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Liverpool Law Review

A Journal of Contemporary Legal and
Social Policy Issues

ISSN 0144-932X

Volume 37

Number 3

Liverpool Law Rev (2016) 37:105-117

DOI 10.1007/s10991-016-9184-0



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The Right of Peers to Attend the Accession Council and the Coronation

Noel Cox¹ 

Published online: 13 September 2016
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Abstract The coronation of English and later British Kings and Queens represents an ancient survival. Although changed greatly over time, the essence can be traced to the earliest centuries of pre-Conquest England. Contemporary pressures, including increased secularism and the changed role of the constituent countries of the United Kingdom, have raised questions about the form and content of a future coronation in London. One of these is the role of the peerage, traditionally accorded a significant place in any coronation. This article will consider the question of the right of peers—hereditary or life—to attend a coronation. It does so by looking at whether a coronation is a legal or constitutional necessity, who can or should attend a coronation, and also looks briefly at some of the other activities associated with the accession of a new Sovereign, that traditionally involved members of the peerage.

Keywords Coronation · Peerage · Privileges of peerage

Introduction

The coronation of Kings and Queens, the ancient hallowing of a monarch, that can be traced in England back to the eighth century at least, faces possible significant changes in the near future. Although rarely applied in as full a form elsewhere as it is in the United Kingdom, it nevertheless represents a formal consecration of a new ruler in a manner followed around the world. However, although coronations have varied considerably over the centuries, a more radical change is possible for the next Sovereign of the United Kingdom. The Natural Secular Society has plans to lodge a legal challenge to the religious content of the coronation. The General Assembly of

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the Church of Scotland backed calls for a separate Scottish coronation ceremony if Scotland opted for independence, and changes to membership of the House of Lords have raised questions about the form and content of a future coronation in London.

This article will consider the question of the right of peers—hereditary or life—to attend a coronation. It does so by looking at whether a coronation is a legal or constitutional necessity, who can or should attend a coronation, and also looks briefly at some of the other activities associated with the accession of a new Sovereign, that traditionally involved members of the peerage.

Privileges of Peerage

Aside from the now largely removed membership of the House of Lords, there are other miscellaneous—but sometimes still important—privileges attaching to the possession of a peerage. These include special positions in the order of precedent, the right to certain distinctions in their coats of arms, to wear coronation and parliamentary robes, and of course to use the style and titles of peerage. They are not however legal privileges in the same sense as the exemption from appearing as a witness,¹ or of access to the Sovereign,² which relate to the constitutional functions of the peerage.³ They are honorific in nature.

There is, however, one exception to this, where a “minor” privilege actually reflects the constitutional role of the peerage, and which may indeed be said to be an example of the right of peers to have access to the Sovereign, and is therefore more than merely honorific. This is the right to attend a coronation. This remains a very great privilege, and one that, like the (albeit uncertain) privilege of being hereditary counsellors to the Sovereign, would appear to be distinct from the right of membership of the House of Lords—indeed it predates the House, and Parliament itself, by many centuries. This privilege, of attendance at a coronation, is one which may well be challenged in the not-too-distant future.⁴ The coronation of our next Sovereign can realistically be expected within the next decade, and due consideration needs to be given to some of the principles upon which it should be planned.

Coronations

When considering coronation attendance, there are three factors which are important. First is the question of whether a coronation is a legal or constitutional necessity—which relates to its role in relation to succession; the second is the

¹ Parliamentary Privilege, First Report, 31 March (1999), para 330.

² Ibid.

³ See also Cox (1997).

⁴ As noted above, the National Secular Society’s proposed legal action, being one example. National Secular Society “Change is overdue to our sectarian coronation—even the heir to the throne seems to think so” <http://www.secularism.org.uk/blog/2013/11/change-is-overdue-to-our-sectarian-coronation-even-the-heir-to-the-throne-seems-to-think-so> accessed 16th May 2014.

question of who attends the coronation—and by what right; and third, what other activities, associated with the accession of a new Sovereign, involves members of the peerage.

