

Preprint

THE STATUS OF KNIGHTHOOD APPOINTMENTS MADE BY DEPOSED ROYAL FAMILIES

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ABSTRACT

Legal debates on the deposed sovereigns' rights have emerged since 20th century. Among them, the right to appoint knights by heads of deposed royal families is one of the focal points. The author begins with a comprehensive review of legal debates on the subject. Six principles on the appointment are extracted from the review. Then, a new interpretation is proposed, wherein the legitimacy to confer honours and the legitimacy of the orders of knighthood themselves have to be considered separately. Under this method of interpretation, the criterion to judge the legitimacy of an appointment of knight is both the *jus honorum* of the head of the family and the order of knighthood itself being legitimate.

Keywords: knighthood; international law; Canon Law; order of knighthood; sovereign; royal family; jus honorum; fons honorum; jure sanguinis

Introduction

Throughout the 19th and 20th centuries, monarchy was abolished in a number of European countries. As a result, the political order of European countries transitioned from monarchy to the republican system of government. International law became the pillar of the democratised world.¹ As a result, since the 20th century, academic research on the “descending” source of sovereignty, namely, monarchy, wound down. At the same time, efforts began to focus on the “ascending” source of sovereignty, namely democracy.² In the political realm, debates on the rights of deposed sovereigns were emerging rapidly in the last decades of the 20th Century.³ It is the author's standing that this was directly related to the fact that the academic community had focused less on monarchy and its rights. In other words, the root of many political debates on royal prerogatives might be attributed to the lack of academic research on this subject. Among the debates on royal prerogatives, one of the most notable focal points is the right to appoint new knights to dynastic orders of knighthood.⁴ The abolition of monarchy in European countries created confusion regarding the legitimacy of several orders of knighthood that had

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¹ H. Bull, 'International Law and International Order,' *International Organization* 1972-3, pp. 583-88.

² S. Dellavalle, 'On Sovereignty, Legitimacy, and Solidarity Or: How Can a Solidaristic Idea of Legitimate Sovereignty Be Justified?,' *Theoretical Inquiries in Law* 2015-2, pp. 367-98.

³ L. Glanville, *Sovereignty and the responsibility to protect: a new history*, Chicago: University of Chicago Press 2013, pp. 132-170.

⁴ H.E. Cardinale, *Orders of Knighthood, Awards and the Holy See*, Buckinghamshire: Van Duren Publishers Limited 1984, pp. 217-235.

originally belonged to the monarchs, which led to the formation of the International Commission for Orders of Chivalry at the 5th Congress of Genealogy and Heraldry in 1960.⁵ Since its formation, the International Commission for Orders of Chivalry has periodically published its judgments on the legitimacy of the order of knighthood around the world. However, as N. Cox pointed out⁶, the criteria it followed in delivering its judgments are self-regulatory. This poses a significant problem when considering the fact that some countries in Europe have passed bills that forbids the appointment of new knights by deposed sovereigns, including the Italian Republic.⁷ Since the subject of conferment of knighthood by deposed sovereigns may fall under international law,⁸ it is the author's standing that legal studies alone can offer a solution to the differences that arise between the applicability of national law and the prerogative of royal families to confer honours.

To this end, the purpose of this paper is twofold. First, the paper aims to review and summarise legal principles on the conferment of knighthood. Second, it aims to present a new clarification of the legitimacy of dynastic orders based on the principles, with the aim of easing the conflicts between national law and dynastic royal prerogatives. The author wishes this preprint would work as a platform for academic discussions.

I. Legal Principles on the Orders of Knighthood

This section presents a comprehensive review of the known customs governing the orders of knighthood. In particular, customs that saw good agreements among scholars and/or jurists are explicitly labeled as "Principles" in the following section.

