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REAL AULA MALLORQUESA

THE BULLETIN

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EDITORIAL

The ongoing purpose of Orders of Chivalry handed out by reigning monarchs is regularly questioned. A no doubt well intentioned government even obliged the King of Sweden to stop so honouring his own citizens, no matter how deserving, so now he can only honour foreigners. In this scenario of course those Orders of Chivalry which persist, despite their hereditary Grand Master being deprived his rightful throne, inevitably come in for much greater attack. Such is the fate of our own Militare Ordine del Collare di Sant'Agata, or "MOC" as we affectionately know it.

The Marquis von Wowern has made it his personal crusade for many years now to combat such disparagement wherever he encounters it by producing expert opinion of the highest calibre to refute whatever nature of accusation may arise. This particular issue of the Bulletin of the Real Aula Mallorquesa brings together some of the more notable documentary evidence to substantiate the status and standing of the Royal House of Aragon, Majorca and Sicily and by extension of its principal extant Order of Chivalry, the MOC.

In this issue we first consider the History of the Royal House that is called of Aragon, Majorca and Sicily and how, despite being tricked out of its Throne and its Lands, the Royal House continues to exist to this very day and how its Headship has passed into the Dynasty of Paternò Castello Guattadauro in the person of Don Francesco who uses the courtesy title of Duke of

Perpignan and who is Grand Master of the Chivalric Orders in the gift of the Royal House. This brief History is followed by a summary Genealogy which shows how the Headship descends from James I the Conqueror to Don Francesco our present Head of Name and Arms. In his expert opinion of the 2nd May 2008 Prof. Harrison then considers the validity of original supporting documents in the family's possession which he has inspected first hand. It should be noted that Prof. Harrison flew to Catania specifically to see these original documents (on the Royal House web site – www.real-aragon.org) and as a professional historian with some considerable experience in dealing with documents he professed himself perfectly reassured as to their authenticity as you will note. Scoffers on the Web therefore base their spurious so called arguments on self serving aspirations that fly full in the face of hard professional evidence.

A pivotal event in the transmission of the dynastic rights was the agreement reached in the Family Pact of 1853. The legal status of such family agreements is then considered by Prof. Bramstang in his expert opinion of the 12th August 2008. Prof. Bramstang then goes on to consider the standing of Orders of Chivalry in terms of international law and brings particular light to bear on the circumstances of the MOC in his further expert opinion of the 19th May 2009.

Despite the fact that the republican Constitution of the Republic of Italy sought to abolish all royal, noble and chivalric distinctions from the outset, Italy is obliged

nevertheless to recognise matters of international law which by definition override any constraints of its own domestic legislation. The rights of a Fount of Honours such as Don Francesco are deemed to be a matter of international law and on that basis the Ordinary Tribunal of Ragusa considered the status of Don Francesco including the Orders of Chivalry in his gift. The full Court judgement of the 9th May 2003 follows which substantiates all Don Francesco's claims. The status of the Court and the validity of its judgement in general as well as in this particular case are then studied in inordinate thoroughness by Prof. Sundberg in his expert opinion of the 15th September 2006

Now that we have conclusively studied the theoretical and legal aspects of the claims of the Royal House, we see how in her opinion of the 5th October 2009 Ambassador Ehnbom-Palmquist rules on how the external signs of such an Order of Chivalry, namely its insignia, may be correctly displayed. It should be noted that the protocol applied by the Royal Court in Sweden is illustrative of a standard observance and so applies equally elsewhere.

A further aspect of the claims of the MOC is its relationship with the Roman Catholic Church. Whereas chivalry as we know it and apply it grew up within and from out of the Roman Catholic Church and whereas the Church has its own recognised Orders of Chivalry, the MOC does not claim to be a Catholic Order as such, namely belonging to the Church. It is rather, as it always has been, a dynastic Order, albeit grounded heavily in

Catholic precepts. The MOC has a very close relationship with the Church in various places at the local level. The Catholic Church's clergy provide the MOC's chaplains, which include several eminent prelates. The MOC has been granted a church in Catania by the Archbishop of Catania for use as its grandmagistral seat. The MOC does of course admit knights and dames of other Christian denominations and indeed, in the Category of Merit, persons who may not be of the Christian faith. The Marquis von Wowern in his opinion of the 5th February 2010 considers the relationship of the MOC with the Catholic Church. We follow with the Nihil Obstat or approval of Fr. Pascal René Lung of the 4th November 2009 by which Roman Catholic men and women are permitted to be invested as Knights and Dames in the MOC. We conclude with the opinion of a canon lawyer, Dr. E. Peters, of the 17th October 2009 which addresses the issue of such a Nihil Obstat in Canon Law terms.

The documents that make up this issue constitute the heaviest Bulletin ever. They are and will remain a lasting testimony to the persistence and enthusiasm of the Marquis von Wowern in his pursuit of these essential issues. We shall remain eternally grateful to him.