To the first, the necessity for a coronation, a coronation is the formal hallowing of a new king or queen. Parsons believed that it was the “coronation and admission that maketh a perfect and true king”.⁵ The succession was based on consent and acceptance, rather than being strictly heredity. It is commonly said that the title to the Crown was governed at common law⁶ by the feudal rules of hereditary descent formerly applicable to land.⁷ It followed that, to complete the title, some formal act, such as a coronation, was needed. Wentworth maintained that a coronation was a declaration rather than a creation of right.⁸

Both Parsons and Wentworth maintained that, as the right to the Crown was not entirely a matter of the automatic operation of the law, a formal coronation was needed. It must be remembered that succession was never entirely certain, although it was long essentially based on common law principles analogous to those applied to succession to land.

In the legal history of those Western societies which have passed through the era known as feudalism, succession to property and succession to thrones are intimately connected. The analogy with land descent is, however, not strictly correct, it is submitted, since the only feature which the title to the Crown had in common with this was primogeniture, and this had been the developing rule in the pre-feudal Saxon dynasty.⁹ And in the sixteenth century it was established that the Salic law,¹⁰ which excluded female rulers and long thought fundamental to Western laws of succession, only applied to private law. This caused some dismay in France, though not in England, where the rule had never prevailed.¹¹

The analogy with land presupposed that this developed before the title to the Crown had been settled. In fact the laws developed side by side in the two centuries after the Conquest. As society become more settled in the century after the Conquest, primogeniture came to be the usual form of inheritance. But the Crown did not pass without formal election until Edward II. For practical reasons primogeniture was the most convenient means of conveying the Crown.

⁵ Doleman (1594, 136); Axton (1977, 94).

⁶ Lawson and Davies (1974, vol 8 para 845).

⁷ This is the substance of the rule as deduced by Sir William Blackstone (see Blackstone (1978, 192, 193). The principal authority for the existence of the rule is to be found in the course of descent in the past, and in the fact that where the rule has been broken, or where any doubt as to the validity of the title has existed, it has usually been found necessary to fortify the title by statute. See 7 Hen IV c 2 (Succession to the Crown) (1405–6); 1 Mar sess 2 c 1 (Legitimacy of the Queen) (1553); 1 Eliz I c 3 (Recognition of the Queen's Title to the Crown) (1558–9); 1 Jac I c 1 (Recognition of the King's Title to the Crown) (1603–4) (all repealed); and the Succession to the Crown Act 1707 (6 Ann c 41).

⁸ Wentworth (1598, 54); Craig (1703, 21).

⁹ See Truax (1995); Le Patourel (1971), Leyser (1990).

¹⁰ Salic or Salique Law, an ancient law of Pharamond, King of the Franks.

¹¹ In the East, there was an elaborate succession law, but little or nothing on the Crown. This was most irreconcilable, or perhaps most explicable, in Muslim countries, because of the minute fractional division of estates. Natural selection, the triumph of the strong over the weak, prevailed as a means of settling the succession within the ruling family (Maine 1890, 125–144).

By the accession of Richard II, however, influenced by this misleading analogy, the then developed rule of representative primogeniture was applied to the Crown.¹² But the true political nature of the Crown, and the continuing right of the magnates to regulate the succession to it, was re-asserted, not 20 years later, by the deposition of the king.

Although the law of succession at common law is based on that applicable to real property, it is distinct from it, and has only adopted those principles of descent appropriate to the Crown.¹³ The succession law was never consciously adopted; it developed, adopting the developing real property law gradually, but always restrained by the political nature of the office.

The first formulation of the doctrine of the automatic demise of the Crown dates from some time between 25 and 29 September 1399. This doctrine was held to invalidate the parliamentary writs that had been issued by the authority of the former king. The last Parliament of Edward II had become the first of Edward III, and a new Parliament was afterwards called on the demise of the Crown without the issue of writs until 1867.¹⁴ Thereafter there was to be no interregnum on the death of one king, and the succession of the next.

Succession was now direct and automatic. It followed that there was no room for parliamentary intervention, and nor indeed was a coronation strictly necessary (as *Calvin's Case* established 200 years later). But the common law right of inheritance was always liable to be defeated by parliamentary grant, or by the election of the *Witan* or *Commune Concilium*.¹⁵ This parliamentary intervention normally took place when the king's ability to rule (or in some cases his right to rule) was challenged.

The Crown now descends according to the statutory limitations, but retains its hereditary and descendible qualities as at common law, subject to the statutory provisions.¹⁶ Title by descent, and title by choice of Parliament expressed two different views of kingship. This came to the fore under James II, and the solution settled the supremacy of the statutory title. The question as to whether the king could vacate the Throne by his misconduct, as James was held to have done, is not one which can be examined here. So far as the succession was concerned the immediate solution was a return to the ancient device of election by the magnates, or as it now was, by Parliament, *ex post facto*.