The legitimacy of the appointment of new knights has been explored under international law by a number of previous studies on the Sovereign Order of Malta (or the Sovereign Military Hospitaller Order of Saint John of Jerusalem, of Rhodes and of Malta) because of its unique status as a sovereign recognised by the international community. It has to be noted that the nature of dynastic orders of knighthood is different from that of the Sovereign Order of Malta. The status of the Sovereign Order of Malta, which is widely recognised as an international person, falls explicitly under international law, while many jurists do not assume the same for the dynastic orders of knighthood. Although knighthood appointments made by deposed royal families in exile have in a few instances been recognised by governments, some argue that these are only bilateral arrangements and as such it is not a subject of international law. Nevertheless, many of the legal discussions on the matter prove to be relevant and are applicable to the discussions on dynastic orders of knighthood. Therefore, the author referred to studies on the Sovereign Order of Malta by Hoegen Dijkhof as a foundation for this review. To examine the conventions and legal interpretations of Canon Law, the author studied the works of Cardinale and Duren in detail. On the interpretation of international law, the author referred to the works of Cox. Finally, the author also examined a series of judgments delivered in the Italian Republic between 1952 and 1964 on the legitimacy of the royal prerogatives of Prince Francesco Mario⁹ and its interpretations by E. Furno, which proved to be relevant to the subject.

⁵ P.F.d. Uberti et al., *Register of Orders of Chivalry*, Bologna: International Commission for Orders of Chivalry 2016, p.5.

⁶ N. Cox, 'The sovereign authority for the creation of Orders of Chivalry,' *Journal of the Heraldry Society of Southern Africa* 2009-2, pp. 317-29.

⁷ Lagge 3 marzo 1951, n. 178 .

⁸ E. Furno, 'Ordini equestri non nazionali. - Art. 7 Legge 3 marzo 1951, n. 178,' *Rivista Penale* 1961-1, pp. 46-70.

⁹ *Francesco Mario v. Italy*, No. 40/51 R.G. No. 485/52 (United Court Bari 1952).

I.1 The Foundation and the Possession of the Orders of Knighthood

Under international law, sovereigns hold the supreme power over its cities and provinces.^{10,11} This secular right is called sovereignty, or *jus majestatis*.¹² J. Althusius understood the right as follows:¹³

[*Jus majestatis*] is the means by which the members, in order to establish good order and the supplying of provisions throughout the territory of the realm, are associated and bound to each other as one people in one body under one head.

Members under sovereigns hold *jus honorum*, a right to hold a public office or to be conferred honors with unilateral appointments by the sovereign.^{14,15} *Jus honorum* is also interpreted as the exclusive right of sovereigns to appoint members to public positions or to confer an honor upon them.¹⁶ In this sense, *jus honorum* is the right ‘to grant and confirm coats of arms, to bestow titles drawn from places over which their ancestors had exercised their sovereign powers, and also the right to found, re-establish, reform and exercise the Grand Magistracy of the Orders of Knighthood conferred by their family.’¹⁷

To legitimise orders of knighthood, *jus majestatis* and *jus honorum* are required. As a result, the **orders of knighthood must be founded or sponsored by a sovereign power (Principle 1)**.^{18,19} Here, the expression “founded or sponsored” is used because in the past, there have been orders of knighthood that had been founded by private persons, then received the recognitions from sovereign powers to gain its legitimacy, including the Knights Templar.²⁰ However, it should be noted that as observed by the International Commission for Orders of Chivalry,²¹ private persons’ rights to create orders of knighthood have long since fallen into disuse, and orders of knighthood have been exclusively founded by sovereign powers in the last few centuries.

¹⁰ M.R. Ossewaarde, ‘Three rival versions of political enquiry: Althusius and the concept of sphere sovereignty,’ *The monist* 2007-1, pp. 106-25.

¹¹ M. Vatter, ‘Republicanism or Modern Natural Right? The Question of the Origins of Modern Representative Democracy and the Political Thought of Giuseppe Duso,’ *CR: The New Centennial Review* 2010-2, pp. 99-120.

¹² M.S. Weinert, *Democratic Sovereignty: Authority, Legitimacy, and State in a Globalizing Age*, London: Routledge 2007, p. 68.

¹³ Ibid.

¹⁴ H.T. Martínez, ‘Ius suffragii y ius honorum,’ *Revista Chilena de Derecho* 1993, pp. 345-52.

¹⁵ S.P. Sinha, ‘The Anthropocentric Theory of International Law as a Basis for Human Rights,’ *Case W. Res. J. Int’l L.* 1978, p. 469.

