



Hereditary Monarchies and Inherited Titles

Bhutan • Denmark • Fiji • Japan • Kuwait • Bahrain
Norway • Sweden • Tonga • United Kingdom

February 2008

LL File No. 2008-00589
LRA-D-PUB-000151

This report is provided for reference purposes only.
It does not constitute legal advice and does not represent the official
opinion of the United States Government. The information provided
reflects research undertaken as of the date of writing.
It has not been updated.

LAW LIBRARY OF CONGRESS
HEREDITARY MONARCHIES AND INHERITED TITLES
BHUTAN

In 1724, Jigme Dakpa was recognized as Druk Shabdung and King in 1728. Since then the line of succession to the King has been hereditary. In 1973, when the King volunteered to surrender some of his powers, the subjects of the King refused to let him. His son surrendered some powers, including giving the National Assembly the right to force a monarch to abdicate in favor of his successor, in 1998, against similar opposition from the Bhutanese people.¹

In 1907, the Wangchuck family was acknowledged as the ruling dynasty of Bhutan, creating an hereditary monarchy. In 1952, when the second Wangchuck King died, Bhutan was an absolute monarchy.² Since that time, the Kings have moved toward creating a constitutional monarchy. Under the new constitution being drawn up, it is stated that the Throne of Bhutan shall vest in the legitimate descendants of the Druk Gyalpo Ugyen Wangchuck.³ A photocopy of the full succession rules suggested in Article 2 of the third, and latest, Draft Constitution of the Kingdom of Bhutan, in English, is attached, which was obtained from <http://www.constitution.bt/> (official source).

Prepared by Krishan Nehra
Senior Foreign Law Specialist
February 2008

¹ *No blood, no coup; Bhutan king gives up power*, EXPRESSINDIA, July 17, 1998, available at <http://www.expressindia.com/news/ie/daily/19980718/19950264.html>.

² ALBERT P. BLAUSTEIN AND GIBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 9 (1989).

³ Third Draft Constitution of the Kingdom of Bhutan, Art. 2, §§ 1-4 (Aug. 1, 2007).

LAW LIBRARY OF CONGRESS
HEREDITARY MONARCHIES AND INHERITED TITLES
DENMARK

The order of succession to the Danish throne is regulated in the Act of Succession of March 27, 1953.¹ According to this Act, the Danish throne is inherited by the descendants of King Christian X and Queen Alexandrine.² When the King dies, the throne passes to his son or daughter. Precedence is given to the son. If there are several children of the same gender, the older child takes precedence over the younger.³ When one of the King's children has died, the child of the deceased shall take his place in accordance with the lineal descent rules.⁴ If the King dies and leaves no children who are entitled to succeed the throne, the throne will pass to the King's brother or sister, the brother taking precedence over the sister. If the King has more than one brother or more than one sister, or where any of his brothers or sisters have died, what is mentioned above will apply.⁵ If there is no person to succeed the throne according to what is stated above, the throne will pass to the nearest collateral line of the descendants of King Christian X and Queen Alexandrine, in accordance with the lineal descent and with precedence given to men over women and for the elder over the younger.⁶

A King may marry only after consent has been given by the Parliament.⁷ Only children who are born of lawful marriage are given the right of succession to the throne.⁸

The King, and the heir to the throne, is of age when he has completed his eighteenth year.⁹ If the throne becomes vacant and there is no heir to the throne, the Danish Parliament will elect a King and establish the future order of succession to the throne.¹⁰ Provisions relating to what happens in cases where the King is ill, absent, or a minor are laid down in statute.¹¹

Prepared by Linda Forslund
Contract Foreign Law Specialist
February 2008

¹ The Constitutional Act of Denmark of June 5 1953 and the Act of Succession of March 27 1953, *available at* the Danish Parliament's Web site in English, <http://www.folketinget.dk/pdf/constitution.pdf>.

² 1 § The Act of Succession of March 27, 1953. Christian X was King of Denmark from 1912 to 1947.