From this point forth we have two competing views of the title to the Crown: by inheritance, and by grant of Parliament. A king relying in fact on one would invoke the other to reinforce his title. For several centuries more there remained conflict between title by parliamentary choice, and title by inheritance. The old form of

¹² Taswell-Langmead (1929, 169).

¹³ Constable stated, incorrectly, that the succession was by the "ordinary course of inheritance in fee simple by lineal descent in blood" (Constable 1660, 44). Logically, the Crown was an estate in fee, because at common law only an estate in fee was heritable. But inherited land was freely alienable; the Crown never was, though the attempt by Edward VI to devise the Crown may be taken to have implied this.

¹⁴ Lapsley (1951, 273–336).

¹⁵ *Halsbury's Laws of England*, vol 8 para 846.

¹⁶ These are contained in the Act of Settlement 1700 (12 and 13 Will III c 2) (Eng), and His Majesty's Declaration of Abdication Act 1936 (1 Edw VIII and 1 Geo VI c 3 (UK). The Legitimacy Act 1959 (7 and 8 Eliz II c 73) (UK) does not affect the succession to the Throne [s 6 (4)].

election gave way to parliamentary title, but several kings claimed hereditary title despite statutory bars, James I among them.¹⁷

Dunham and Wood have argued that two centuries of depositions led to the formulation of a new theory of parliamentary monarchy, based on the principle that any aberrant settlement of the succession had to be justified by the consent of the estates of the realm. They concluded that by 1485 it had “established and then reiterated principles that were, in the end, to form a constitutional doctrine legitimating a right to depose and a right to rule”.¹⁸ But the Crown was not yet at the disposal of Parliament.

The Tudor dynasty could appeal neither to the theory of hereditary right which had been the basis of the Yorkist claim nor the statute law on which a Lancastrian claim might have been maintained.¹⁹ But Henry VII was at least *de facto* king.²⁰ There is no assertion of hereditary right in the Act for the Recognition of the title of Henry VII 1485.²¹ It merely recognises a fact, it does not elect or create the king.²² That the Parliament which passed the statute was summoned by a usurper did not matter since he was *de facto* king at least. Henry relied on possession. This was affirmed at his coronation. Subsequently, and particularly under the Tudors, parliamentary title was prescribed, leaving little room for elective title to the Crown, and thereby reducing the importance of the coronation.

The Jesuit Robert Parsons stated in 1594 that:

no man is King or Prince by instrument of nature, but every King and kings sonne hath his dignity and preheminance above other men, by authority only of the common wealth.²³

¹⁷ Indeed, the succession of James in such circumstances appeared to suggest that hereditary right was indeed indefeasible. He was also an alien, and thereby debarred by common law from possessing land in the kingdom (Nenner 1995, 3).

¹⁸ Dunham and Wood (1976).

¹⁹ It was not clear by what right Henry VII was king, but there could be no denying that he was king. Heredity, election, nomination, conquest and prescription could each have been pleaded, but reliance on too many grounds showed the weakness of the title.

²⁰ Under an Act to regulate the Succession 1405–6 (7 Hen IV c 2) (Eng), Henry VII's line were legitimate, but excluded from the succession. However, it is unclear whether this conditional legitimation was effective. Though there are a number of instances which suggest that illegitimacy was not a bar to succession to the Saxon Throne, since the Conquest all monarchs had been legitimate. Henry VII did not claim the Throne by inheritance, neither did Elizabeth (though hers was a legitimate birth subsequently invalidated).

²¹ Act for the Recognition of the title of Henry VII 1485 (1 Hen VII c 1) (Eng), printed at the beginning of the Statutes of Henry VII in *Statutes of the Realm* (1816) II, 499. [extract only]: “for comfort of realm, and to avoid all ambiguities and questions... ordained, established and enacted that by the authority of this present parliament, that the inheritances of England and France, with all the permanence and royal dignity to the same pertaining... rest, remain and abide in the most royal person of our now sovereign lord King Henry VII and in the heirs of his body lawfully coming, perpetually with the grace of God so to endure in none other.” This does not rely on hereditary title- it recognises a political fact or *fait accompli*.

²² Keir (1966, 8).

