CANON LAW AND KNIGHTHOOD APPOINTMENT IN MODERN TIMES

[ESP] *Derecho canónico y nombramiento de caballeros en tiempos modernos*

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Abstract: Legal debates on the deposed sovereigns' rights have emerged again in the 20th century. Among them, the right to appoint knights by heads of deposed royal families has been one of the focal points. The author begins with a comprehensive review of legal debates on the subject to provide readers with an up-to-date understanding on this developing topic. Six major views 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; Canon Law; order of knighthood; royal family; fons honorum.

Abstract: I dibattiti giuridici sui diritti dei sovrani deposti sono riemersi nel XX secolo. Tra questi, il diritto di nominare cavalieri da parte dei capi delle famiglie reali spodestate è stato uno dei punti focali. L'autore inizia con una rassegna completa dei dibattiti giuridici sull'argomento per fornire ai lettori una comprensione aggiornata su questo tema in sviluppo. Sei punti di vista principali sulla nomina sono estratti dal lavoro di ricerca. Si propone una nuova interpretazione, in cui la legittimità di conferire onorificenze e la legittimità degli stessi ordini cavallereschi devono essere considerati separatamente. Secondo questo metodo di interpretazione, il criterio per giudicare la legittimità di una nomina a cavaliere è sia lo *jus honorum* del capofamiglia sia la legittimità dell'ordine cavalleresco stesso.

Parole chiave: diritto canonico; ordine cavalleresco; famiglia reale; fons honorum

1. 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 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

[1] BULL, H., «International Law and International Order», in *International Organization* 3 (1972), pp. 583-88.
[2] DELLA VALLE, S., «On Sovereignty, Legitimacy, and Solidarity Or: How Can a Solidaristic Idea of Legitimate Sovereignty Be Justified?», in *Theoretical Inquiries in Law* 2 (2015), pp. 367-98.
[3] GLANVILLE, L., *Sovereignty and the responsibility to protect: a new history*, Chicago 2013, pp. 132-170.
[4] CARDINALE, H.E., *Orders of Knighthood, Awards and the Holy See*, Buckinghamshire 1984, pp. 217-235.
[5] UBERTI, P.F.D. ET AL., *Register of Orders of Chicalry*, Bologna 2016, p. 5.

out[6], 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 to review and summarise the latest legal discussions on the conferment of knighthood. The author wishes this paper would provide readers with an up-to-date understanding of this fascinating developing subject.

2. Legal Views 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 'Major views' 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

[6] Cox, N., «The sovereign authority for the creation of Orders of Chivalry», in *Journal of the Heraldry Society of Southern Africa* 2 (2009), pp. 317-29.
[7] Legge 3 marzo 1951, n. 178.
[8] Furno, E., «Qrdini equestri non nazionali. - Art. 7 Legge 3 marzo 1951, n. 178», in *Rivista Penale* 1 (1961), pp. 46-70.

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 Mario[9] and its interpretations by E. Furno, which proved to be relevant to the subject.

2.1. 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]

[9] *Francesco Mario v. Italy*, No. 40/51 R.G. No. 485/52 (United Court Bari 1952).
[10] Ossewaarde, M.R., «Three rival versions of political enquiry: Althusius and the concept of sphere sovereignty», in *The monist* 2 (2007), pp. 106-25.
[11] Vatter, M., «Republicanism or Modern Natural Right? The Question of the Origins of Modern Representative Democracy and the Political Thought of Giuseppe Duso», in *CR: The New Centennial Review* 2 (2010), pp. 99-120.
[12] Weinert, M.S., *Democratic Sovereignty: Authority, Legitimacy, and State in a Globalizing Age*, London 2007, p. 68.
[13] Ibid.

[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 (Major view 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] In addition, there are several orders of knighthood that had been founded by non-sovereign princes, which were then attached to the sovereign power after the foundation, including those by the House of Burgundy and by the House of Savoy. However, it should be noted that as

[14] MARTÍNEZ, H.T., «Ius sufragii y ius honorum», in *Revista Chilena de Derecho* (1993), pp. 345-52.
[15] SINHA, S.P., «The Anthropocentric Theory of International Law as a Basis for Human Rights», in *Case W. Res. J. Int'l L.* (1978), p. 469.
[16] DE BECKER, A., «The Legal Status of Public Employees or Public Servants: Comparing the Regulatory Frameworks in the United Kingdom, France, Belgium, and the Netherlands», in *Comp. Lab. L. & Pol'y J.* (2010), p. 949.
[17] Ibid., supra note 9.
[18] CARDINALE, H.E., *Orders of Knighthood, Awards and the Holy See*, cit., p. 173.
[19] Ibid., supra note 5.
[20] Ibid., supra note 18.

