

## Comment: A right royal mess

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Logistical nightmare ... or easier to simply become a republic?

The royal wedding raises concerns about rules of succession that reflect centuries-old prejudices against women and Catholics. But changing them will be a logistical nightmare, writes George Williams, UNSW's Anthony Mason professor of law.

The royal wedding has prompted the British Prime Minister to support change to the rules of succession to the throne. His main concern is that under the law as it stands a first-born daughter of Prince William and his wife would be relegated below a younger brother.

Removing this obvious example of discrimination will be extraordinarily difficult. It will require the law to be altered not just in Britain but also in the 15 other nations, including Australia, that have the Queen as their head of state.

The change must also go beyond remedying the position of female heirs. It will need to deal with the fact that the rules of succession continue to reflect centuries-old prejudice and hatred towards Catholics.

The British monarchy has been fortunate that there has been no need to apply the precedence given to male heirs in past decades. Elizabeth II became Queen because she had no brothers. In the case of the next two generations, the first-born child of each, Charles and William, is male.

The family may not be so fortunate with the next generation, and will no doubt want to avoid the negative reaction that would follow a first-born daughter missing out on the throne.

The royal family does not have the power to alter the rules of succession, and Britain cannot act alone. If they were changed only there, there would be two sets of rules, and the prospect of different monarchs in different nations. Britain might have as its monarch a first-born daughter under a revised set of rules, while another nation could have as its monarch a younger son under the old set. The result would be an intolerable split within the house of Windsor.

To avoid this problem, the rules of succession must be altered simultaneously with nations ranging from Australia, Canada and New Zealand to the Solomon Islands, Jamaica and Grenada. How this is achieved will vary for each country.

In Australia it would probably involve the Federal Parliament passing a law at the request of each of the six state parliaments. It would thus require the co-operation of seven lawmaking bodies. As recent experience shows, this can be difficult to achieve, and can take a long time. State elections have a habit of getting in the way of co-ordinated action, and if a state parliament decided to hold out instead for a transition to a republic, the process across Australia, and indeed the

Commonwealth, could fall in a heap.

A nightmare set of logistics is not the only obstacle. Some nations will be reluctant to make any change unless discrimination against Catholics is also eliminated.

The rules of succession are a product of the Glorious or Bloodless Revolution of 1688 that led to the overthrow of King James II of England, that nation's last Catholic monarch.

The victor was the English Parliament. It brought about fundamental changes to how England was governed, capped by recognition of the sovereignty of Parliament in the 1688 Bill of Rights. Reflecting this, the rules of succession have from that time been determined by Parliament and not the royal family.

The new rules were set out in the Act of Settlement of 1701. This law remains in force, and determines the line of succession to the throne. It reflects the bloody struggles of the time between Protestants and [Catholics](#), and the desire of the Parliament that no Catholic should again ascend to the throne.

As a result, the act states that the monarch must be "in communion" with the Church of England and that a person is disqualified from the office if they "profess the popish religion" or "marry a papist". As the head of the Catholic Church in England has pointed out, Prince William "can marry by law a Hindu, a Buddhist, anyone, but not a Roman Catholic".

Unravelling the religious connection between the monarch and the Church of England could prove even more difficult than fixing the precedence given to men over women. Perhaps, in Australia's case, it might simply be easier to become a republic.

Provided by University of New South Wales

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