Monte Sant'Angelo
3rd March 2010

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The History of the Royal House of Aragon, Majorca and Sicily and the Militare Ordine del Collare

The Kingdom of Aragon was one of the small Christian states which arose in the Iberian peninsula following the gradual expulsion of the Moors, who had held sway in the area in the wake of their conquest of the old Visigothic realm of Spain in the Eighth Century. It lay in the northeast of the peninsula and the earliest ruler of which we take note in this brief history was Aznar Galindez, Count of Aragon (including the territories of Urgell, Cerdanya and Conflent) for twenty years from 809 AD. The first of his successors to be regarded as King of Aragon was Ramiro I (1035-1063), an illegitimate son of Sancho the Great, King of Navarre who ruled in Pamplona 1000-1035 and who from 1028 was also King of Castile. When Ramiro's grandson Alfonso I, known as "the Battler", died childless in 1134 he bequeathed his kingdom to the crusading military orders, The Templars and The Hospitallers, but the Will was set aside by the magnates of the realm in favour of the late king's brother, Ramiro, a monk and bishop-elect at the time but who was given dispensation from his religious vows to be crowned Ramiro II. He duly married Agnes of Aquitaine, but after fathering the much

needed heir, Petronella, he set aside his wife retired once more to his monastery in 1137**.** [1]

In early childhood Petronella (ob.1173) married Raymond Berengar IV Count of Barcelona (d. 1162), thus uniting the crowns of the two states in one much stronger kingdom with access to the sea. Henceforth the ruling dynasty of Aragon was styled the House of Barcelona. The great-grandson of Raymond and Petronella, who succeeded to the throne in 1213, was James I (King also of Majorca and Valencia, Count of Barcelona and Urgell, Lord of Montpellier) known to history as "the Conqueror".

James I was only five years old at his accession on the death in battle of his father Peter II. He occupied the throne until his death in 1276 and during his long and brilliant reign he laid the foundations of the Aragonese Empire or, to give it its correct title, the Lands of the Crown of Aragon. In 1228 James wrested Majorca from the Moors and ten years later did likewise with Valencia. By these conquests he received the sobriquet of "James the Conqueror". His first marriage was to Eleanor of Castile, by whom he had a son Alfonso, who died without progeny in 1260. The King's union with Eleanor was dissolved in 1229 and in 1235 James wed Yolanda of Hungary. This marriage produced seven children, of whom three were sons. In due course the eldest became King Peter III of Aragon, the second James was granted the throne of Majorca (with its capital in Perpignan) in

[1] http://www.aragob.es/pre/cido/corona.htm

1286, the third son Sancho became Archbishop of Toledo but was murdered in 1275. Of the daughters the eldest married King Alfonso X of Castile, while the second became the wife of King Philip III of France from which union the Royal House of France traces its descent from James the Conqueror of Aragon. Queen Yolanda died in 1251. In the meantime the King had formed a relationship with Doña Teresa Gil de Vidaure, by whom he had had two sons, James Baron of Xerica, born c1255, and Peter Baron of Ayerbe and Lord of Paternò, born in 1260. After the birth of Peter of Ayerbe King James married Teresa and had their two sons legitimised. Then, by his Will dated 21st August 1261, he provided that they should take precedence in right of succession to the throne over any of his daughters born of his union with Yolanda. In 1260 the Pope recognised the marriage of James and Teresa and gave his consent to the known testamentary intentions of the King, which in due time became the first formal law of succession to the Lands of the Crown of Aragon. The House of Xerica descending from James became extinct in 1309, but that of Ayerbe from his brother Peter continues to this day.

Peter III, son of James the Conqueror, known as "the Great", came to the throne in 1276. Six years later the people of Sicily revolted against the French who under Charles II of Anjou had invaded their country. In a bloody affair known as the Sicilian Vespers, the French were massacred and the local nobility invited the Aragonese monarch to accept the Crown. Peter III of Aragon, married to Constance the Swabian heiress to Sicily, accordingly also became King of Sicily. He

reigned until 1285 when he was succeeded by his son Alfonso III, who ruled until his death in 1291, at which point the Crown of Aragon passed to his brother James II of Aragon. In 1296 the new king granted the crown of Sicily to a third brother Frederick and at this stage that monarchy became for a number of years separate from Aragon[2].

James II was followed in 1327 by his son Alfonso IV, who reigned until 1336 when his son Peter IV ("the Ceremonious" or "the Cruel") ascended the throne. In 1375 Peter attacked and defeated his cousin the last King of an independent Majorca and reunited the crown of the island with that of Aragon. In 1381 King Peter IV secured the homage of the Duchy of Athens which had been under Catalan rule since the reign of his kinsman Frederick II of Sicily (1296-1337) whose Catalan mercenaries had captured the area[3].

Peter was followed on his death in 1387 by his son John I, who died without male heirs in 1395, to be succeeded by his brother Martin I ("the Humane"). The new monarch's son, also called Martin, had become King of Sicily in 1390 by virtue of his descent from Eleanor of Sicily, the third wife of Peter IV (the male line of the Sicilian kings having died out). Martin of Sicily expired

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2 http://www.cervantesvirtual.com/historia/monarquia/jaime_ii.shtml

3 http://menorca.infotelecom.es/~ecampins/Menorca/Historia/Aragon.html

without heir in 1409 and his father took the throne of the island in addition to his existing sovereignty of Aragon. A year later he also died and with this the surviving eldest line of the House of Barcelona became represented by James Count of Urgell, younger son of Alfonso IV. He did not in the event succeed to the Throne of the Lands of Aragon, as was his undoubted right.

When King Martin I of Aragon died in 1410 he had no children to succeed him and he had not named a successor. The only written law of succession was the Will of James I which confirmed the principle of male primogeniture, but this was not followed. Six claimants to the throne stepped forward. Through intrigues and political gerrymandering the law of succession was set aside, and a group of nine electors (three from each realm of Aragon, Valencia and Catalonia) was put together to decide upon the respective claims. They met at Caspe in Aragon in 1412, and by the very composition of the group a decision for one of the claimants, Ferdinand of Antequera was assured in advance. Therefore the event known to history as "the compromise of Caspe" was not a valid election. When in 1213, Peter II had died on the battlefield of Muret, his son James I the Conqueror, was only five years old and in the custody of his father's conqueror. After negotiations the child-king was released and escorted to Catalonia. It was then decided to entrust him to the Templars at Monzón and his great-uncle, Sanç of Provence, was designated Regent of the realm. James later recalled that both Sanç and his uncle Ferrado "had