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.

Orders of knighthood founded by a sovereign belong to his/her royal family (Major view 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 (Major view 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] However, since the great majority of the orders of knighthood founded before the Reformation attached the orders to the principal dominion of the founder, these dynastic orders are Catholic-founded; i.e., they were dominical rather than dynastic at the time.

[21] Ibid., supra note 5.
[22] CARDINALE, H.E., *Orders of Knighthood, Awards and the Holy See*, cit., p. 119.
[23] The Ministry of Justice. Review of the Executive Royal Prerogative Powers: Final Report. (London, 2009).
[24] Ibid.
[25] Ibid., supra note 22.
[26] DUREN, P.B.V., *The Pontifical, Religious and Secularised Catholic-founded Orders and their relationshop to the Apostolic See*, Buckinghamshire 1995, p. 218.
[27] Ibid.

2.2. Orders of Knighthood and the Canon Law

While the knighthood itself has its root in the Frankish conquerors of Gaul, the origin of the orders of knighthood lies within the Catholic Church.[28] Originally, the Latin word ordo, denoted 'a privileged body, isolated from the remainder of society, invested with particular responsibilities, whose cohesiveness, superiority, and dignity were plainly visible in the rank accorded to it in religious, military, or civil processions'.[29] In this sense, the legal and public act of ordination was to confer a status on the individual that is not necessarily related to his birth.[30] According to Constable, the earliest known references to the three orders, that is of prayers, of warriors and of labours, can be found in the ninth century England.[31] The distinction between the two types of layman, that of warriors and of labours, can be found in tenth century by the Catholic Church.[32] Odo of Cluny, the second abbot of the Cluny, wrote that 'it is therefore allowed to a layman placed in the order of warriors to carry a sword in order to defend the unarmed populace.'[33]

The Holy See, the ecclesiastical jurisdiction of the Catholic Church, have created, recognised, merged, and abolished numerous orders of knighthood.[34] To this date, many orders of knighthood are still Catholic-founded, and thus, abide by Canon Law.[35] The Catholic Church is a member of the international community, and has been influential in shaping international law.[36] The pope is the sovereign of the

[28] Gautier, L., *La Chevalerie*, Paris 1884, pp. 1-30.
[29] Duby, G., Goldhammer, A., *The Three Orders: Feudal Society Imagined*, Chicago 1980, p. 73.
[30] Ibid.
[31] Constable, G., *Three Studies in Medieval Religious and Social Thought*, Cambridge 1995, p. 279.
[32] Ivi, pp. 281-282.
[33] Ibid.
[34] Lawrence-Archer, J.H., *The Orders of Chivalry. From the Orifinal Statues of the Various Knighthood, and other Sources of Information*, London 1887, pp. 323-333.
[35] Duren, P.B.v., *The Pontifical, Religious and Secularised Catholic-founded Orders and their relationshop to the Apostolic See*, cit., pp. 220-221.
[36] Boyle, E.H., Golden, S., Liao, W., «The Catholic Church and International Law», in *Annual Review of Law and Social Science* (2017), pp. 395-411.

Vatican City State,[37] an independent state created in 1929 through the Lateran treaties, recognised under international law.[38] The position of Canon Law under international law in this respect is summarised by Rene Metz as follows:[39]

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 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.[40] 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.[41]

[37] Art. 1-2, Fundamental Law of Vatican City State 2000.
[38] KUNZ, J.L., «The Status of the Holy See in International Law», in *American Journal of International Law* 2 (1952), pp. 308-14.
[39] METZ, R., *L'Eglise a ses lois (Le Droit canon)*, Paris 1959, pp. 131-133.
[40] CUMBO, H.F., «The Holy See and International Law», in *The International Law Quarterly* 4 (1948), pp. 603-620.
[41] Art. 7, Costituzione della Repubblica Italiana.

The theological disciplines of the Catholic Church are expressed using the juridical method of Canon Law.[42] 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:[43]

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 prescript 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.

[42] BEAL, J.P., CORIDEN, J.A., GREEN, T.J., *New commentary on the code of canon law*, Mahwah 2000, pp. 1-10.
[43] Ivi, pp. 401-404.

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 association recognised by a competent ecclesiastical authority is private.[44] 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.[45]

As a result, dynastic orders of knighthood once explicitly recognised by the Holy See has a status under international law (Major view 4).[46,47] 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.[48] 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.