³ *Id.*, 2 §.

⁴ *Id.*,

⁵ *Id.* , 3 §.

⁶ *Id.*, at 4 §.

⁷ *Id.*, 5 §.

⁸ *Id.*

⁹ Arti. 7, the Constitutional Act of Denmark of June 5 1953 and the Act of Succession of March 27 1953, *available at* the Danish Parliament's Web site in English, <http://www.folketinget.dk/pdf/constitution.pdf>.

¹⁰ *Id.*, art. 9.

¹¹ *Id.*

LAW LIBRARY OF CONGRESS

HEREDITARY MONARCHIES AND INHERITED TITLES

FIJI

Fiji has a Great Council of Chiefs that has, until recently, played a significant role in Fiji's political process. Some members of the Great Council of Chiefs are chiefs who have inherited the title of chief. This title appears to be inherited via customary law and disputes regarding the title and associated rights to land are resolved by the Native Lands Commission with reference to customary law and procedure.

I. Background

In accordance with Section 116 of the Constitutional (Amendment) Act 1997, the Great Council of Chiefs established under the Fijian Affairs Act (Cap. 120) is to continue in existence in accordance with that Act. However, Fiji's current government has published an extraordinary government gazette suspending the Great Council of Chiefs (Bose Levu Vakaturaga) and established a task force to review the Great Council of Chiefs and its functions.¹

Most recently, Fiji's parliament has received and discussed a report by the Cabinet subcommittee appointed to review the Great Council of Chiefs (GCC) Special Task Force Report and its recommendations. These recommendations have been incorporated into the Fijian Affairs (Great Council of Chiefs) Regulations 2008 that have not yet been publicly released.²

II. Succession of the Great Council of Chiefs

In accordance with the Fijian Affairs (Great Council of Chiefs) Regulations 1966 (reg. 2) the Great Council of Chiefs consists of:

2.-(1) The members of the Great Council of Chiefs, hereinafter referred to in these Regulations as the Council, shall be-

- (a) the Minister;
- (b) the Fijian members of the House of Representatives;
- (c) not more than seven chiefs to be appointed by the Minister;
- (d) not more than eight other persons to be appointed by the Minister;
- (e) three persons (of whom at least two shall be members of the Provincial Council) to be elected by each Provincial Council with twenty or more members;
- (f) two persons (of whom at least one shall be a member of the Provincial Council) to be elected by each Provincial Council with less than twenty members.

Thus the persons with inherited title that permits them to be considered for participation in the Council of Great Chiefs are "chiefs." "Chief" is defined in the Fijian Affairs Act (Cap. 120) (§ 2) as "any person enrolled in the principal mataqali of a yavusa in the register of native land owners recorded under the provisions of section 8 of the Native Lands Act." *Mataqali* refers to clan and *yavusa* refers to tribe.

¹ See: Address by PM Bainimarama after the Great Council of Chiefs Meeting, Apr 13, 2007, available at the Fiji Government Web site, http://www.fiji.gov.fj/publish/page_8756.shtml.

² See: Press Release, Cabinet Considers GCC Report (Feb. 12, 2008), available at the Fiji Government Web site, http://www.fiji.gov.fj/publish/page_11181.shtml.

In accordance with Section 4 of the Native Lands Act (Cap. 133), the Minister may appoint a Native Land Commission with the “duty of ascertaining what lands in each province of Fiji are the rightful and hereditary property of native owners, whether of mataqali or in whatever manner or way or by whatever divisions or subdivision of the people the same may be held.”

Thus Native Lands and Fisheries Commission (part of the Ministry of Indigenous Affairs³) is responsible for maintaining the Register of Native Land Owners (Vola ni Kawa Bula) and resolving any land disputes relating to customary land.