¹⁶ A. De Becker, ‘The Legal Status of Public Employees or Public Servants: Comparing the Regulatory Frameworks in the United Kingdom, France, Belgium, and the Netherlands,’ *Comp. Lab. L. & Poly.J.* 2010, p. 949.

¹⁷ Ibid, supra note 9.

¹⁸ Cardinale 1984, supra note 4, p. 173.

¹⁹ Ibid, supra note 5.

²⁰ Ibid, supra note 18.

²¹ Ibid, supra note 5.

Orders of knighthood founded by a sovereign belong to his/her royal family (Principle 2).^{22,23} Orders of knighthood founded or sponsored by sovereigns are recognised as the monarchs' 'truly personal, executive prerogatives.'²⁴ In other words, they are 'the exclusive property of a Sovereign, and they remain such even if he goes into exile, and are transmissible to his legitimate successor and Head of the Family.'²⁵ **Only when the sovereign explicitly yields the rights to the crown, would the order of knighthood become the property of the state (Principle 3).**²⁶ Here, the orders of knighthood that belong to a family are called "dynastic order" of the "family order" to distinguish themselves from state-owned orders. Only so long as the order of knighthood is the property of the state, the order is governed by the state and its rights considered the patrimony of the state.²⁷

I.2 Orders of Knighthood and the Canon Law

The origin of the orders of knighthood lies within the Catholic Church.²⁸ The Holy See, the ecclesiastical jurisdiction of the Catholic Church, initiated its involvement in the field of chivalry with the first Papal Bull granting indulgences to Crusaders. It had since created, recognised, merged, and abolished numerous orders of knighthood.²⁹ To this date, many orders of knighthood are still Catholic-founded, and thus, abide by Canon Law.³⁰ The Catholic Church is a member of the international community, and has been influential in shaping international law.³¹ The pope is the sovereign of the Vatican City State,³² an independent state created in 1929 through the Lateran treaties, recognised under international law.³³ The position of Canon Law under international law in this respect is summarised by Rene Metz as follows:³⁴

In the person of the pope who represents it, the Holy See enjoys a twofold sovereignty: territorial sovereignty as representing the Vatican City State, and personal authority as representing the Catholic and Universal Church. ...

The pope and the Holy See represent the universal Catholic Church. And the Catholic Church in its universality has the character of a supra-national institution. There is nothing, therefore, to prevent the recognition of international personality in it, which confers a real sovereignty upon it, even though one of another order

²² Cardinale 1984, supra note 4, p. 119.

²³ The Ministry of Justice. 2009. *Review of the Executive Royal Prerogative Powers: Final Report*. London.

²⁴ Ibid.

²⁵ Ibid, supra note 22.

²⁶ P.B.v. Duren, *The Pontifical, Religious and Secularised Catholic-founded Orders and their relationship to the Apostolic See*, Buckinghamshire: Colin Smythe 1995, p. 218.

²⁷ Ibid.

²⁸ L. Gautier, *La Chevalerie*, Paris: Victor Palme 1884, pp. 1-30.

²⁹ J.H. Lawrence-Archer, *The Orders of Chivalry. From the Orifinal Statues of the Various Knighthood, and other Sources of Information*, London: W. H. Allen and Co. 1887, pp. 323-333.

³⁰ Duren 1995, supra note 26, pp. 220-221.

³¹ E.H. Boyle & S. Golden & W. Liao, 'The Catholic Church and International Law,' *Annual Review of Law and Social Science* 2017, pp. 395-411.

³² Art. 1-2, Fundamental Law of Vatican City State 2000.

³³ J.L. Kunz, 'The Status of the Holy See in International Law,' *American Journal of International Law* 1952-2, pp. 308-14.

³⁴ R. Metz, *L'Eglise a ses lois (Le Droit canon)*. Paris: Arth. Fayard, 1959, pp. 131-133.

than territorial sovereignty. This way of looking upon the Catholic Church is fully in line with the development of modern international law. ... International personality is attributed to [supra-national institutions], so that, while not possessing territorial sovereignty, these bodies are able to conclude agreements with states whose sovereignty is of a territorial order. The classic institution of this kind is the United Nations Organization, and there are many others – NATO, UNESCO and so forth. It is in this category of new juridical institutions of a supra-national character that most contemporary writers place the Holy See.

