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that Canada's provinces would also

royal succession or any other single issue, its approach is consistent with a broader pattern that has been noticed by other observers.

> *raise other major constitutional issues. The Government have no plans to legislate in this area*.[11]

The April 2011 marriage of Prince William, who is second in the line to the throne, forced the issue of the succession rules up the agenda, as it was widely expected that he would soon become a father.

Dominions to change the rules of succession. [29] Failure to pass such laws and to ensure their constitutional validity risks creating a constitutional crisis for future generations in which the Crowns of the various Commonwealth Realms are inherited by different individuals.

A bill to change ritain's succession law was introduced into the ritish parliament on 13 December 2012. After being passed by the House of Commons on 28 January and House of Lords on 13 March, it received Royal Assent on 25 April 2013. The *Succession to the Crown Act, 2013* will not come into force until the Commonwealth Realms covered by the Statute of Westminster have changed their rules of succession. [30] On 18 February 2013, a bill to change New Zealand's succession rules was introduced into that country's parliament. As of October 2013 it has not yet been passed. [31]

The equivalent Canadian legislation, Bill C-53, was introduced into the House of Commons on 31 January 2013. It was passed by that body on 4 February, approved by the Senate on 26 March 2013, then received Royal Assent on 27 March 2013. It is now known as the *Succession to The Throne Act 2013.* It should be noted that the Canadian statute does not enact changes to the law of succession as the New Zealand bill proposes to do. Instead, the Canadian statute merely assents to the British Succession to the Crown Bill 2013. At the time of the passage of Bill C-53, the Canadian government adopted the position that the rules of succession for the Canadian Crown were not part of Canadian law and were merely part of "UK law." The Attorney-General justified this view by saying that the monarch of the United Kingdom is automatically the monarch of Canada by virtue of the Preamble to the British North America Act, 1867, which stated that the colonies wished to be "federally united into One Dominion under the Crown of the United Kingdom of Great ritain and Ireland."[32] This is a significant difference from what occurred in the aftermath of the 1936 Abdication Crisis, when many Canadians felt that Canada needed to change the rules of succession for the Canadian Crown through an act of parliament.

2. The Constitutional Nature of the Changes to Rules Governing the Royal Succession

This section of the paper will show that modifying the rules of the royal succession is a change to the constitution and a substantive alteration of the "office of the Queen."

[29] Anne Twomey, "Changing the Rules of Succession to the Throne" (October 12, 2011). Sydney Law School Research Paper No. 11/71. Available at SSRN: http://ssrn.com/abstract=1943287
[30] United Kingdom Parliament, "Explanatory Notes: Succession to the Crown Act 2013" http://www.legislation.gov.uk/ukpga/2013/20/pdfs/ukpgaen_20130020_en.pdf
[31] New Zealand Parliament, ills Digest "Royal Succession ill 2015" http://www.parliament.nz/NR/rdonlyres/5FCA9CC0-5528-40F4-8AC1-5206C4765DC4/262753/2015RoyalSuccession1.pdf
[32] "Statement by the Harper Government Welcoming Royal Assent of ill C-53: Succession to the Throne Act," 2013 27 March 2013, http://www.pch.gc.ca/eng/1364419530966.

The *Constitution Act (1982)* in Canada clearly does not require the consent of the provincial legislatures to every conceivable minor alteration to offices of the Queen or her federal and provincial representatives. For instance, a Lieutenant-Governor is currently entitled to a fifteen-gun salute, whereas the Governor-General is entitled to a twenty-one-gun salute.[33] The federal government would be entitled to change these protocol rules unilaterally, if it so wished.