In accordance with Section 17 of the Native Lands Act, disputes among native Fijians as to the leadership of any division or subdivision of people are resolved by the Commission, which will conduct an inquiry and decide who is the proper leader. In this instance, the dispute must be referred to the Commission, and the Commission may not initiate an inquiry.⁴ It is possible for disputing parties to resolve the matter between themselves, in which case the Commission is not required to hear any evidence (or further evidence) but merely recognizes the agreed leader.

In accordance with Section 21, illegitimate children may inherit native lands.

Prepared by Lisa White
Foreign Law Specialist
February 2008

³ See: Ministry of Indigenous Affairs website at: <http://www.fijianaffairs.gov.fj/NLFC.html> (last visited February 15, 2008).

⁴ *Vosailagi v Native Lands Commission* [1989] FJHC 53; [1989] 35 FLR 116 (22 June 1989).

Native Lands Act (Cap. 133)

Disputes as to headship of mataqali, etc.

17.-(1) In the event of any dispute arising between native Fijians as to the headship of any division or subdivision of the people having the customary right to occupy and use any native lands, the Commission may inquire into such dispute and after hearing evidence and the claimants shall decide who is the proper head of such division or subdivision, and such person shall be the proper head of such division or subdivision:

Provided that if the claimants agree in writing in the presence of the Chairman of Commission as to who is the proper head of such division or subdivision it shall not be necessary for the Commission to hear evidence or further evidence as the case may be.

(2) On the conclusion of any inquiry held under subsection (1), the Chairman of the Commission shall inform the parties of the decision and shall transmit a copy of such decision to the scribe of the province in which the land belonging to such division or subdivision is situate and such decision shall be publicly read at the next meeting of the provincial council of that province.

Illegitimate children to be tribal land-owners and recorded as such

21.-(1) Notwithstanding anything contained in the Legitimacy Act all Fijians of illegitimate birth shall be deemed to be owners of native lands and may be recorded as may seem just and equitable as members of the proprietary units of either their father or mother.

(2) It shall be lawful for the Commission to prepare a supplementary register recording the names of all members of proprietary units found by the Commission under the provisions of subsection (1) to be members of their respective proprietary units, and such register shall be transmitted to the Registrar of Titles and preserved by him in the same manner as the register referred to in section 10.

LAW LIBRARY OF CONGRESS

HEREDITARY MONARCHIES AND INHERITED TITLES

JAPAN

The Constitution reads: “the Imperial Throne shall be dynastic and succeeded to in accordance with the Imperial House Law passed by the Diet.”¹ The Imperial House Law reads: “the Imperial Throne shall be succeeded to by male descendants in the male line of Imperial Ancestors.”² The Imperial House Law specifies the order among potential successors.³ Only when the Imperial heir is suffering from an incurable disease of mind or body, or when any other weighty cause exists, may the order of succession be changed by decision of the Imperial Household Council, in accordance with the order.⁴ Courts are not involved in the Imperial House succession.

Prepared by Sayuri Umeda
Senior Foreign Law Specialist
February 2008

¹ Nhonkoku kenpō [Constitution of Japan], 1946, art. 2.

² Kōshitsu tenpin [Imperial House Law], Law No. 3 of 1947.

³ *Id.* art. 2

⁴ *Id.* art. 3.

2008-00589

LAW LIBRARY OF CONGRESS
HEREDITARY MONARCHIES AND INHERITED TITLES
KUWAIT AND BAHRAIN

The succession to the throne in both the State of Kuwait and the Kingdom of Bahrain is hereditary under their respective constitutions.¹

No courts in either country have jurisdiction to play any role related to hereditary rights to succession.

Prepared by Issam Saliba
Senior Foreign Law Specialist
February 2008

¹ Constitution of Kuwait, approved No. 11, 1962, by His Highness Sheikh Abdullah Al Salem Al Sabah, *available at* the official Web site of the State of Kuwait, <http://www.da.gov.kw/eng/kuwaitInfo/political.php> (in English); Constitution of the Kingdom of Bahrain, Feb. 14, 2002, available at http://www.election.gov.bh/English/pdfs/e_constitution.pdf (in English, official translation).