The Holy See has a juridical personality under international law. The Catholic Church is a supra-national institution and is a subject of international law.³⁵ In some cases, the Catholic Church is even recognised for its independence and sovereignty, as in the case of the Constitution of the Italian Republic.³⁶

The theological disciplines of the Catholic Church are expressed using the juridical method of Canon Law.³⁷ Under Canon Law, orders of knighthood that are explicitly recognised by the Holy See hold an official status in the Catholic Church as *private associations*. This is based on Canons 298, 299 1-3, and 301, which read as follows:³⁸

Can. 298 §1. In the Church there are associations distinct from institutes of consecrated life and societies of apostolic life; in these associations the Christian faithful, whether clerics, lay persons, or clerics and lay persons together, strive in a common endeavor to foster a more perfect life, to promote public worship or Christian doctrine, or to exercise other works of the apostolate such as initiatives of evangelization, works of piety or charity, and those which animate the temporal order with a Christian spirit.

Can. 299 §1. By means of a private agreement made among themselves, the Christian faithful are free to establish associations to pursue the purposes mentioned in can. 298, §1, without prejudice to the precept of can. 301, §1.

§2. Even if ecclesiastical authority praises or commends them, associations of this type are called private associations.

§3. No private association of the Christian faithful is recognized in the Church unless competent authority reviews its statutes.

Can. 301 §1. It is for the competent ecclesiastical authority alone to erect associations of the Christian faithful which propose to hand on Christian doctrine in the name of the Church or to promote public worship, or which intend other purposes whose pursuit is of its nature reserved to the same ecclesiastical authority.

Canon 298 recognises the right of association of the Christian faithful and provides the criteria to be relied on in examining an association's request for recognition. In Canon 299, it is explicitly stated that without recognition from a competent ecclesiastical authority, an association will remain without official status, thereby remaining a *de facto* association. Only upon recognition by the competent ecclesiastical authority, is an association given official status in the Catholic Church as a *private association* with its corresponding juridical status. Finally, Canon 300 presents the distinction between a *public association* and a *private association*. It states that an association erected by a competent ecclesiastical authority is *public* and an

³⁵ H.F. Cumbo, 'The Holy See and International Law,' *The International Law Quarterly* 1948-4, pp. 603-620.

³⁶ Art. 7, Costituzione della Repubblica Italiana.

³⁷ J.P. Beal & J.A. Coriden & T.J. Green, *New commentary on the code of canon law*, Mahwah: Paulist Press 2000, pp. 1-10.

³⁸ *Idem*, pp. 401-404.

association recognised by a competent ecclesiastical authority is *private*.³⁹ Based on these legal bases, an order of knighthood explicitly recognised by the Holy See, usually by means of Papal Bulls, is considered a *private association* in the Catholic Church. Due to the Holy See's status as an independent juridical person under international law, this recognition and status of orders of knighthood cannot be suppressed by other states.⁴⁰ As a result, **dynastic orders of knighthood once explicitly recognised by the Holy See has a status under international law, which cannot be suppressed by other states (Principle 4)**.^{41,42} This continues, unless the Holy See itself explicitly retracts its recognition on them. Here, note that only dynastic orders of knighthood may have a status in the Catholic Church, because orders that belong to the crown or to the state are considered secular, and therefore lose their Catholic character.⁴³ It also has to be noted that since 1920s the Holy See hasn't given explicit recognitions to any orders of chivalry other than pontifical orders and two Catholic orders, the Sovereign Order of Malta and the Order of the Holy Sepulchre.

I.3 Appointment of New Knights to the Orders of Knighthood

As reviewed in Section I.1, *jus honorum* is required to appoint a new knight. A person or body that holds *jus honorum* is called *fons honorum*, and **every order of knighthood must have a *fons honorum* to appoint new knights into the order (Principle 5)**.^{44,45} *Jus honorum* is the right to appoint knights, where *fons honorum* is a person or body that has such a right and accordingly appoints knights. In monarchies, sovereigns exclusively hold *jus honorum*, and thus they themselves are the *fons honorum*.⁴⁶ *Jus honorum* of the sovereigns are *jure sanguinis*, or rights by blood. **Regardless of whether they are regnant or not, heads of royal families enjoy *jus honorum* indefinitely as long as the succession is made according to each family's dynastic law (Principle 6)**.^{47,48,49,50,51} This essential principle requires a detailed review.

