the Merovingian and Carolingian dynasties, with time it came to be forgotten, however in the 14<sup>th</sup> century it was rediscovered and officially adopted by the French monarchy in the fifteenth century in order to justify women being excluded from succeeding to the throne.<sup>[32]</sup> The key passage of the Salic Law for our purposes here states that "But of Salic land no portion of the inheritance shall come to a woman: but the whole inheritance of the land shall come to the male sex."<sup>[33]</sup> However, it should be noted that the original Salic Law did not explicitly prohibit females inheriting sovereignty with a kingdom,<sup>[34]</sup> and as the wording of the above makes clear, it relates to the inheritance of land.

It was in the early part of the 15<sup>th</sup> century that the French diplomat and royal secretary Jean Montreuil cited this particular article of the Salic Law, including in it the expression "*in regno*", though the original text does not contain these words.<sup>[35]</sup> Subsequently, other French scholars of the royal chancellery began to make the connection between the Salic Law and the royal succession.<sup>[36]</sup> At the time of Queen Victoria's accession to the throne of the United Kingdom in 1837, the states constituting the German Confederation, which also included the Kingdom of Hanover, also followed such an understanding of the Salic Law, not allowing for female succession.<sup>[37]</sup> The situation was different in the United Kingdom, which had a system in which the crown was inherited by the children of the reigning sovereign according to the order of birth, however male children took precedent over female children in order of succession.<sup>[38]</sup> This was a system which followed common rule rules essentially based on feudal hereditary descent rules with regards to land.<sup>[39]</sup> Sir William Blackstone described this system in the following way: "But our law does not extend to a total exclusion of females, as the Salic law, and others, where feuds were most strictly retained: it only postpones them to males; for, though daughters are excluded by sons, yet they succeed before any collateral relations ... thus steering a middle course between the absolute rejection of females, and the putting them on a footing with males."<sup>[40]</sup> Thus, while Victoria ascended to the throne of the United Kingdom, her uncle Ernest Augustus, Duke of Cumberland, became King of Hanover, and so ended a connection which had lasted 123 years.<sup>[41]</sup> However, it should be not-

[31] Pollock, 1898, 26.

[32] Taylor, 2006, 543.

[33] The Salic Law, Title LIX. Concerning Private Property, Article 6.

[34] Hanley, 2006, 289.

[35] Cayley, 2006, 58-59.; Taylor, 2001, 359.

[36] Taylor, 2001, 359.

[37] Doppler, 1997, 51.

[38] Succession to the Crown Bill: Explanatory Notes, Clause 1:26.

[39] Succession to the Crown Bill: Explanatory Notes, Clause 1:26.

[40] Blackstone, 1830, 213.

[41] Brophy, 2010, 9.

ed that the two countries always maintained carefully distinguished interests.<sup>[42]</sup> As to the eventual fate of the Kingdom of Hanover, Ernst August I's son, King George V of Hanover lost his territories to the Kingdom of Prussia in 1866.<sup>[43]</sup>

#### IV. MODERN CHANGES REGARDING ROYAL SUCCESSION AND MARRIAGE

In 2011 during the Commonwealth Heads of Government Meeting being held in Perth, the capital of Western Australia, the then Prime Minister of the United Kingdom, David Cameron, called a meeting of the Prime Ministers of the Commonwealth Realms, which led to the Perth Agreement.<sup>[44]</sup> This then led to the passing in the UK of the Succession to the Crown Act 2013, passed on 25 April 2013 and which came into force on 26 March 2015.<sup>[45]</sup> The Act abolished the system of male primogeniture that had governed royal succession, stating that “In determining the succession to the Crown, the gender of a person born after 28 October 2011 does not give that person, or that person’s descendants, precedence over any other person (whenever born).”<sup>[46]</sup> Furthermore, the Act amends both the Bill of Rights and the Act of Settlement.<sup>[47]</sup> Specifically, it states that “A person is not disqualified from succeeding to the Crown or from possessing it as a result of marrying a person of the Roman Catholic faith.”<sup>[48]</sup> Additionally, the Act repealed the Royal Marriages Act 1772, with the new rule being that “A person who (when the person marries) is one of the 6 persons next in the line of succession to the Crown must obtain the consent of Her Majesty before marrying.”<sup>[49]</sup> If this consent is not obtained, and according to the proper procedure,<sup>[50]</sup> then that “person and the person’s descendants from the marriage are disqualified from succeeding to the Crown”.<sup>[51]</sup> In addition to the United Kingdom, the same changes came into being on 26 March 2015 across the other 15 Commonwealth Realms where Queen Elizabeth II is Head of State.<sup>[52]</sup> However, very importantly, it must be noted that a prohibition still exists on a Roman Catholic ascending to the throne, which is a result of legislation such

[42] Heinzen, 2007, 262.