²³ Specifically, he argued that the presumption of the hereditary right of the next in blood could be rebutted in some circumstances. Title is determined by Parliament. Parliament is, in the first instance, guided by common law rules of hereditary succession, as modified by historical experience. Upon consideration of the personal qualities and circumstances of those in the line of succession, it may qualify

What was a heresy in late Tudor times came to be orthodoxy in the next century. In the 1590 s Peter Wentworth proposed that Parliament, as the High Court of Parliament, be charged to sort through the potential complex of hereditary claims, to choose whoever had the best right, not to elect the heir.²⁴ The opportunity to formulate a rule for future successions was lost.

The right of Parliament to vary and limit the descent of the Crown, in cases of misgovernment amounting to a breach of the original contract between the Crown and the people, cannot be said to be admitted as a definite constitutional principle.²⁵ But due weight must be attributed to the fact that the tenure of the Crown since 1688 has depended upon the action taken by the Lords and Commons convened in an irregular manner.²⁶

The present succession is affected largely by the Revolutionary Settlement still.²⁷ As from the dates of the Unions of England with Scotland and Ireland, the succession of the imperial Crown of the United Kingdom of Great Britain, and of Great Britain and Northern Ireland respectively, is to be as it then stood limited and settled under the Act of Settlement.²⁸ This succession is vested in the heirs of the body of the Princess Sophia²⁹ who are Protestants.³⁰

The settling of the succession on the heirs of the Electress Sophia was an extension of this elective approach, but the succession thereafter proceeded by inheritance. The Succession to the Crown Act 1707³¹ itself expressly affirmed the power of Crown and Parliament to limit and bind the succession.

Footnote 23 continued

the succession further. According to his reading of the precedents, there was in fact a form of election each time a Sovereign succeeded. This, in fact, amounted to an interregnum (Doleman 1594, 142, 198–9).

²⁴ Wentworth (1598, 5, 48, 51).

²⁵ The title to the Crown was originally elective, and the notion of the hereditary right grew gradually. What survives of the elective principle is still to be seen in the terms of the coronation ceremony. The true nature of the title of William and Mary was elective, but this was cloaked in the legitimacy of heredity. James II was deemed to have abdicated by having withdrawn himself from the country (Anon 1689, 7).

²⁶ Maitland (1931, 283–5).

²⁷ *Halsbury's Laws of England*, at para 847.

²⁸ Union with Scotland Act 1706 (6 Anne c 11) (Eng), art II; Union with Ireland Act 1800 (39 and 40 Geo III c 67) (Eng) art 2; Ireland Act 1949 (12 and 13 Geo VI c 41) (UK) s 1 (1). In Scotland a convention offered the Throne jointly to William and Mary, though conditional upon the abolition of episcopacy and the institution of a Presbyterian church order.

²⁹ The Princess Sophia having predeceased Anne, the Crown descended, under this provision, to George I, son of Sophia. It then descended lineally to George IV, from George IV to his brother William IV, from whom it descended to Queen Victoria, niece of William IV, then lineally to Edward VIII, who on 10 December 1936, executed an Instrument of Abdication, and, on 11 December 1936, gave his assent to His Majesty's Declaration of Abdication Act 1936 (1 Edw VIII and 1 Geo VI c 3) (UK). Thereupon His Majesty ceased to be king, and the Crown passed to George VI [s 1 (1)], from whom it descended lineally to Her present Majesty Queen Elizabeth II. The Duke of Windsor (the former King Edward VIII) and any issue he might have were excluded from the succession: s 1 (2).

³⁰ As to the effect of the Act of Settlement 1700 (12 and 13 Will III c 2) (Eng) and the subsequent statute, 4 Anne c 4 (Princess Sophia, naturalisation) (1705) (otherwise 4 and 5 Anne c 16) (Eng) (repealed) on the lineal descendants of Princess Sophia, see *Attorney-General v Prince Ernest Augustus of Hanover* [1957] AC 436, [1957] 1 All ER 49, HL (lineal descendants are British subjects). Indeed, Blackstone maintained that this Act actually re-asserted the rule of hereditary succession. But it really provided for the Crown to continue in the hereditary line, but by right of Parliament (Blackstone 1978).

³¹ 6 Ann c 41.