Legal debates on the deposed sovereigns' *jus honorum* emerged in the 20th century in Europe, when monarchy was abolished in many countries. One of the first judgments delivered under

³⁹ Ibid.

⁴⁰ Ibid, supra note 22.

⁴¹ Ibid, supra note 37.

⁴² Ibid, supra note 30.

⁴³ Ibid, supra note 26.

⁴⁴ H.J. Hoegen Dijkhof, *The Legitimacy Of Orders Of St. John A historical and legal analysis and case study of a para-religious phenomenon*, Amsterdam: Leiden University 2006, p. 411.

⁴⁵ D.C.R. Butculescu, 'Prolegomena to the Study of Heraldic Insignia: from the Medieval Coat of Arms (XIV-XVI Century) to the Heraldic Insignia of Institutions and Societies in Contemporary Law. Evolution, Legal Regime, Effects, Legal Protection, Prohibitions', *Diversity and Interdisciplinarity in Business Law* 2017, pp. 11-18.

⁴⁶ N. Cox, 'The Office of the Chief Herald of Ireland and Continuity of Legal Authority,' *Dublin ULJ* 2007, pp. 84.

⁴⁷ S.P.K.y. Baca, 'Resolution of Monarchical Successions Under International Law: Succession of HRH Prince Ranier to the Chiefship of The Royal House of the Two Sicilies,' *The Augustan* 1975-76, pp. 1-32.

⁴⁸ Ibid, supra note 8.

⁴⁹ Ibid, supra note 9.

⁵⁰ Ibid, supra note 22.

⁵¹ Hoegen Dijkhof 2006, supra note 44, pp. 296-297.

the contemporary legal system on this subject was given in the Italian Republic in 1952, by Pretura Unificata di Bari (United Court of Bari) on Case 485/52. This was a criminal case where Umberto Zambrini, a resident of Bari, Italy, was prosecuted for the crime of “Usurpation of Titles and Honours” (Article 498 of the Italian Penal Code), for publicly presenting himself as Count of Sant’Ilarico. During the trial, the defendant claimed that the title of nobility was legitimately conferred by the Prince of Emmanuel, Francesco Mario Paternò Castello di Carcaci. After an investigation, the court ruled that Francesco Mario was indeed a direct descendant of a branch of the House of Aragon.⁵² Based on the investigation, Judge Giovanni de Gioca delivered the following judgment on March 13, 1952:⁵³

By a brevet of Kings James I, ... the claim to this throne made by the Paternò is legitimate which confirms him indeed a member of a branch of the House of Aragon and are its last representatives. ... [Therefore, Francesco Mario] have retained many of his rights *jure sanguinis*.

Among those rights are the *fons honorum*, or the faculty to ennoble, to grant and confirm coats of arms, to bestow titles, drawn from places over which their ancestors had exercised their sovereign powers, and also the right to found, re-establish, reform and exercise the Grand Magistracy of the Orders of Knighthood conferred by their family, which may be handed down from father to son as an irrepressible birthright, which indeed is found among the inherited rights of Prince Francesco Mario as also confirmed in 1860 by Francis II di Borbone, King of the Two Sicilies.

This judgment clearly rules that a head of a deposed royal family retains its *jus honorum* as *jure sanguinis*. Further, the judgment indicates that he or she can confer nobility or appoint new knights to dynastic orders of knighthood as well. The consequent judgment on Francesco Mario at Tribunale di Pistoia followed the same principles.⁵⁴ E. Furno summarised the judgments on *jus honorum* under international law as follows:

Scholars and jurists have agreed that royal prerogatives personally belong to the Sovereign; and that outside of the “*debellatio*” that is the total or spontaneous abdication, the deposed Sovereign, even without [some of royal prerogatives], preserves the “*jus honorum*” as well as the “*jus majestatis*”⁵⁵

There are quite a few judgements, both civil and criminal, some very recent, which all generally accept the traditional principles given above. Principally, the special prerogatives of “*jus majestatis*” and “*jus honorum*” are based on “*nobilita nativa*” and “*jure sanguinis*,” and the question of the such prerogatives are subject of international law with all logical consequences: a sovereign in exile can legitimately confer noble titles and the honors that fall within its heraldic heritage as the head of family, with or without a predication.⁵⁶

Here, the questions of *nobilita nativa* (innate nobility) and *jure sanguinis*, that is the questions on the legitimacy of the succession, are ought to be resolved under international law through

⁵² Ibid.