the hope of being king". In the summer of 1214 the cardinal-legate Pierre de Dovai, on behalf of the king, summoned a general cort at Lérida, where all those present were required to swear fealty to the king, rather than the regent or anyone else with pretensions. There can be little doubt that these events were remembered by James I when in August 1270 he wrote his third and last will. The testament makes it clear that the throne was to descend in male primogeniture from the male line of his second wife Yolanda, but both the Lords of Xerica and Ayerbe (James and Peter, his sons with his third wife Doña Teresa Gil de Vidaure) were recognized as heirs to the throne, should the male line from Yolanda become extinct, as it did. The testament was ratified by the Pope and became the first formal order of succession to the lands of the Crown of Aragon. The only valid claims to the throne would be dynastic in male primogeniture. The first claimant was James of Urgel who based his claims on the fact that he was the great-grandson of Alfonso IV (who was the great-grandson of James I). The second claimant was Alfonso, Duke of Gandia, son of Peter Count of Ribagorza and grandson of James II. Alfonso died in the course of the discussions about the succession and his son, also named Alfonso, took his place. The third claimant was Louis, Duke of Calabria. He was the son of Violante of Anjou, who was daughter of King John. The fourth was Ferdinand of Antequera, Infante (Prince) of Castile, son of Eleanor (who had married John of Castile) and grandson of Peter IV. The fifth claimant was Frederick, Count of Luna, an illegitimate son of the Infante Martin (son of King Martin I, but had died before his father). The sixth was John, Count of

Prades, brother of the first Alfonso (the second claimant), thinking his rights were better than those of his nephew. The fifth claimant, Frederick, could not have any real dynastic claims as he was not born of a legitimate marriage[4].

As James Count of Urgel, Alfonso Duke of Gandia and John Count of Prades all claimed and could verify succession in the male line, their claims were better than the claims of Louis Duke of Calabria and Ferdinand Infante of Castile (as they could only claim succession through the female line)[5].

It is quite clear that of James, Alfonso and John, the person being the closest relative to Martin was James of Urgel. Also J.N. Hillgarth in "The Spanish Kingdoms 1250-1516" says, when discussing the "compromise" of Caspe, that "among the descendants in the male line, the closest relation to Martí was Jaume, count of Urgel …" (op.cit. vol 2, p. 229). Any successor other than James of Urgel must have been appointed on grounds other than dynastic and so in opposition to the Will of James I and the law of succession[6].

[4] http://rinconpatrio.blogspot.com/2007/12/el-compromiso-de-caspe.html

[5] http://www.ayllon.info/aylloncaspe.htm

[6] http://www.mocterranordica.org/eng/Bisson1.gif

This point is also stressed by T.N. Bisson, who when discussing the "compromise" of Caspe points out that "… the issue was (or became) political rather than simply legal, a utilitarian question of which candidate with some dynastic claim would make the best king" ("The medieval crown of Aragon", ss. 135-6).

Yet the Compromise of Caspe found in favour of Ferdinand of Antequera (in fact a member of the Castilian House of Trastamara) who thus came to power in a manner similar to a military coup in conflict with the prevailing order of succession.

When James Count of Urgel died in captivity in 1433, the legitimate line of succession passed to the Duke of Gandia who died without heir in 1454. At this date the operative document was still the Will of James I the Conqueror, as this remained the only law of succession in existence, which clearly said that his legitimised male descendants by Teresa Gil de Vidaure were to take precedence in the succession over those in a female line born of Yolanda of Hungary. The lawful succession to the thrones of the Lands of the Crown of Aragon thus passed in 1454 to the House of Ayerbe.

1454 – 1851

Teresa Gil de Vidaure was the third wife of James the Conqueror who in his Will of 21st August 1261 recognised their two sons James and Peter, born before the marriage but subsequently legitimised, and allowed

the succession to pass through them should the senior lines fail, which they did.

The honoured custom since time immemorial was and remains that, provided that there is no specific debellatio (that is, renunciation of sovereign rights), the jus maiestatis inheres forever in the person of the lawful head of the family in accordance with the will of the particular family under consideration. This principle is now incorporated in international law (see e.g. http://www.dynastic-law.com/). Thus, when the Duke of Gandia died in 1454 - the line leading from James I of Xerica (c1255-1280) the elder legitimised son of the Conqueror, being already extinct since 1409 - the Headship of the House of Aragon and de jure kingship of the Lands of the Crown of Aragon passed to Sancho a descendant of James of Ayerbe, the elder son of Peter of Ayerbe (the Conqueror's younger legitimated son). Sancho’s grandson, Alfonso, became Count of Simari in 1519, and Alfonso's grandson, Alfonso III, became Marquis of Grotteria. In turn Caspar VI, Alfonso III's great-great-great grandson subsequently became the first Prince of Cassano. These great nobles were de jure kings of the Lands of the Crowns of Aragon until their line became extinct with the death before 1851 of Joseph the last Prince of Cassano.

After the extinction of the senior branch the succession then passed to the cadet branch of the House of Ayerbe, the continuing line from Peter, the younger son of King James the Conqueror in his third marriage.

In the 19th Century a wave of mediaeval revivalism swept Europe from which Sicily was not exempt. The then Duke of Carcaci, a prominent intellectual, notably researched the historical order of chivalry in his family's gift, a study which even merited mention in his funeral eulogy.

The House of Ayerbe and the Pact of 1853

Peter first Baron of Ayerbe had a son Michael who in turn sired a boy, Giovanni the Elder born in 1347 and who in 1398 became Vicar General of the Kingdom of Sicily. Giovanni married Sibilla Spadafora and from that union descends unbroken the line of the House of Paternò. Individual members of the House of Paternò regularly held the highest offices in the land such as Archbishop of Palermo, Viceroy, Ambassador to the Pope and Lord in Waiting to successive Kings of the Two Sicilies and the said Kings gave full recognition to the Family's particular status.