After the triumph of hereditary title over election, the possibility of intervention by the successors of the *Witan* remained. The modern position is that the statutory provisions settle the Crown in the present line of succession, and provides certain statutory conditions on tenure.³² The descent of the Crown in the present Protestant line is secured by the Acts which regulates the succession, the Act of Settlement 1700,³³ and the new Succession to the Crown Act 2013. Even though the law of succession may be certain today, nonetheless it historically, and constitutionally still today, involved more than merely a parliamentary title; certainly is enhanced by the use of the coronation itself (something that remains important, especially when there has been a change to the law of succession, as in 2013). The coronation is the stamping of constitutional authority upon the individual that the law has made king or queen. Whether it is required by formal law is another matter.

*Calvin's Case*³⁴ found that a coronation, as a consequence of hereditary succession, was not a legal necessity (as there was automatic succession). However, it is to be doubted whether a Sovereign would be fully accepted without a coronation, as may be seen with the still-current attitude towards King Edward VIII; the succession remained a combination of hereditary title, parliamentary grant, and consent—as we were reminded in 1688–89, and indeed in 1936. It is rarely a wise move to make radical changes at the beginning of a reign. Equally, the question of who may be included or excluded is one that is fraught with difficulties. We still recall with some amusement or pathos depending upon our view of the rights of the parties, the exclusion of Queen Caroline from the coronation of her husband, King George IV in 1821, something to be discussed below.

In 2013 the General Assembly of the Church of Scotland supported a call to crown monarchs separately in a newly independent Scotland.³⁵ In an ideal world it might be thought that the realms could have their own coronations (or at least inaugurations), but really this isn't necessary; Scotland was between 1603 and 1707 and still today is in a distinct position. The Queen is crowned for the whole Commonwealth. At the coronation of King Edgar in 973 (one of the earliest for which comprehensive details are available, and also one of the most important late Saxon coronations) there were five sub-kings present. It was truly an imperial occasion, just as in 1953 The Queen wore, figuratively speaking, many crowns. What is clear, however, is that the tradition of coronations over a 1000 years is too strong to be broken even if a coronation isn't strictly necessary in law. It must be

³² *Halsbury's Laws of England*, at para 850.

³³ Act of Settlement 1700 (12 and 13 Will III c 2) (Eng) s 1: the lords spiritual and temporal and commons shall and will, in the name of all the people of the realm, most humbly and faithfully submit themselves, their heirs and posterities, and faithfully promise [in the event of the decease of King William III and of Queen Anne and the failure of the heirs of their respective bodies] to stand to, maintain and defend the heirs of the body of the Princess Sophia, being Protestants, according to the limitation and succession of the Crown in the Act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

³⁴ (1608) 7 Co Rep 1a; 77 E.R. 377.

³⁵ 23 May 2013. This was based on a Joint Report by the Church and Society Council, the Committee on Ecumenical Relations, and the Legal Questions Committee on the implications for the Church of Scotland of independence for Scotland, 15 May 2013. The Report itself didn't conclude that a coronation was necessary, but the General Assembly endorsed that more specific sentiment.

questioned whether *Calvin's Case* was correct—the better view may be that a coronation is necessary to validate the choice of Sovereign.

Attendance at a Coronation

Attendance at a coronation is dependent upon invitation by the Earl Marshal. However, for some 700 years a Court of Claims has been held to hear petitions relating to attendance and service at coronations.³⁶ But the coronation is but the culmination of a series of steps involved in the inauguration of a new reign. At an earlier stage, a new Sovereign is proclaimed by the Accession Council, which although archaic and indeed ephemeral, is one of the oldest institutions in the kingdom. This comprises Lords Temporal and Spiritual, the Lord Mayor of London and many others by long-standing custom if not strict right. It would be dangerous to exclude hereditary peers from such a body merely on the assumption that, as former members of the House of Lords, they had no further constitutional role. This may be true, but for the sake of constitutional legitimacy, it is a dangerous assumption to make. It also ignores their extant, but uncertain, privileges of hereditary counsellors to the Sovereign.

The role of the Accession Council is to proclaim a new Sovereign. As such it has a practical constitutional function. But attendance at it, although historically important, might be less likely to exercise the minds of peers, hereditary or life. Certainly there would be many peers who would petition the Court of Claims for an invitation to a coronation, and it is doubtful that the Court could rightly exclude them arbitrarily. Aside from the Archbishops and Bishops, the peers have been the most regular participants in the coronation service for a 1000 years—and arguably not in their legislative capacity,³⁷ but rather their executive role as counsellors to the Sovereign.