LAW LIBRARY OF CONGRESS

HEREDITARY MONARCHIES AND INHERITED TITLES

NORWAY

Executive Summary

The order of succession to the throne of Norway is lineal. Only children born in lawful wedlock can inherit the throne. The nearest line of descendants takes precedence over the more remote and older children take precedence over younger.

The order of succession to the Norwegian throne is regulated in article 6 of the Norwegian Constitution.¹ The order of succession is lineal. Only a child born in lawful wedlock to the King or Queen, or to someone who is himself or herself entitled to the succession, is eligible to succeed to the throne. The nearest line of descendants takes precedence over the more remote and the elder over the younger. An unborn child will also be included among those entitled to the succession and will immediately take her or his proper place in the line of succession at birth. When a Prince or Princess is born, his or her name and the time of birth are sent to the Parliament and entered into the record of its proceedings. For those born before 1990, a male heir to the throne takes precedence over a female.

According to article 7 of the Constitution, the King may propose to Parliament a successor to the throne if there is no Prince or Princess entitled to the succession. Parliament has the right to make the choice if the King's proposal is not accepted.

If the King dies and the heir to the throne is still under age, the Council of State shall immediately summon the Parliament.² If the Parliament is not summoned, it becomes the unconditional duty of the Supreme Court to, as soon as four weeks have elapsed, arrange for the Parliament to be summoned.³ Until the Parliament has assembled and made provisions for the government while the King is under age, the Council of State is responsible for the administration of the Realm in accordance with the Constitution.⁴ If the King is absent or so ill that he cannot attend to the government of the country, the next in line to succeed to the throne shall conduct the government as the temporary executor of Royal Powers. The next in line to the throne cannot be a minor when serving as temporary executor of Royal Powers. If he or she is under age, the Council of State will conduct the administration of the country.⁵ It is the

¹ Kongeriket Norges Grundlove, given i Rigsforsamlingen paa Eidsvold den 17 de Mai 1814, in English, available at <http://www.stortinget.no/english/constitution.html#fulltext> (unofficial source).

² *Id.*, art. 39.

³ *Id.*, art. 46.

⁴ *Id.*, arti. 40.

⁵ *Id.*, art. 41.

Parliament that chooses the trustees that conduct government on behalf of the King while he is under age.⁶

If the Royal Line dies out and no successor to the throne has been designated, a new Queen or King is chosen by the Parliament.⁷

Prepared by Linda Forslund
Contract Foreign Law Specialist
February 2008

⁶ *Id.*, art. 43.

⁷ *Id.*, art. 48.

LAW LIBRARY OF CONGRESS

HEREDITARY MONARCHIES AND INHERITED TITLES

SWEDEN

Executive Summary

The right of succession in Sweden is regulated by the Act of Succession. Male and female descendants of the King may succeed to the throne, with precedence given to older siblings and their descendants over younger siblings.

The right of succession to the Swedish throne is regulated in the Act of Succession, one of the four fundamental texts which make up the Constitution of Sweden.¹ Those with the right to succeed to the throne of Sweden are the “male and female descendants of King Carl XVI Gustaf, Crown Prince Johan Baptiste Julii, later King Karl XIV Johan’s, issue in direct line of descent.”² Older siblings and their descendants take precedence over younger siblings and their descendants.³ A Prince or Princess of the Royal House may not marry unless the Government has given its consent upon application of the King. Princes and Princesses who marry without consent forfeit their right of succession for themselves and their descendants.⁴ The heir to the throne may not travel abroad without the knowledge and consent of the King.⁵

The King is the Swedish Head of State. If the King is prevented from performing his duties because of illness, foreign travel, or any other reason, the member of the Royal House under the valid order of succession who is not prevented from performing the duties shall assume and perform the duties of Head of State in the capacity of Regent *ad interim*.⁶ If the Royal House should become extinct, the Parliament appoints a Regent to perform the duties of Head of State until further notice. The same applies if the King dies or abdicates and the heir to the throne has not yet turned eighteen. The Parliament appoints a Deputy Regent at the same time.⁷ If the King has been continuously prevented for six months from performing his duties or has failed to do so, the Government has to inform Parliament. The Parliament then determines whether the King can be deemed to have abdicated.⁸ Parliament can appoint a person to serve as Regent *ad interim* under a Government order when no one competent is in a

¹ Successionsordningen (Svensk författningssamling [SFS] 1810:0926). The other three fundamental texts are the Instrument of Government, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression.