Over the centuries the descent had thrown off numerous branches, many of which had intermarried. Thus, when the last Prince of Cassano died, it was not clear who precisely held the dynastic right to the jus maiestatis of the Lands of the Crown of Aragon and it became urgently necessary that the question be answered.

A family conclave, on the initiative of the Duke of Carcaci Don Francesco Paternò Castello e Sammartino, was called on 14th June 1853, and held in Palermo in the palace of the Marchese di Spedalotto, head of one of the

more senior branches of the family. After a review of the relevant evidence and a wide-ranging discussion, it was the finding of the conclave that the royal rights, which had been the subject of the debate, should be confirmed as belonging to Don Mario, son of the Duke of Carcaci's younger brother Don Giovanni and his wife Donna Eleonora Guttadauro of Emmanuel Riburdone, the heiress of the House of Guttadauro. This conclusion which had received the assent of King Ferdinand II of the Two Sicilies was reached on the recognition that Don Mario alone had the royal blood of Aragon in his veins from two sources, through the separate descents of both his mother and his father from King James the Conqueror[7].

A family pact was then signed and registered on 16 June 1853 in the Chamber of Seals and Royal Registers of the Kingdom of the Two Sicilies. It was decreed that during the minority of Don Mario, his father Don Giovanni should be Regent.

Events 1853 – 1860

The sealing of the family pact was but one of a series of events following the death of the last Prince of Cassano which determined and confirmed the dynastic rights of the House of Paternò Castello Guttadauro. The final endorsement came on 2nd February 1860 when the Royal Commission for Titles of Nobility recommended to the new king Francis II that a petition by the Ecc'mo Sig. Don Mario Paternò Castello Guttadauro dei Duchi

[7] http://www.mocterranordica.org/eng/archive.html - 6FamPakt

di Carcaci be granted. The petition was that the Prince should receive all confirmation of the Sovereign's assent for those "chivalrous distinctions" which he wished to bestow. On 11th February 1860 the king approved the recommendation of the Royal Commission and directed the Secretary of State for Sicilian Affairs to give effect to his approval.

Events 1860 – 1965

The designated Regent, Don Giovanni, worked vigorously to assert the dynastic rights of the family. In doing so he was crowning the work of his elder brother the great Duke of Carcaci who had died in 1854, having spent his life establishing his family's Royal dynastic rights and regulating the succession.

The principal vehicle used by the Regent was the Military Order of the Collar of Saint Agatha of Paternò. Taking full advantage of the recognition granted by successive kings of the Two Sicilies, Don Giovanni proceeded to recruit to the Order the flower of the nobility of Sicily. In 1859 the Royal Order of San Salvador of Aragon, which had been founded in 1118 by Alfonso I, had been revived and in 1861 the Order of the Royal Balearic Crown was established.

The year 1861 was a fateful one. Don Giovanni died and Don Mario I, by then 23 years old, assumed full responsibility for the rights of his House. The Bourbon monarchy of the Two Sicilies was overthrown and the kingdom was incorporated into that of the newly created

Italy under the sovereignty of Victor Emmanuel II of Sardinia of the House of Savoy. Thereafter Don Mario maintained a policy of neutrality favouring neither the intruding House of Savoy nor the deposed Bourbons. Two of his three sons predeceased Don Mario and his third son Don Enrico succeeded his father in 1906. Don Enrico died in 1908 without issue and by the Will of Don Mario the succession passed to Donna Eleonora Angela Maria, sister of Don Enrico, and to the issue of her marriage to Don Roberto Paternò Castello, brother of the tenth Duke of Carcaci. In 1913 Donna Eleonora bore a son, Don Francesco Mario II for whom his father acted as Regent until he attained his majority in 1934. Don Francesco Mario II was a colourful, indeed flamboyant, character who vigorously promoted the dynastic rights of his family - not always, be it said, diplomatically. In November 1965, due to painful illness and thus being unable to exercise his full powers, he decided to associate his son the Infante Don Roberto (born in 1937) with himself in the government of the Royal House. (In October 1962 in the ancestral church of Santa Maria di Gesù in Catania Don Roberto had married Noble Maria of the Counts Fattori.) On 28th November 1965 Don Francesco Mario issued a Decree conferring on Don Roberto the title of Prince of Gerona and formally sharing with him his sovereign and magisterial powers.

Events 1965 – 1996

The power-sharing between father and son continued until the death of Don Francesco Mario II on 16th

February 1968 at which point the Prince of Gerona was formally proclaimed Head of Name and Arms of the Royal House of Aragon in the style of Roberto II in the convent of St Augustine in Catania. Magnates and dignitaries of the Royal House were present on the historic occasion. Don Roberto II took the titles of pretence of Duke of Perpignan and Prince of Emmanuel, whilst his elder son, Don Francesco was created Duke of Gerona, the title usually borne by the heir to the Crown. Subsequently Don Roberto divorced Donna Maria dei conti Fattori (the marriage was not annulled), the mother of Donna Aurora Duchess of Palma and Don Francesco Duke of Gerona and dynastic heir, in order to marry in a civil ceremony Bianca Monteforte whom he styled Marchesa di Montpelier and by whom he had a further son, Don Torbio created Duke of Valencia.