[43] Pavlac - Lott, 2019, 40.

[44] Cornell, 2015, 193-194.

[45] Succession to the Crown Act 2013, Chapter 20.

[46] Succession to the Crown Act 2013, Chapter 20, Section 1.

[47] Succession to the Crown Act 2013, Chapter 20, Section 4(2) and Schedule (2) and (3).

[48] Succession to the Crown Act 2013, Chapter 20, Section 2(2).

[49] Succession to the Crown Act 2013, Chapter 20, Section 3(1) and (4).

[50] Succession to the Crown Act 2013, Chapter 20, Section 3(2).

[51] Succession to the Crown Act 2013, Chapter 20, Section 3(3).

[52] These countries include: Antigua and Barbuda, Australia, Bahamas, Barbados, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St Kitts and Nevis and St Vincent and the Grenadines, St Lucia, Solomon Islands and Tuvalu. See Commencement of Succession to the Crown Act 2013: Statement made on 26 March 2015 - Statement made by Mr Nick Clegg, Statement.

as the above discussed Bill of the Rights and the Act of Settlement, as well as the 1707 Act of Union and the 1910 Accession Declaration Act.<sup>[53]</sup> The latter involves the monarch declaring “that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law”.<sup>[54]</sup>

As to the ultimate motivation for the passing of the 2013 Succession to the Throne Act, it can be said that the previous laws in this area as described above came into focus due to altered norms and standards within the broader community. At the Perth summit, David Cameron stated that “The idea that a younger son should become monarch instead of an elder daughter simply because he is a man, or that a future monarch can marry someone of any faith except a Catholic – this way of thinking is at odds with the modern countries that we have become.”<sup>[55]</sup> Later, after the coming into force of the Act, the then Deputy Prime Minister of the UK, Nick Clegg, said that “The Act removes the male bias in the line of succession, ending the system of male heirs automatically inheriting the throne over female heirs and removing this historic discrimination against women. The Act also ends another long-standing piece of discrimination, the bar on anyone who marries a Roman Catholic from becoming monarch...”<sup>[56]</sup>

## V. CONCLUSION

The Bill of Rights and Act of Settlement were legal instruments that came into being during a specific historical period which sought to exclude a certain religious group from ever attaining the crown or coming into close proximity to it via marriage. These instruments ultimately enabled the House of Hanover to obtain the very same crown and bring about a personal union between two different European states. However, this personal union was eventually dissolved due to another law which excluded a certain group from sovereign power, that is, women, as it operated in Hanover at that time. The changes in succession law in the United Kingdom as a result of the 2013 Succession to the Throne Act now allow the British monarch to marry a Roman Catholic and allow for an elder female child to succeed before a younger male child. Furthermore, with the repeal of the Royal Marriages Act 1772, the sovereign has lost much of their theoretical authority in the matter of approving marriages of those even distantly in

[53] Parpworth, 2013, 1091.

[54] Accession Declaration Act 1910, Chapter 29, Section 1.

[55] Watt, 2011.

[56] Commencement of Succession to the Crown Act 2013: Statement made on 26 March 2015 – Statement made by Mr Nick Clegg.

line to the throne, though as has been seen, they still retain a certain authority regarding the very close members of their family. Obviously, the various rules which had previously regulated aspects of the Royal Family's life such as succession and marriage are no longer considered acceptable according to present norms and standards, though the principle still persists that the British sovereign cannot be a Roman Catholic. It is interesting to note the effect of such legislative regimes and norms (or even the lack thereof) as surveyed in this study on the history of nations. One may consider how different the history of the British Isles and the British Empire itself may have been had the French interpretation of the Salic Law been in force in the lands that comprise the United Kingdom. It should be remembered that three of the country's greatest and most notable monarchs have been women, that is Elizabeth I, Victoria and the present sovereign, Elizabeth II, names history would never have known had the Salic Law been adopted in the British Isles.

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