² Art. 1 The Act of Succession, available in English from the Swedish Parliament’s Web site at http://www.riksdagen.se/templates/R_PageExtended_6311.aspx.

³ *Id.*

⁴ *Id.*, art. 5.

⁵ *Id.*, art. 7.

⁶ Chapter 5, § 3 Regeringsformen (Sveriges författningssamling [SFS] 1974:152). The Instrument of Government is available in English at http://www.riksdagen.se/templates/R_Page_6307.aspx.

⁷ *Id.*, Chapter 5, § 4.

⁸ *Id.*, Chapter 5, § 5.

position to serve (under above mentioned articles 3 and 4). The Speaker, or in his absence, one of the Deputy Speakers, serves as Regent *ad interim* under a Government order when no other competent person is in a position to serve.⁹

Prepared by Linda Forslund
Contract Foreign Law Specialist
February 2008

⁹ *Id.*, Chapter 5, § 6.

**LAW LIBRARY OF CONGRESS
HEREDITARY MONARCHIES AND INHERITED TITLES**

TONGA

Executive Summary

Succession procedure for the Crown of Tonga and inherited titles is detailed within the Constitution. Existing hereditary estates are detailed within the Land Act (Cap. 132). Succession favors male heirs born in wedlock and follows the blood line; in the absence of a lawful male heir, however, the King may, within his lifetime, nominate a successor, or, the House of Nobles may, by ballot, select a chief whom they wish to succeed as King.

I. Succession of Crown and Titles

In accordance with § 32 of the Land Act,¹ the crown of Tonga is inherited by the lawful heirs of a nominated ruler. In the absence of a lawful heir the King may, with the consent of the House of Nobles, appoint an heir within his lifetime.

Where there is no lawful heir the House of Nobles may by ballot elect a successor from one of the chiefs. In the event that the election is not possible, then all nobles of the legislative assembly may elect a successor to the throne.

Section 35 prohibits any felon, insane person or imbecile from inheriting the crown.

The King may, in accordance with § 44, bestow titles but may not deprive any person of a hereditary title (other than for treason).

The law of succession for hereditary estates and titles is detailed within § 111 of the Constitution. Inheritances are passed to heirs born in wedlock and preference is given to male heirs. The title and hereditary estates of a noble or of a hereditary chief may only be passed to male heirs although female heirs may occupy the town allotment and the plantation lands pertaining to the title.

Existing hereditary estates are detailed in Schedule 1 of the Land Act.

II. Resolution of Disputes

The 1958 Privy Council decision of *Leone Etu v. Nuku*² notes that the Supreme Court is the appropriate venue to resolve decisions regarding title and inheritance of a noble because, in accordance with § 4 of the Supreme Court Act (Cap. 10), the Supreme Court has jurisdiction to hear “..any other matter not specifically allotted to any other tribunal.”³

Disputes involving land and requiring a remedy of transfer of ownership title may fall within the jurisdiction of the Land Court in accordance with the Land Act.

¹ Cap. 132.

² *Leone Etu v. Nuku*, II Tonga Law Reports 161 (1958).

³ *Id.*

In accordance with § 50(2) of the Constitution,⁴ disputes involving a “determination of hereditary estates and titles” may be appealed to the Privy Council.

Copies of the relevant sections of the Constitution and Supreme Court Act are attached. Unofficial, but government-supplied, versions of Tongan legislation are available from the Tongan government website at: <http://legislation.to/cms/home.html> (last visited February 15, 2008).