⁵³ Ibid, supra note 9.

⁵⁴ Ibid, supra note 51.

⁵⁵ Furno 1961, supra note 8, p. 47.

⁵⁶ Idem, p. 56.

the correct application of each family's dynastic laws.⁵⁷ Therefore, by applying these principles to the appointment of new knights to orders of knighthood, Cardinale concluded as follows:⁵⁸

A Sovereign in exile and his legitimate successor and Head of the Family ... may bestow honours in full legitimacy, provided the Order has not become extinct. ... No authority can deprive them of the right to confer honors, since this prerogative belongs to them as a lawful personal property *iure sanguinis* (by right of blood), and both its possession and exercise are inviolable.

This is the essential principle on the appointment of new knights to orders of knighthood, which was expressed in form of Principle 6.

II. The Conflict between National Laws and Family Rights to Appoint Knights: The Application of the Principles

One of the focal points in the legal debates on this subject has been the legitimacy of the right to appoint new knights to dynastic orders of knighthood when the deposed royal family in question is explicitly prohibited from doing so under national law. Since the conferment of knighthood by deposed royal families is a subject of international law,⁵⁹ it may be the discussions based on the international law alone that can offer a solution to the conflict.⁶⁰ In this section, the author will propose a new mode of interpretation of international law based on the principles reviewed in the previous section, to indicate that the conflict between national laws and the right to appoint new knights to dynastic orders of knighthood can be resolved.

II.1 The Two Positions on the Family Right to Appoint Knights to Orders of Knighthood

Several countries in Europe today do not recognise the dynastic orders of knighthood of their deposed royal families in their national laws. In some cases, including the Italian Republic,⁶¹ they even have legislations that explicitly prohibit deposed royal families from appointing new knights to the dynastic orders of knighthood. These national laws seem to be directly in conflict with the Principle 6.

There have been two major positions in the legal debates on this matter. The first position is that the family right to appoint new knights to extant dynastic orders of knighthood cannot be deprived by any authority (Position A). This position was most prominently expressed by the International Commission for Orders of Chivalry as '*[Jus honorum] is therefore considered ultra vires of any republican State to interfere, by legislation or administrative practice, with the Princely Dynastic Family or House Orders.*'⁶² Cardinale and Duren also hold this view.^{63,64}

The second position is that the family rights to dynastic orders of knighthood are rights *in rem* under international law, and as such, they exist within the legal system which created them, *lex*

⁵⁷ Ibid, supra note 47.

⁵⁸ Ibid, supra note 22.

⁵⁹ Furno 1961, supra note 8, p. 47.

⁶⁰ C. Joerges, 'On the legitimacy of Europeanising private law: considerations on a justice-making law for the EU multi-level system,' *Electron J Comp Law* 2003-7, p.3.

⁶¹ Ibid, supra note 7.

⁶² International Commission for Orders of Chivalry 2016, supra note 5, p. 19.

⁶³ Ibid, supra note 22.

⁶⁴ Ibid, supra note 26.

creatus, unless the order in question is recognised by other states (Position B). Cox explained this position as follows:⁶⁵

Any property may be sequestrated, seized or abolished by legitimate authority – provided that this is done in accordance with the proper legal procedures. ... Orders of chivalry are governed by the appropriate *lex creatus*. Claims to Orders and the rights they confer must be directed to the granting jurisdiction where the claim will be decided by the *lex creatus*. Unless the Order is recognised by another state, the purported abolition must be accepted as valid.

