

# Royal succession campaign curious

New Zealand Herald 13 December 2000 p A17

The Guardian newspaper in London has announced its support for what has been described in the New Zealand Herald as a move to scuttle the monarchy. Actually the Guardian has launched a legal challenge to the law of succession to the Crown, a somewhat less ambitious aim.

At present Catholics and anyone who has married a Catholic cannot inherit the throne, and although women can succeed, males are preferred. The former is a consequence of the Glorious Revolution of 1688, the latter the result of over a thousand years of legal and cultural development.

The present legal challenge is based on the Human Rights Act 2000, which was enacted in the United Kingdom earlier this year, and which prohibits discrimination on the grounds of sex or religion.

The newspaper's campaign has several curious aspects. Firstly, it is being waged in an aggressive and confrontational way, almost as though the monarchy itself was resisting the proposed changes. However both the Queen and the Prince of Wales are on record as supporting changes to the succession law, which Parliament had originally imposed upon an unwilling monarchy.

Secondly, Lord Wilson of Mostyn, Parliamentary Under Secretary of State for the Home Office, announced three years ago that the British government supported changing the law of succession to the throne. That change has yet to occur is simply a reflection of the complexity of the task, and the lack of urgency.

Thirdly, any alteration by the United Kingdom Parliament to the law regarding the succession to the throne would not in itself be sufficient to alter the rules of succession to the throne in other independent member of the Commonwealth of which the Queen remains head of state. New Zealand and every other country affected would have to change its succession law at the same time, or we would be faced with the possibility, at some time in the future, of having a different sovereign to the United Kingdom.

The prohibition on Catholics succeeding to the throne is a consequence of the 1688 revolutionary settlement, after King James II had attempted (or so his critics argued) to re-impose Catholicism on a predominantly Protestant people. A return to the unspoken expectation of royal Protestantism of the Henrician reforms of a century earlier would be preferable to an outright legal ban on Catholics succeeding. This could leave the legal establishment of the Church of England in England, and the Church of Scotland in Scotland, substantially intact. But it would mean that a Catholic king or queen might succeed to the throne, as James II did, disastrously enough for himself, in 1685.

The present arrangements provide that the Crown descends lineally through the issue of the reigning Sovereign, subject to the right of primogeniture amongst both males and females of equal degree. Thus the eldest or sole son succeeds, but if a sovereign

has only daughters, then the eldest of these will succeed in preference to a brother or uncle of the previous sovereign.

Were a succession law to be drawn up today, it is likely that it would provide for the succession of the eldest child of the Sovereign, irrespective of sex. Sweden has recently adopted such a rule. However that was replacing the much more restrictive Salic law, which allowed only male rulers. The British tradition has been one of compromise, of flexibility, and was never so exclusive.

No selection process for a head of state is perfect. Just look at the American presidency. The presidential election in 1996 cost the almost inconceivable sum of US\$2.7b (NZ\$6b). The election just held, with its attendant legal and constitutional chaos, will prove no doubt to have been even more expensive. The law of succession to the Crown is a product of a incomparably older tradition.

Changes should be as a consequence of mature debate, not media-inspired court action. Most importantly, this is a matter, not for a newspaper to decide, but for the people through their duly elected representatives, in the New Zealand and United Kingdom Parliaments.

Noel Cox, Barrister and Lecturer at the Auckland University of Technology, is Chairman of the Monarchist League of New Zealand