Prepared by Lisa White
Foreign Law Specialist
February 2008

⁴ Constitution of Tonga § 50(2).

The Constitution of Tonga

Succession to the Throne

32. The right and title of King George Tupou I to the Crown and the Throne of this Kingdom were confirmed by the Constitution of 1875 and it was further declared in the said Constitution that the succession to the Crown and Throne should devolve upon David Uga and then upon Wellington Gu and then upon them begotten by him in marriage and if at any time there be no heirs of Wellington Gu the Crown and Throne shall descend in accordance with the following law of succession:

It shall be lawful only for those born in marriage to succeed.

The succession shall be to the eldest male child and the heirs of his body but if he should have no children to the second male child and the heirs of his body and so on until all the male line shall be ended.

Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no children it shall descend to the second female child and the heirs of her body until the female line is ended.

And if there shall be none of this line of David Uga lawful descendants by marriage to succeed to the Crown of Tonga it shall descend to William Tungi and his lawful heirs begotten by him in marriage and to their heirs begotten by them.

And if there should be no lawful heir the King shall appoint his heir if the House of Nobles consent to it (the representatives of the people having no voice in the matter) and he shall be publicly declared heir to the Crown during the King's life.

Should there be no heir to the Crown or successor who has been so publicly proclaimed the Prime Minister or in his absence the Cabinet ministers shall convoke the nobles of the Legislative Assembly (the representatives of the people having no voice in the matter) and when they meet the House of Nobles shall choose by ballot some one of the chiefs whom they wish to succeed as King. And he shall succeed as the first of a new dynasty and he and the heirs of his body born in marriage shall possess the Crown according to law.

And in the event of there being none to succeed according to this law the Prime Minister or in his absence the Cabinet ministers shall again convoke the nobles of the Legislative Assembly in accordance with this law and they shall choose one to succeed to the Throne as the first of a new dynasty and so on according to this law for ever.

Heir Apparent may not choose consort

33.(1) It shall not be lawful for any member of the Royal Family who is likely to succeed to the throne to marry any person without the consent of the King.

And if any person should thus marry the marriage shall not be considered legal and it shall be lawful for the King to cancel the right of such person and his heirs to succeed to the Crown of Tonga. And the next person in succession to him who so marries shall be declared the heir and the offender shall be regarded as dead.

(2) The expression “any member of the Royal Family who is likely to succeed to the throne” in the last preceding sub-clause shall be construed to include all persons born in lawful marriage and related by descent either lineally or collaterally to the King but not more than twenty times removed from the King.

Idiot not to succeed

35. No person shall succeed to the Crown of Tonga who has been found guilty of a felony or who is insane or imbecile.

King may confer titles

44. It is the King's prerogative to give titles of honour and to confer honourable distinctions but it shall not be lawful for him to deprive anyone who has an hereditary title of his title such as chiefs of hereditary lands and nobles of the Legislative Assembly who possess hereditary lands except in cases of treason.

And if anyone shall be tried and found guilty of treason the King shall appoint a member of that family to succeed to the name and inheritance of the guilty person.

111 Law of succession

The following is the law of succession to hereditary estates and titles:

Children lawfully born in wedlock only may inherit and the eldest male child shall succeed and the heirs of his body but if he have no descendants then the second male child and the heirs of his body and so on until all the male line is ended. Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no descendants the second female child and the heirs of her body and so on until the female line is ended.

And failing direct heirs the property shall revert to the eldest brother of the owner of the property beginning with the eldest and his heirs in succession to the youngest and their heirs in accordance with the law of inheritance. And if the brothers have no descendants it shall descend to the eldest sister and the female line as provided in the case of the male line. And if these should have no descendants and there should be no legitimate heir it shall revert to the Crown in accordance with the one hundred and twelfth clause.