However, existing Canadian jurisprudence indicates that the proposed changes to the rules of the royal succession constitute a substantive change to the constitution. In his 2003 ruling in the cases of *O'Donohue v. Canada*, Justice Paul S. Rouleau of the Superior Court of Ontario decided that the rules of succession "are, in my view, part of the unwritten or unexpressed constitution." The key sentence in Justice Rouleau's decision declares that any changes to "the rules of succession… would, for all intents and purposes, bring about a fundamental change in the office of the Queen without securing the authorizations required pursuant to s. 41 of the *Constitution Act, 1982*."

the Labour MP for Newport West, described the rules of succession as "part of the settled constitution of the land.".[38]

3. Canada and Australia as Compound Monarchies

All but three of the nations that have Queen Elizabeth as their head of state are unitary states. Canada, Australia, and St. Kitts and Nevis, in contrast, are all federations and

much more power relative to that of the sub-national governments. The constitutional plan embodied in the Quebec Resolutions gave the central government the power to levy any type of tax it chose, while the taxation powers of the provinces were restricted. The long list of powers entrusted to the federal government included key aspects of economic policy, including banking, finance, telegraphs, ports and navigation, inter-provincial and other railways. The federal government was given the power to render uniform the commercial and property laws of the English-speaking provinces. The provincial governments were assigned a short list of responsibilities, many of which were connected to the embryonic welfare-state, which was then a branch of the government of trivial importance, at least judged as a percentage of GDP.[42] The residuary power: jurisdiction over all subjects not explicitly declared as belonging to the provinces, was given to Ottawa. In the US constitution, all powers not explicitly granted to the national government rest with the states. Most importantly, the federal government was given the power to disallow provincial statutes that it found disagreeable.[43]

The attitudes of George Brown of Toronto were fairly representative of those of the other English-speaking Fathers of Confederation. At the Quebec Conference, he advocated giving minimal powers to the provinces. The provinces, he said, should have the simplest sort of institutions and would be controlled by a single-chamber body. Brown thought that giving the provinces unicameral rather than bicameral legislatures would send the message that they were more like district councils than true Westminster-style assemblies. The provincial governments would be headed by a Lieutenant-Governor appointed by the Dominion, which would bring them into "harmony" with the wishes of the federal government. Brown also said that the provincial governments would be essentially apolitical and administrative entities, charged with "clerical and routine" activities. According to Brown the actual making, as opposed to delivery of policy, would rest with the national government.[44]

In December 1864, shortly after the constitutional plan agreed by the Quebec Conference had leaked to the press, John A. Macdonald reassured a friend in Toronto that the federation would evolve into a unitary state within their lifetimes. He also stated that it would be impolitic to express this hope in public, since doing so might alienate political allies in Lower Canada. [45]

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[42] Richard B. Splane, *Social Welfare in Ontario, 1791-1893: A Study of Public Welfare Administration* (Toronto: University of Toronto Press, 1965), 283.

[43] Stevenson, ***Ex Uno Plures,*** 14-1 ; "Report of the Discussion in the Quebec Conference" in ***Confederation : Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act,*** **edited by Joseph Pope** (Toronto : The Carswell Co. Ltd., 1895), 53-88.

[44] J.M.S. Careless, *Brown of the Globe* (Toronto: Macmillan, 1959), vol. 2, p. 167-9.

[45] Macdonald told Malcolm Cameron that if he lived to "the ordinary age of man", he would "see both Local Parliaments & Governments absorbed in the General power". Macdonald also said that "of course it does not do to adopt that point of view in discussing the subject in Lower Canada." In his public statements, Macdonald professed to be very happy with the quasi-federal constitution designed by the Quebec Conference. Letter from Macdonald to Cameron, 19 December 1864, quoted in Ged Martin, "Archival Evidence and John A. Macdonald iography" *Journal of Historical Biography* 1 (2007): 79-115, 91.