But no one has an absolutely certain right to attend a coronation—except the King or Queen Regnant.³⁸ As an example, we have the exclusion of Queen Caroline in 1821. Caroline of Brunswick-Wolfenbüttel (1768–1821) and the Prince of Wales, later the Prince Regent, were ill-matched, and within a year of their marriage they lived apart. After an official inquiry into allegations of adultery it was said that Caroline's behaviour was open to “very unfavourable interpretations”. Later, after the Prince of Wales became King, the government prepared a Bill of Pains and Penalties, to deprive her of the status of Queen, and to divorce her. This was heard in the House of Lords. Although few people thought her to be innocent, many of those at the hearing disliked the whole procedure, and the Bill was withdrawn before it could go to the House of Commons. She sought to attend the coronation of

³⁶ See, generally, Wollaston (1903).

³⁷ See the *Coronation of Her Majesty Queen Elizabeth the Second: minutes of the proceedings of the Court of claims* 1952. Officeholders were generally only excluded where their services were not needed, as because of the abolition of the coronation banquet.

³⁸ King Edward VIII was not of course crowned, owing to his abdication a few months before his planned coronation, nor was King Edward V (one of the Princes in the Tower), and in strict terms both were still king.

her husband, although she did not have an invitation; she tried to gain admittance at every door but was turned away because she did not have a ticket. Her activities provoked hostility from the crowd. She was hooted and hissed until she left.³⁹ Her treatment did, however, establish that no one except the Sovereign had an unfettered right to attend.⁴⁰

Some changes may doubtless be required—and some are desirable for liturgical or historical reasons (such as the restoration of the sermon, abandoned in 1902)—and others to reflect the diminished role of the House of Lords. This could be achieved by including the Lord Speaker of the House of Lords, rather than by excluding the peers. Typically, and rather unsatisfactorily, the new post of Lord Speaker, first held by Baroness Hayman from 4th July 2006, was granted rank and precedence after the Speaker of the House of Commons, by royal warrant of 4th July 2006.⁴¹ As the Speaker of the Upper House she should, of course, have had precedence before the Speaker of the House of Commons.

No Sovereign can risk their title being questioned—least not one succeeding to the Crown in an age of media hostility and vindictive and evilly-disposed opportunists—not to mention jaundiced and sceptical academics. As such they would express no views, historically at least, on the need for attendance by anyone. However, the attendance of peers is constitutionally proper—as indeed is the attendance of members of the Lower House, hitherto represented by the Speaker of the House of Commons.

However, peers have attended the coronation of their Sovereigns since coronations began, and were present at the inauguration of Kings before that. Their legislative (or executive) role was, then and now, in a sense, immaterial. They represented the continuity of the constitution in a manner that the elected members of the House of Commons, however important they may be on a day-to-day basis, cannot do.

Accession Councils and the Various Oaths to be Taken by a New Sovereign

There are other activities associated with the accession which involves the peerage.

Upon succeeding to the throne, the new Sovereign must take the coronation oath in the form provided by statute.⁴² The requirement of section 2 of the Act of Settlement 1700⁴³ that the Coronation Oath shall be in accordance with the Coronation Oath Act 1688⁴⁴ are not adhered to, as the oath has been amended in

³⁹ Robins (2006).

⁴⁰ *Queen Caroline's Claim to be Crowned* (1821) 1 State Trials NS 949.

⁴¹ College of Arms register I.85/194.

⁴² Act of Settlement 1700 (12 and 13 Will III c 2) s 2. In terms of this provision the form of the oath is provided by the Coronation Oath Act 1688 (1 Will and Mary sess 4 c 6), s 3, and must be administered by the Archbishop of Canterbury or York, or any other bishop of the realm appointed by the Sovereign for that purpose, in the presence of all persons attending, assisting or otherwise present at the coronation: s 4.

⁴³ 12 and 13 Will III c 2.