The Royal House today

In 1996 for personal reasons by means of a formal notarial act sworn in the commune office of Mascalucia (Catania) Don Roberto II abdicated categorically and irrevocably all his rights and responsibilities as Head of the Royal House. Thus Don Francesco, as the elder son born of an equal and dynastic matrimony consecrated by the Church became Duke of Perpignan and assumed all the rights and responsibilities as Head of the House of Aragon. The succession is now happily assured by Don Francesco's own sons, Don Roberto Duke of Gerona (born 1992) and Don Domenico Duke of Ayerbe (born 2001) by his wife Noble Donna Giuseppina Campisi . HRH Don Francesco is, as decided by an international

Court, Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily; Sovereign and Head of Name and Arms of the Royal House of Aragon, Majorca and Sicily; Nobleman of the Dukes of Carcaci, Prince of Emmanuel, Duke of Perpignan and by the Grace of God and hereditary right, as legitimate Pretender to the Thrones of Aragon, Majorca and Sicily, Prince of Catalonia, Count of Cerdagne, Count of Roussillon, Patrician of Catania, Lord of Valencia, Lord of Montpelier, Count of Urgell, Viscount of Carlades, etc, etc, Sovereign Grand Master of the Military Order of Saint Agatha of Paternò, Grand Master of the Royal Balearic Crown, Grand Master of the Royal Order of James I of Aragon, Grand Master of the Order of San Salvador of Aragon and of the Royal Aragonese Order of the Knights of Saint George and the Double Crown. He has the sovereign prerogatives known as jus majestatis and jus honorum, with the ability to confer honorific titles and chivalric distinctions relating to the hereditary dynastic Orders, and the quality of a subject of international law and of Grand Master of non-National Orders within the terms of the Law of the 3rd March 1951, No. 178.

Militare Ordine del Collare di Sant'Agata dei Paternò

The Military Order of the Collar (or “MOC”) was founded by King Alfonso III of Aragon on the 23rd January 1289 as a knightly institution with the purpose of defending Minorca (Reg. 078, fol. 38r, Archivo de la Corona de Aragón). The member knights were obliged

to live in the Fortress of Saint Agatha, situated in the region of that island called Saint Agatha, and so they became known as “the knights from Saint Agatha” (Archivo del Reino de Mallorca, Contratos Civitatis et Partis Foraneae, no. 352, f. 126-126v). They were each allocated a plot of land sufficient to maintain them in arms with a horse (“cavalleria”). The cavallerias were still active in the year 1600 and some are claimed to have survived into the 19th century (“Evolución de la agricultura y de la propiedad rural en la isla de Menorca”, Tomas Vidal Bendito, Revista de Menorca 1969). When Ignazio II Prince of Biscari travelled to the Balearics in the mid 18th century the remaining descendants told him of this ancient chivalric institution known as “the knights from Saint Agatha”. His notes were found by the seventh Duke of Carcaci who published them in his book in 1849 (“L’Ordine del Collare”, Francesco Paternò Castello e Sammartino, Catania 1851). Much of the historic research has been made possible by the findings of Professor Elena Lourie in her article “La colonización cristiana de Menorca durante el Reinado de Alfonso III ‘El Liberal’, rey de Aragón”in“Crusade and Colonisation” (ISBN 0-86078-266-2).

The Balearics (Majorca, Minorca and Ibiza) were an independent kingdom 1276 - 1349 and, according to international law, the consequent dynastic rights, including those related to chivalric orders and knightly associations, continue through the hereditary office of the Head of the House even if no conferments in this regard are made for a period of time. It seems that over the centuries only sporadic conferments were made, until

in the 18th century the association appears as the MOC and is more and more a dynastic Order, receiving formal Statutes in the middle of the 19th century, thereafter a hierarchical organisation with formal recognition from the reigning monarchs in the kingdom of the Two Sicilies.

The Military Order of the Collar is today a dynastic Order, that is to say, its office of Grand Master attaches to the sovereign prince who is the Head of the Royal House and is inherited by his successors. In addition to any charitable or spiritual aims, members of such Orders are bound by an oath of loyalty to the Grand Master of the Order[8].

The main historical source for the history of the Order is the book "L'Ordine del Collare, Patrimonio della Ser.Ma Real Casa Paternò", published in 1851 by the seventh Duke of Carcaci. When reorganising the family archives this distinguished historian had come across a manuscript diary of his ancestor Ignazio II Paternò Prince of Biscari, who had visited the Balearic Islands in the mid 18th century. While there he discovered an original document concerning the Order in the library of the Convent at Fornells, as well as a contemporary painting showing the badge and the dress of the knights. Fortunately Don Ignazio recorded these details and two centuries later his notes were discovered by the Duke, who set about the revival of the Order in 1851 after the publication of his book.

[8] http://www.mocterranordica.org/eng/archive.html - 2OrdColl

As early as 18th May 1851 the Order's legitimacy was recognised by the Bourbon King of the Two Sicilies, whose officials were required to record its conferrals in the Registry Office of the Kingdom. On 30th March 1853 the Governor of the Province of Catania, in the name of the King, allowed only three exceptions to the Royal prohibition on the wearing of orders other than Royal Sicilian Orders, these being Papal Orders, the Order of Malta and the Military Order of the Collar. In 1859 the Royal Commission on Titles of Nobility examined the claims of the House of Paternò to confer titles and bestow Orders and it advised the King that such acts, titles and Orders were legitimate. In 1860 the reigning Head of State, H.M. King Francesco II, approved this decision by Royal Decree and ordered its execution throughout the Kingdom. The King also recognised Don Mario as hereditary Grand Master of the Order and made various provisions to ensure the succession to the Grand Magistracy. For many years the Order remained almost a Family Order, largely restricted in its membership to relatives and close associates[9].