Party appeared to have a firm grip on power at the federal level.[67] For these reasons, Australia's state governments gradually lost much of their power to the Commonwealth (i.e., federal) government.[68] Today, the Australian federation is, by many statistical measures, more centralized than that of Canada: in Canada, federal revenue represents

Canadian legal academics have also noted the same flaws in the Canadian federal government's approach. In June 2013, two law professors in the Province of Québec launched a constitutional challenge against Canada's Succession to the Throne Act. Geneviève Motard and Patrick Taillon of Université Laval have argued that the law is unconstitutional on several grounds. First, they say that the federal law is a constitutional amendment and that the federal government failed to obtain approval of all the provinces as required by section 41. They also object to the fact that the Canadian legislation does not actually change the rules of succession and merely expresses approval of the British law that changed the rules of succession. They contend that this procedure means that Canadian law will be changed by a British statute that is written in English only, which is a violation of the provision in the Canadian constitution that states that all laws must be both English and French. They also note that even the revised rules of successions still bar a Roman Catholic from ascending to the throne, which is a violation of the guarantee of freedom of religion contained in the Charter of Rights and Freedoms, which is part of the Canadian constitution.[71] At first, Québec's Parti Québécois government was neutral

of legislation in the state parliaments is, as of June 2013, currently underway. Like Canada, Australia is a compound monarchy in which the powers of the Crown are divided between the Governor General at the national level and Queen's representative in each state (or provincial) capital. As we shall see below, Australian legal and public opinion is somewhat divided as to what constitutes formal approval by the state parliaments. However, the necessity of obtaining their consent is recognized by all concerned. In sharp contrast to the Harper government's unilateral approach to amending the succession rules in Canada, Australia's state governments have been involved in every stage of the process.

The involvement of the state governments in changing the rules of the Royal Succession began with the Council of Australian Governments (COAG) meeting on 25 July 2012. The functions of COAG are similar to that of a First Ministers' conference in Canada. COAG was created in 1992 and includes the Prime Minister, state Premiers, the "Chief Ministers" of the two territories (Northern Territory and Australian Capital Territory), as well representatives of the Australian Local Government Assm MinBT5op]/TETB.741 0 0 1 2

Australia's First Ministers declared that they were satisfied with this "hybrid" approach, which allows Queensland to pass its own bill.[82]

For Canadians, the important lesson to be taken away from the procedure for altering the royal succession in Australia is that it was understood by all levels of government and all political parties that the involvement of the state parliaments in some fashion would be required. Australians merely disagreed about the precise form the state parliaments' action should take. The requirement that the state governments be involved was recognized by COAG at their meeting in July 2012 and their subsequent meetings.

5. Why Did the Canadian Federal Government Ignore the Provinces?

Canada's Prime Minister and federal Attorney-General were likely aware that Australia's state governments were involved in the process, since the resolutions of COAG are placed online and are reported by the Australian media (and both countries have always kept a keen eye on what the other was doing as they are quite similar culturally, economically and in some ways politically). Moreover, the Prime Minister of New Zealand has been acting as a go-between to coordinate the passage of current legislation in the Commonwealth Realms. More importantly, they were certainly aware of section 41 of the Canadian constitution, which clearly states that the legislatures of all ten provinces must vote in favour of any changes to the "office of the Queen" before they can be effected. For

can, therefore, see why the Canadian federal government opted for a procedure for changing the rules of succession that did not involve talking to any of the provinces.

Another possible factor that influenced the decision of the federal government not to involve the provinces is the apparent hostility of its leadership to cooperative federalism and First Ministers' Meetings. Canada's current Prime Minister, Stephen Harper, has called for a return to "classical federalism" of the sort that existed during (an unspecified period in) Canada's past. In effect, this would involve revertin ‡]

Conclusion

It remains to be seen whether the courts will determine whether the current Canadian government's approach to changing the rules of succession is constitutionally valid. The Superior Court of Québec is set to hear a constitutional challenge to the *Succession to The Throne Act 2013* in October 2013.[89] It is also unclear whether the electoral defeat of the Labour Party by Tony Abbott's Liberal-National coalition on 7 September 2013 will affect the legislative timetable for changing the rules of the royal succession in that country.[90] Tony Abbott was born in the United Kingdom, moved to Australia as a child, and is a fervent monarchist.[91] However, it should be noted that republicanism is an issue that divides all of the other major political parties in Australia, including his own Liberal Party.[92] The passage of the relevant legislation in Australia could be derailed by the new Coalition government which was elected on 7 September 2013, which means that the process of changing the rules of the royal succession may be prolonged.

What is clear, however, is that constitutional questions