But should a female be next in succession to the title of a noble or of an hereditary chief the next male heir shall inherit the title and estates. But should such female afterwards have a legitimate male issue the title and estates shall revert to the male issue of the female upon the death of the male in possession of the estate:

Provided that the female that is the heir shall occupy the town allotment and the plantation lands appertaining to such title but the hereditary estates that is the lands occupied by the people shall be held by the inheritor of the title.

Whereas by Tongan custom provision has always been made that an adopted child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions of this clause and should there be alive no such descendant by blood the provisions of the one hundred and twelfth clause shall apply.

Estate without heirs to revert to the crown

112. Should there be no legitimate heirs to an estate such estate shall revert to the King. But the King may confer the title and estate upon any other person and the person so appointed and his heirs shall possess such title and estates for ever.

Supreme Court Act (Cap. 10)

Jurisdiction.

4. The Supreme Court shall have jurisdiction in all civil cases in which the amount claimed exceeds \$500 and in all criminal cases for which the maximum penalty exceeds \$500 or 2 years imprisonment and in all divorce, probate and admiralty matters and in any other matter not specifically allotted to any other tribunal.

LAW LIBRARY OF CONGRESS
HEREDITARY MONARCHIES AND INHERITED TITLES
UNITED KINGDOM

The title to the Crown of the United Kingdom is derived partly from statute and partly from common law rules of descent. The right of succession to the throne is hereditary, although this right is not absolute and can be altered by an Act of Parliament. The current line of descent was established in the Act of Settlement 1700.¹ Blackstone notes that:

The grand fundamental maxim upon which the *jus coronae*, or right of succession to the throne of these kingdoms, depends, [is] this: that the crown is, by common law and constitutional custom, hereditary; in a manner peculiar to itself; but that the right of inheritance may from time to time be changed or limited by act of parliament; if thus transferred to a new proprietor the crown retains nevertheless its descendible quality ... This is strictly consonant to our laws and constitution; as may be gathered from the expression so frequently used in our statutes book, of the “king’s majesty, his heirs, and successors” in which we may observe that as the word “heirs” necessarily implies an inheritance or hereditary right, generally subsisting in the royal person; so the word “successors,” distinctly taken, must imply that this inheritance may sometimes be broken through; or that there may be a successor, without being the heir, of the sovereign.”²

An example of Parliament excluding the immediate heir to the Crown and granting the Crown to someone else was after the “Glorious Revolution” with the Bill of Rights in 1689,³ when the throne was declared vacant after James II. Parliament was concerned about the influence of Catholicism in government and considered that “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.”⁴ Instead of allowing James II’s son and heir, who was born after James II converted from Anglicanism to Catholicism, to inherit the Crown, Parliament declared that James II had abdicated and that the throne was vacant. Parliament then called upon James II’s daughter, Mary, from his first, Protestant marriage, and her husband, William of Orange to jointly take the Crown.

Parliament once again intervened to determine the line of succession to the Crown in 1700 with the Act of Settlement after William and Mary died without producing any heirs. According to Blackstone, Parliament, by “the Act of Settlement ... for the last time in our history, exercised its paramount right to settle the succession to the Crown; a right founded not only in reason, but in the ancient principles of our Constitution and supported by long usage and a uniformity of theory and practice for centuries.”⁵

¹ Act of Settlement 1700, c. 2. (12 & 13 Will. 3).

² WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 191 & 195 (1908).

³ Bill of Rights 1688. c.2 (1 Will & Mar. sess. 2.). The full title is “An Act for declaring the rights and liberties of the subject, and for settling the succession of the crown” and it was declared to be a statute in the Crown and Parliament recognition Act 1689, c. 1 (2 Will & Mar.).

⁴ Bill of Rights 1688 . c.2 (1 Will & Mar. sess. 2.).

⁵ THOMAS PITT TASWELL-LANDGMEAD, ENGLISH CONSTITUTIONAL HISTORY 181 (6th ed. 1992).

The Act of Settlement provided that the Crown should go to the Duchess Sophia of Hanover and her Protestant descendants.

Prepared by Clare Feikert
Foreign Law Specialist
February 2008