The Order was reconstituted in 1961 and new Statutes have been issued and revised on a number of occasions. Since his accession HRH Don Francesco has laid great stress on the works of charity supported by the members of the Order. Over the years members of the Order have raised considerable sums for charity and have performed countless charitable acts for the relief of suffering, in keeping with the highest aims of the Order. The

[9] www.mocterranordica.org/eng/archive.html

legitimacy of the Order as an official dynastic Order has been established several times by Italian courts of law, most recently 8th January 2003 by the International Court of Arbitration in Ragusa. An archive with complete historical and legal documentation may be found at the web site quoted above. Today the Order is organised into Grand Priories in Europe and the United States of America with individual members elsewhere. The different jurisdictions arrange various activities for the knights and dames in the countries where they operate.

Genealogy of the Heads of The Royal House of Aragon, Majorca and Sicily from James I the Conqueror to date

1213 – 1276	James I King of Aragon
1276 – 1285	Peter III King of Aragon
1285 – 1291	Alfonso III King of Aragon
1291 – 1327	James II King of Aragon
1327 – 1336	Alfonso IV King of Aragon
1336 – 1387	Peter IV King of Aragon
1387 – 1395	John I King of Aragon
1395 – 1410	Martin I King of Aragon
1410 – 1433	James II Count of Urgell
1433 – 1454	Alfonso II, Duke of Gandia, Count of Ribagorza
1454 - ????	Sancho de Ayerbe, b. ca 1400
???? – 1518	Sancho, b. ca 1440, d. 1518
1518 – 1520	Alfonso, Count of Simari 1519, b. 1470, d. 4/6 1520
1520 – 1548	Michele, b. 1470, d. 3/10 1548

1548 – 1588	Alfonso, Marquis of Grotteria 1583, d. 11/10 1588
1588 – 1592	Indico, d. 13/6 1592
1592 – 1596	Pietro (younger brother of Indico), d. 25/2 1596
1596 – 1606	Vincenzo, d. 1606
1606	Francesco (younger brother of Vincenzo), d. 1606
1606 – 1613	Gaspare (younger brother of Francesco),
1613 – 1630	Pietro
1630 - ????	Filiberto, d. 29/10 1699
???? – 1698	Giuseppe, b. 31/8 1650, d. 1698
1698 – 1727	Nicola Michele, b. 29/7 1676, d. 1/12 1727
1727 – 1739	Emilio, b. 9/4 1689, d. 4/5 1739
1739 – 1784	Giuseppe II, b. 4/4 1729, d. 18/1 1784
1784	Felice, b. 8/7 1730, d. 17/10 1784
1784 – 1837	Giuseppe III, last Prince of Cassano, b. 4/6 1784, d. 8/7 1837
FAMILY PACT of 1853	
1838 - 1906	Mario
1906 – 1908	Enrico (youngest son of Mario)

1908 - 1934	Eleanora (sister of Enrico) & Roberto I (cousin of Enrico)
1934 - 1968	Francesco Mario (son of the above)
1968 - 1996	Roberto II (son of the above)
1996 -	Francesco (gloriously reigning)

Expert Opinion - Prof. Dick Harrison, Department of History, Lund University, Sweden

OPINION

From documents dating from the middle of the Nineteenth Century which have been preserved in the original it can be concluded that the then reigning Royal House of Bourbon of the Kingdom of The Two Sicilies recognised the Militare Ordine del Collare di Sant'Agata dei Paternò ("MOC") as being on a par with its own dynastic orders and considered it as part of the patrimony of the Paternò dynasty.

The history of the MOC before 1850 is unknown, as far as documentary evidence is concerned. There are strong indications that the Order, as we know it, began as a dynastic order attached to the Paternò family well before 1850. According to family traditions the origins of the Order are mediaeval. However, these traditions cannot as yet be verified on the basis of written sources.

These traditions tell of a chivalric brotherhood or order of Balearic origin and associated with Saint Agatha. Hypothetically the tradition may originate in the documented fact that in 1289 King Alfonso III of Aragon initiated a process of granting lands and specific related rights to a certain number of knights on Minorca,

an island that he had recently conquered from the Muslims. These knights were required to reside in the fortress named after Saint Agatha. The knightly lordships were hereditary as can be demonstrated by their survival over several centuries. It should be regarded as possible, although it cannot be demonstrated, that this brotherhood mentioned in family tradition emanated from these knights or some of them.

The more recent evolution of the MOC has rather reinforced the position of the House of Paternò since the Head of the Dynasty has secured recognition of his position as a fons honorum and a subject of international law.

The MOC should therefore be designated a legitimate dynastic or family order. As such a dynastic order from an historical point of view it must be regarded as equivalent to other legitimate dynastic orders such as those belonging to the Royal House of Bourbon of The Two Sicilies and to other former regnant royal or princely dynasties.

Dick Harrison
Professor of History
Lund University
Sweden

2nd May 2008

Family Pact - Prof.Gunnar Bramstang, Professor Emeritus of Public Law, Sweden

Opinion

I have been given the question why it is that family pacts in royal and princely dynasties (e.g. Hapsburg, Nassau, Lippe and others) by the surrounding world throughout have been regarded as binding, and in particular the family pact drawn up 14th June 1853 by the House of Paternò (the Royal House of Aragon, Majorca and Sicily) having been found valid by Italian Courts of Law. Regarding dispute on the order of succession the doctrine of public law ordered that the succession should lawfully be settled by the members of the sovereign dynasty. This opinion is asserted e.g. by Samuel Pufendorf, "De officio hominis et civis" (1682) book II, chapter 10, nr 12: In case a controversy should arise in regard to the succession in a patrimonial kingdom, it will be best to take the matter before arbitrators among the royal family.

In this tradition it is reasonable to view to surrounding world's respect for, and the acceptance of the courts of law of, such family pacts as an expression of that these dynasties are still considered sovereign in internal matters such as the order of succession.

Regarding the pact in question of the Royal dynasty of Paternò, its validity has been tried and established several times by courts of law, and it must thus be regarded as valid under both public and civil law; all considered in the perspective of international princely law.