⁴⁴ 1 Will III and Mary c 6.

practice without legislative sanction.⁴⁵ There is now a significant divergence between law and practice in this respect.⁴⁶ The title to the Crown is not however dependent upon the taking of the oath.⁴⁷

As well as taking the coronation oath, section 2 of the Act of Settlement 1700⁴⁸ requires that every new Sovereign must make, subscribe and repeat, sitting on the throne in the House of Lords, either on the first day of the meeting of the first Parliament after the accession, or at the coronation, whichever shall happen first, a declaration of their religious orthodoxy.⁴⁹ This Accession Declaration should be in the form of section 1 of the Bill of Rights 1688.⁵⁰ This is to the effect that he or she is a faithful Protestant, and will, according to the true intent of the enactments which secure the Protestant succession to the throne, uphold and maintain those enactments to the best of his or her powers according to law.⁵¹

⁴⁵ *Report of the Justice and Law Reform Committee on the Imperial Laws Application Bill* (1988) Explanatory Material p 57–60.

⁴⁶ The form of the oath as at present administered differs from that provided by the act owing to the disestablishment of the Irish Church (by the Irish Church Act 1869 [32 and 33 Vict c 42]), and by the provisions of the Union with Scotland Act 1706 (6 Ann c 11) art xxv.

⁴⁷ The latest form of the Coronation Oath may be seen in the Proceedings of the Coronation of Her Majesty The Queen, 2 June 1953:

Archbishop of Canterbury—“Madam, is your Majesty willing to take the oath?”

The Queen—“I am willing”

Archbishop of Canterbury—“Will you solemnly promise and swear to govern the people of this United Kingdom of Great Britain and Northern Ireland and the other realms and territories, according to the statutes in Parliament agreed on, and the respective laws and customs of the same?”

The Queen—“I solemnly promise to do so”

Archbishop of Canterbury—“Will you, to the utmost of your power, maintain the laws of God, the true profession of the Gospel, and the Protestant Reformed Religion established by law? And will you maintain and observe inviolably the settlement of the Church of England and the doctrine, worship, discipline and government thereof by law established in England? And will you preserve unto the bishops and clergy of England and to the churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them or any of them?”

The Queen—“I will”

The election proper (the enthronement at Westminster Hall) was abandoned at the accession of Edward VII, but the religious equivalent persists, though the above is really only the confirmation of the election.

⁴⁸ 12 and 13 Will III c 2.

⁴⁹ Her Majesty The Queen made the declaration on opening Parliament on 4 November 1952.

⁵⁰ 1 Will III and Mary sess 2 c 2.

⁵¹ Bill of Rights 1688 (1 Will and Mary sess 2 c 2), s 1; Act of Settlement 1700 (12 and 13 Will III c 2) s 2; Accession Declaration Act 1910 (10 Edw VII and 1 Geo V c 29). The declaration was made by King George V at the opening of Parliament, and therefore the necessity for making it at the coronation did not arise: 7 HL Official Reports (5th series) col 4. The same was true in the case of Queen Elizabeth II. King George VI made the declaration during the coronation service: see *Supplement to the London Gazette*, 10 November 1937, p 7054. For the purposes of any enactment requiring an oath or declaration to be taken, made or subscribed by the Sovereign on or after the accession, the date on which the Sovereign attains the age of eighteen years is deemed to be the date of the accession: Regency Act 1937 (1 Edw VIII and 1 Geo VI c 16) s 1 (2).

The new Sovereign had to read out a declaration in which he asserted his own orthodoxy, and condemned the doctrine of transubstantiation. They also proclaimed from the throne that “the Invocation or Adoration of the Virgin Mary or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous”.

In 1910 a revised declaration, introduced by the Accession Declaration Act 1910⁵² (United Kingdom), allowed the king to merely affirm that he was a faithful member of “the Protestant Reformed Church by law established in England”.⁵³ There was opposition even to this modest declaration, and a final revision, enacted 3 August 1910, simply said that “I declare that I am a faithful Protestant and will uphold the Protestant succession”.⁵⁴

Apart from the requirement to take the coronation oath and give the accession declaration, any person coming into possession of the Crown must join in communion with the Church of England.⁵⁵ In practice, the Sovereign has also joined the Church of Scotland, and worships in accordance with the rites of the Established Church in Scotland whilst resident within that kingdom. There is however no legal requirement that the Sovereign be a member of the Church of Scotland.⁵⁶ It is not known whether that might be affected by independence for Scotland.

However, it was provided as a fundamental term of the union of England with Scotland that every person who succeeds to the Crown must take and subscribe the oaths for the preservation of the Established Church in England and the Presbyterian Church in Scotland.⁵⁷ These are separate oaths to the coronation oath and accession declaration.

Anyone who adheres to the Roman Catholic Church (or formerly who marries such a person⁵⁸), cannot inherit the Crown, nor can they remain Sovereign if they

⁵² 10 Edw VII and Geo V c 29.