[44] Ibid.
[45] Ibid., supra note 22.
[46] Ibid., supra note 37.
[47] Ibid., supra note 30.
[48] Ibid., supra note 26.

2.3. Appointment of New Knights to the Orders of Knighthood

As reviewed in Section 2.1, 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 (Major view 5).[49,50] 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.[51] 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 (Major view 6).[52,53,54,55,56] This essential major view 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 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

[49] Hoegen Dijkhof, H.J., *The Legitimacy Of Orders Of St. John A historical and legal analysis and case study of a para-religious phenomenon*, Amsterdam 2006, p. 411.
[50] Butculescu, D.C.R., «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», in *Diversity and Interdisciplinarity in Business Law* (2017), pp. 11-18.
[51] Cox, N., «The Office of the Chief Herald of Ireland and Continuity of Legal Authority», in *Dublin ULJ* (2007), p. 84.
[52] Baca, S.P.K., «Resolution of Monarchical Successions Under International Law: Succession of HRH Prince Ranier to the Chiefship of The Royal House of the Two Sicilies», in *The Augustan* 76 (1975), pp. 1-32.
[53] Ibid., supra note 8.
[54] Ibid., supra note 9.
[55] Ibid., supra note 22.
[56] Hoegen Dijkhof, H.J., *The Legitimacy Of Orders Of St. John A historical and legal analysis and case study of a para-religious phenomenon*, cit., pp. 296-297.

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.[57] Based on the investigation, Judge Giovanni de Gioca delivered the following judgment on March 13, 1952:[58]

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 major views. [59] E. Furno summarised the judgments on jus honorum under international law as follows:

[57] Ibid.
[58] Ibid., supra note 9.
[59] Ibid., supra note 51.

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 majestias'[60].

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 'nobilta 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.[61]

Here, the questions of nobilta 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 the correct application of each family's dynastic laws.[62] Therefore, by applying these major views to the appointment of new knights to orders of knighthood, Cardinale concluded as follows:[63]

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 major view on the appointment of new knights to orders of knighthood, which was expressed in form of Major view 6. Finally, however, it should also be noted that some scholars argue that in order for the head of regnant

[60] FURNO, E., «Qrdini equestri non nazionali. - Art. 7 Legge 3 marzo 1951, n. 178», cit., p. 47.
[61] Ivi, p. 56.
[62] Ibid., supra note 47.
[63] Ibid., supra note 22.

royal families to retain jus honorum, the heirs in question have to explicitly or implicitly reject the current political order, i.e., without a spontaneous abdication.

3. The Conflict between National Laws and Family Rights to Appoint Knights

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,[64] it may be the discussions based on the international law alone that can offer a solution to the conflict.[65] In this section, the author will propose a new mode of interpretation of international law based on the major views 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.

3.1. 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,[66] 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 Major view 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

[64] Furno, E., «Qrdini equestri non nazionali. - Art. 7 Legge 3 marzo 1951, n. 178», cit., p. 47.
[65] Joerges, C., «On the legitimacy of Europeanising private law: considerations on a justice-making law for the EU multi-level system», in *Electron J Comp Law* 7 (2003), p. 3.
[66] Ibid., supra note 7.

of knighthood cannot be deprived by any authority (Position A). This position was most prominently expressed by the International Commission for Orders of Chicalry 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.'[67] Cardinale and Duren also hold this view.[68,69]

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 creatus, unless the order in question is recognised by other states (Position B). Cox explained this position as follows:[70]

> 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.

3.2. 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 Major views 1 to 6, it can be understood that these two positions are actually compatible.

[67] International Commission for Orders of Chivalry (2016), supra note 5, p. 19.
[68] Ibid., supra note 22.
[69] Ibid., supra note 26.
[70] Cox, N., «The principles of international law governing the Sovereign authority for the creation and administration of Orders of Chivalry», in *Féil-Scríbhinn Liam Mhic Alasdair – Essays Presented to Liam Mac Alasdair, FGSI* (2009), pp. 15-25.

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, Major views 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.'[71] 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 Major view 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.[72] Thus, they cannot establish new orders of knighthood with a legitimate status under international law.

[71] Ibid., supra note 22.
[72] Ibid., supra note 65.

4. 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 provide readers with an up-to-date understanding on this fascinating developing subject.

The major views and the criterion currently agreed upon by many scholars and jurists are as follows:

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

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

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

Major view 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.

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

Major view 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 Major views 1 to 6.

The usefulness of the identified major views and the criterion was demonstrated through a brief case study of the House of Savoy. The results implied that these latest major views and the criterion may have successfully filled the gap between the Canon law and the dynastic royal prerogatives.