II.2 A New Clarification on the Family Right to Appoint Knights

These two positions have been considered as conflicting with each other and being mutually exclusive. However, the author will show that by introducing a new and simple clarification on the issue, based on Principles 1 to 6, it can be understood that these two positions are actually compatible.

The necessary clarification is that **the legitimacy of *jus honorum* as the head of the family and the legitimacy of their dynastic orders of knighthood themselves have to be considered separate (Clarification)**. In accordance with Position A, the *jus honorum* of the heads of royal families, regardless of whether they are regnant or not, cannot be interfered with by any state's national laws. On the other hand, Principles 1-6, on careful observation, indicate that *jus honorum* is not related to the legitimacy of dynastic orders itself. Therefore, Position B, which contends that dynastic orders of knighthood only exist within the legal systems which either created them or recognised them, does not conflict with the Position A.

By sorting out the legal debates based on the Clarification, Positions A and B can be found compatible and can also be satisfied at the same time. For instance, the argument by Cardinale to the effect that heads of deposed royal families may bestow honours in full legitimacy when the order in question has been solemnly recognised by the Holy See, '*they cannot however found new Dynastic Orders*.'⁶⁶ This seemingly contradicting statement can be logically understood with the Clarification. When an order of knighthood is once recognised by the Holy See, based on Principle 6, the said order holds a status in the Catholic Church. Therefore, even if the rights of *lex creatus* are lost, the order of knighthood will continue to be extant under international law. On the other hand, if the head of a deposed royal family establishes a new order of chivalry by *jus honorum*, the said order in question may neither be able to obtain the rights from *lex creatus* nor obtain a solemn recognition from the Holy See.⁶⁷ Thus, they cannot establish new orders of knighthood with a legitimate status under international law.

II.3 The Criterion of Legitimacy of Appointment of Knights to Orders of Knighthood

As demonstrated above, this Clarification can be made useful while debating the legitimacy of the appointment of new knights to orders of knighthood by the heads of deposed royal families. The only criterion necessary to find an appointment of a new knight valid under international law is that both **the order of knighthood and *jus honorum* of the head of the family must be legitimate under Principles 1 to 6 (Criterion)**.

Take, for example, the validity of appointments by the House of Savoy to illustrate this criterion. The Italian Republic passed a bill titled "Establishment of the Order of Merit of the Italian

⁶⁵ N. Cox, 'The principles of international law governing the Sovereign authority for the creation and administration of Orders of Chivalry,' *Féil-Scríbhinn Liam Mhic Alasdair - Essays Presented to Liam Mac Alasdair*, FCSI 2009, pp. 15-25.

⁶⁶ Ibid, supra note 22.

⁶⁷ Ibid, supra note 65.

Republic and Disciplines on the Conferment and Use of Honours” in 1951, which prohibits the House of Savoy from appointing knights in the following manner:⁶⁸

Except [in case it is authorized by decree of the President of the Republic], it is forbidden to confer honors, decorations and distinctions of knighthood, with any form and name, by bodies, associations or individuals. (Art. 8)

The Order of the Most Holy Annunciation and the related honors are suppressed.

The Order of the Crown of Italy is suppressed and the conferment of the honors of the Order of Saints Maurice and Lazarus is ceased. (Art. 9)

In the past, there have been two seemingly conflicting positions taken toward this national law. The first position was that the legislation was made in historical error to assume the Order of the Most Holy Annunciation and the Order of Saints Maurice and Lazarus to belong to the crown, and that the House of Savoy continues to enjoy the right to appoint new knights to these orders.^{69,70} This position is in agreement with Position A. The second position was that the purported abolition of the orders was valid in the Italian Republic regardless of the historical error, and that it must be accepted as valid, in line with Position B.⁷¹ However, by applying the Clarification and the Criterion, this debate can also be sorted out. Article 8 addresses the *jus honorum* of the House of Savoy. This article seems to deny the *jus honorum* of the House of Savoy, which directly contradicts judgment *No. 485/52*. However, a careful observation makes it apparent that the article only “forbids (vietato)” the exercise of *jus honorum*, and does not try to deprive the right itself. As such, the *jus honorum* of the House of Savoy is still legitimate under Principle 6, and no conflicts exist between the national law and the family rights in that context. Article 9 declares the three orders that are to be abolished. Out of the three, the Order of the Crown of Italy is deemed to belong to the state under Principles 2 and 3, while on the other hand the Order of the Most Holy Annunciation and the Order of Saints Maurice and Lazarus are deemed belonging to the House of Savoy under Principles 1 and 2. Therefore, under Principles 5 and 6, based on the Papal Bull by Gregory XIII that recognised the grand-mastership of the orders ‘forever to the Duke of Savoy and his royal successors,’⁷² these two orders of knighthood hold a status in the Catholic Church, and thus, they hold a status under international law, regardless of the legislation. As a result, based on the Principles, while the Order of the Crown of Italy is abolished by losing the rights of *lex creatus*, the Order of the Most Holy Annunciation and the Order of Saints Maurice and Lazarus are extant and legitimate under international law. These logical conclusions satisfy both Positions A and B. As a result, based on the Criterion, it can be concluded that the appointment of new knights by the House of Savoy to the Order of the Most Holy Annunciation and the Order of Saints Maurice and Lazarus is valid.