Lund 12th August 2008
Gunnar Bramstang
Professor Emeritus of Public Law

Recognised international Orders of Knighthood and their administrative organisations' status and constraint by norms - Prof. Gunnar Bramstag

Some notes with specific reference to "Militare Ordine del Collare" ("MOC")

In a statement of opinion to HRH Don Francesco dated 12 August 2008 regarding the substance and validity of agreements (family pacts/ditto treaties) within dethroned royal and princely Houses that retain their rights as pretenders to the throne, and with particular reference to the medieval Royal House of Aragon, Majorca and Sicily, I have outlined in section 5 an overall survey of the status attributed to Orders of Knighthood such as MOC. In this, their status as separate legal entities subject to international public law has generally been noted. Traditionally, Orders of this kind are terminologically classified as separate subjects of law under public international law (*sui generis*) and essentially autonomous legal entities with their own legal capacity. In earlier stages of their development, Orders of Knighthood seem to have been regarded as public authorities, forming part of the public administration that was under the direction of the sovereign/government. (For more general information on

this point, see *Bramstång, Kungl. Maj:t:s Ordens rättsliga status* (Legal Status of the Order of His Majesty the King). In *Festskrift till Fredrik Sterzel*, 1999, p. 83 et seq.)

On being requested to clarify my view on the MOC's status and capacity for action as a subject of law, I would like, by general consideration of its statutes and conclusions arising from the same (1), to examine the relationship of the Order to the Royal House (2), members (3) and legislation in the countries in which its activities are conducted (4). A general opinion on objectives and practical significance may briefly be outlined (5). Finally, space is given to a number of summarising, concise reflections and conclusions (6).

1. The fundamental statutes for MOC dating from 2007 (replacing the 1983 and previous statutes) that are known to me, along with accompanying complementary regulations form a basic framework that is properly thought-out in both its main principles and its details. The basic statutes, in combination with detailed regulations and general instructions, encompass the Order's Codex (Ch. 5, Article 18) or constitution.

The organisation of the Order (Ch. 9) creates a certain impression of a division into governing, legislative, executive and judicial functions inspired by 18th century theories of power or functional distribution (as advocated by Montesquieu for example). Its current character of a spiritual Order of Knighthood is evident, for example, from provisions governing the Order's own

clergy (Ch. 8). A general principle of the constitution is the *sovereignty* of the Grand Master and the consequent, controlling and all-encompassing right of decision-making that accrues to the Grand Master. The issue is thus not about any sharing of power, but rather about *defining* and *regulating functions*, subordinated to the leadership of the Grand Master.

2. The above-mentioned, detailed statute-based regulation offers considerable support for my previously expressed opinion on MOC as being essentially a separate, autonomous subject of law, although intimately linked with the Royal House of Aragon via the Grand Master. An important criterion in defining the organisation as such is precisely the existence of its own detailed, stabilising system of regulations, incorporating provisions on objective, organisation, right of decision-making and procedure.

3. This Codex or constitution is authoritatively normative and controlling in terms of the relationship to and actions within the MOC of the officials and members of the Order organisation. There is no reason for apprehensions that a consequence of these statutes could risk causing conflict with fundamental legal principles, from either an international or a national legal perspective.

4. In Europe, MOC is divided into four Grand Priories, of which the Terra Nordica Grand Priory covers the Nordic and Baltic States. Grand Priors, Priors and Commanders represent the Order within their particular

areas of jurisdiction in accordance with the MOC Codex and directives from the Grand Master. In the absence of an independent right of decision-making laid down in the constitution, these locally operating units should be viewed more or less as executive bodies within the Order, and hardly as in themselves autonomous subjects of law/legal persons.

In their *internal* relations to the Order, its organisation and members, the units in question are subject to the MOC's system of rules based on the Grand Master's sovereignty. In their external activities they are, of course, required to observe the relevant principles laid down in the above-mentioned Codex, but they must also diligently comply with the legal system in the *country of operation*, especially where *collaboration* is established between the units as representatives of MOC and – for example – social care authorities, aid organisations and other parties, whose actions are governed by the provisions of national law along with relevant principles of European law that take precedence.

The application of the law by Swedish courts and public authorities is dictated by the general requirements of *legality*, *objectivity* and *non-discrimination* (*RF* (Instrument of Government) Ch. 1, articles 1 and 9) and *autonomy* between public authorities (*RF* Ch. 11, article 7). Since a Grand Priory established in Sweden is to be regarded as a part of and a local representative of MOC – a legal entity subject to international public law – the *principle of autonomy* will in my opinion become relevant *ex analogia* in that *on the one hand* no national

public authority can influence MOC's decision-making on matters relating to the exercise of official function (which may include the donation of aid) or application of a law.

If *on the other hand,* aid funds from MOC are placed at the disposal of a Swedish public authority or organisation for an agreed purpose, the aid donor should be aware that the use of the funds will in the final analysis be decided by e.g. the provisions of Swedish social welfare legislation (and by general legal principles). Specific destinations or desires on the part of MOC must, in order to prevent complication, satisfactorily accord with the principles of the legal system in Sweden (ordre public) and with the principles of the relevant specific legislation. A general study of the MOC constitution hardly gives rise to fear of discord in cooperation with the public authorities and other organisations in the country of operation.

5. The general interest in and the appreciation of spiritual Orders of Knighthood has evidently risen since World War II. Not least during periods of depression and worldwide economic recession, the Hospitaller work of Orders of this kind may in many cases be a valuable complement to the central and local government's duty of assistance to the country's citizens. In view of continuing internationalisation and international aid in various forms and project descriptions, the corresponding activities of the Orders of Knighthood appear well in line with the trend of the times. From the viewpoint of promoting efficiency, it also seems

desirable that aid activities should where appropriate be coordinated via interaction between the various organisations involved. The latter aspects have to some extent been alluded to in the preceding section.