⁵³ I [xx] de solemnly and sincerely in the presence of God profess, testify and declare 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.

⁵⁴ Nicolson (1952, 162–163).

⁵⁵ Act of Settlement 1700 (12 and 13 Will III c 2) s 3.

⁵⁶ Nor, indeed, need they be a member of the Church of England, merely in communion with it. Kings George I and George II were German Lutherans. Members of the Sovereign's family need not be in communion with, or members of, the Church of England. The Duke of Edinburgh, before marrying The Queen, was received into the Church, although as a member of the Greek Orthodox Church, he was already a member of a Church in communion with the Established Church in England.

⁵⁷ Union with Scotland Act 1706 (6 Ann c 11) art xxv, and ss 2–5. The oath for the preservation of the Established Church of England is now administered as part of the coronation oath. The oath for the preservation of the Presbyterian Church in Scotland was taken by Queen Elizabeth II at a meeting of the Privy Council held immediately after her accession, the instrument being subscribed in duplicate, and one part sent to the Court of Session to be recorded in the Books of Sederunt, and afterwards to be lodged in the Public Register of Scotland, the other part remaining among the records of the Council to be entered in the Council Book: see the *London Gazette Extraordinary*, 8 February 1952, p 861.

⁵⁸ s 2.

are disqualified after succeeding to the Crown.⁵⁹ In such a case the people are absolved of their allegiance, and the Crown is to descend to such person or persons, being Protestants, as would have inherited it in case the person so reconciled etc. were dead.⁶⁰ As a consequence of the wording used in the Act of Settlement 1700,⁶¹ there is no requirement that someone whose spouse joins the Roman Catholic Church after marriage loses their right to the Crown.⁶² It would appear that the operation of the Act is irreversible, although to be effective the marriage must be a legal one.⁶³

It is clear that the right of peers to attend a coronation is subject to the will of the Sovereign. However, given that at least notionally the title of the Sovereign rests on the assent of the peerage, and because of the constitutional need for coronations to adhere to traditional form, it would be extremely unwise to exclude the peerage from either the accession council or the coronation, as both are inextricably intertwined with the fundamental form of the constitution.

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⁵⁹ The actual wording used says that any person “who shall be reconciled to, or hold communion with, the see or Church of Rome, or profess the popish religion, or marry a papist”, is excluded from “inheriting, possessing or enjoying the Crown”.

⁶⁰ This is the joint effect of the Act of Settlement 1700 (12 and 13 Will III c 2) (Eng) s 2, as amended by the Accession Declaration Act 1910 (10 Edw VII and 1 Geo V c 29) (UK), and the Bill of Rights 1688 (1 Will III and Mary sess 2 c 2) (Eng) s 1, as amended by the Juries Act 1825 (6 Geo IV c 50) (UK) s 62.

⁶¹ 12 and 13 Will III c 2 (Eng).

⁶² Thus Prince Edward Duke of Kent retains his position (34th in 2016) in the line of succession despite his wife Katharine having been received into the Roman Catholic Church on 11 January 1994. However, their son George Earl of St Andrews lost his right to the Throne when he married the Roman Catholic Sylvana Palma Tomaselli 9 January 1988. Similarly, Prince Michael of Kent lost his own right to the Throne when he married Baroness Marie-Christine von Reibnitz 1978. Anyone who is disqualified loses their title to the Crown by operation of law, and without the need for any procedures to be followed. Children of such parents retain their right to succeed so long as not otherwise disqualified.

⁶³ Thus the marriage of George Prince of Wales to Mrs Maria Fitzherbert, a devout Catholic and twice a widow, did not disqualify him from succeeding as king in 1820, as the marriage was contrary to the Royal Marriages Act 1772 (12 Geo III c 11) (GB), and legally null and void. The Act itself is archaic and badly drafted. It has been argued that the Act does not apply to any of Queen Victoria's descendants—O'Farrah (1953).

The Royal Marriages Act 1772 applied to all the descendants of George II, other than the issue of princesses who have married into foreign families. Their marriages are void unless the consent of the Queen has been formally signified. Such a person may, however, marry without consent if they are over twenty-one, provided they give 12 months' notice to the Privy Council and the two Houses of Parliament do not register objection during that period. It was repealed by s 3 of the Succession to the Crown Act 2013.

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