III. Conclusions

In this paper, the author comprehensively reviewed the legal debates on the right to appoint new knights to dynastic orders of knighthood by heads of deposed royal families to extract principles on this subject. The author proposed a new clarification on the conflict of laws, to the effect that the legitimacy of *jus honorum* as the head of family and the legitimacy of their dynastic

⁶⁸ Art. 498, Codice Penale.

⁶⁹ Cardinale 1984, supra note 4, pp. 135-139.

⁷⁰ Duren 1995, supra note 26, pp. 306-319.

⁷¹ Ibid, supra note 65.

⁷² Gregory XIII, *Pro commissa nobis*, Vatican: The Holy See 1572.

orders of knighthood themselves should be considered separate. This clarification led to the establishment of a simple criterion to judge the validity of the appointment of a new knight. The principles and the criterion identified in this paper are as follows:

Principle 1: Orders of knighthood must be founded or sponsored by a sovereign power.

Principle 2: Orders of knighthood founded by a sovereign belong to his/her royal family.

Principle 3: Only when the sovereign explicitly yields the rights to the crown, would the order of knighthood become the property of the state.

Principle 4: Dynastic orders of knighthood once explicitly recognised by the Holy See have a status under international law which cannot be suppressed by other states.

Principle 5: Every order of knighthood must have a *fons honorum*, or a holder of *jus honorum*, to appoint new knights into the order.

Principle 6: Regardless of whether they are regnant or not, heads of royal families enjoy *jus honorum* indefinitely as long as the succession is made according to each family's dynastic laws.

Criterion: An appointment of a new knight into the order of knighthood is valid when both the *jus honorum* of the head of the family and the order of knighthood itself are deemed legitimate under Principles 1 to 6.

The usefulness of the identified principles and the criterion was demonstrated through a brief case study of the House of Savoy. Therefore, the author concludes that these principles and the criterion proposed in this paper are beneficial in filling the gap between the national law and the dynastic royal prerogatives.

Finally, the author acknowledges a few limitations in the principles identified in this paper. First, because of the scarcity of academic studies in this topic, despite the best effort, the author worries that some might find the arguments presented in this paper not sufficient. The author wishes the Post-Publication Open Peer Review provided on this journal would supplement this limitation. Secondly, these principles cannot offer definitive perspectives on the legitimacy of a dynastic order of knighthood without papal recognition when the order is not recognised by *lex creatus*. According to the position that the order exists only within the legal system which created them without recognition from other states, it is reasonable to find the order to be non-extant. However, under the theory that deposed sovereigns outside of the status of *debellatio*, that is, without a spontaneous abduction, constitutes a state, it may be possible to conclude that such orders of knighthood can still be considered extant.^{73,74} The author hopes that these points can be resolved through future research.

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⁷³ J.C. Hall, 'International Law: Power of Government-in-Exile to Enact Valid Legislation,' *Michigan Law Review* 1954-5, pp. 753-56.

⁷⁴ S. Talmon, 'Who is a legitimate government in exile? Towards normative criteria for governmental legitimacy in international law,' *The Reality of International Law. Essays in Honour of Ian Brownlie* 1999, pp. 499-537.

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