6. In summa, MOC is to be regarded as being closely linked with the Royal House in question, but as an essentially autonomous legal entity subject to public international law. This view gains force from a study of the order's constitution, which represents a stable basis for its internal functioning, legally and in practice, as well as for its external competence, ultimately based on its own system of regulations.

In the absence of a constitutionally determined decision-making right of their own (disregarding any possibilities for delegation), MOC's entities established e.g. in Sweden in the form of Grand Priories, Priories and Commanderies are not to be termed as subjects of law autonomous of the Order, but as communicating and executive organisations representing the Order. The issue of their being constrained by the MOC's statutes and – in their external functioning in the country of operation – by national legislation is addressed in section 4, above. The present-day importance of Orders of Knighthood, both in themselves and in their collaboration with social welfare authorities and individual actors in this field is worth emphasising.

In conclusion, it may be noted that the status of MOC as an autonomous subject of law is historically and comparatively determined (cf. my study, referred to

initially) and is also adequate in terms of systematic and practical considerations. This autonomy does not *in any way* encroach on the Grand Master's sovereign right of decision-making or on MOC's historically given relationships to the Royal House of Aragon.
Lund, 19 May 2009

Gunnar Bramstång
Professor Emeritus in Public Law,
Doctor of Law

Ragusa Judgement

REPUBLIC OF ITALY
OFFICIAL GAZETTE OF THE REGION OF SICILY
57th Year
Palermo-Friday, the 9th May 2003
Number 19
(omissis) {pp. 20-21)

VARIOUS ANNOUNCEMENTS
(omissis)

THE ORDINARY TRIBUNAL OF RAGUSA
Be it known that, on the 28th January 2003, there was deposited in the Chancery of the Ordinary Tribunal of Ragusa the following judgment handed down in the collective session of the 8th January 2003, at the seat of the International Court, 108 Via Roma, Ragusa, by the International Judgments Court constituted by the following Magistrates/Judges of the First Rank.
- Adv. Francesco Garofalo, Dr. Salvatore Baschetto and Dr. Marco Guastella, in the matter between the Higher Institute of Nobiliary Law, and entity currently at 254 Corso 6 Aprile, Alcamo and legally represented and defended by Dr. Damiano Bonventre, Duke of San Carlo, an Italian citizen, in his capacity as Rector of the said institute; and Mr Francesco Nicola Roberto Paternò Castello di Carcaci, born in Catania on the 6th June 1964, resident at … , represented and defended by Adv. Antonio Messina of the Court of Trapani, with his offices at 7 Via F.lli S. Anna, Alcamo;

- To Mr Francesco Nicola Roberto Paternò Castello di Carcaci, a blood relative and descendant in a collateral line of the last sovereign of the Royal House of Aragon, as his legitimate successor and as pretender to the throne pertain and legitimately belong the following qualities, rights and privileges:

a) the quality of Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily;

b) the right to designate himself Sovereign and Head of Name and Arms of the Royal House of Aragon, Majorca and Sicily, never renounced, with the right for himself and his successors for an unlimited period whether male or female, to all the qualities prerogatives, attributes and styles of that rank and with the ability to use coats of arms, titles and designations which belong to him by hereditary right,

c) the nobiliary style of Nobleman of the Dukes of Carcaci, Prince of Emanuel, Duke of Perpignan and by the Grace of God and hereditary right, as legitimate Pretender to the Thrones of Aragon, Majorca and Sicily, the titles of Prince of Catalonia, Count of Cerdagne, Count of Roussillon, Patrician of Catania, Lord of Valencia, Lord of Montpelier, Count of Urgell, Viscount of Carlades, etc, etc, Sovereign Grand Master of the Military Order of Saint Agatha of Paternò, Grand Master of the Royal Balearic Crown, Grand Master of the Royal Order of James I of Aragon, Grand Master of the Order of San Salvador of Aragon and of the Royal Aragonese Order of the Knights of Saint George and the Double Crown.

d) the sovereign prerogatives known as jus majestatis and jus honorum, with the ability to confer nobiliary

titles, with or without predicates, noble arms, honorific titles and chivalric distinctions relating to the hereditary dynastic Orders,
e) the quality of a subject of international law and of Grand Master of non-National Orders within the terms of the Law of the 3rd March 1951, No. 178.
f) the present judgment, which has an irrevocable character under Italian Law, takes effect, as the responsibility of and at the expense of the interested party, in the territory of those States which have signed the New York Convention of the to" June 1958, which was effective in Italy by virtue of the Law of the 19th January 1968, No. 62 (Official Gazette of the Republic of Italy of the 2nd of February 1968, No 66);
g) the annotation, by right or by choice, on the baptismal register, retained in the territorially appropriate parish church of the Catholic Church of the text that follows: His Royal Highness the Royal Prince Don Francesco Nicola Roberto Paternò Castello di Carcaci, of Aragon, Majorca and Sicily;
h) the registration in the Category of Justice of the Higher Institute of Nobiliary Law and the consequent payment of the professional fees of Euros 500.00, as fixed for the year 2003, to be paid in Switzerland as is laid down for an agreement under International Law.
The President of the Tribunal of Rag usa, by a Decree of the 17th February 2003 deposited in the Chancery on even date, No. 50/2003, in the Register of Civil Judgements, No 364 cron. and No. 177 rep., recorded in Ragusa on the 7th March 2003, No. 246, Series 4, has given effect within the territory of the Republic to the Judgement given above handed down by the Tribunal for

International Judgements with its seat in Ragusa at 108 Via Roma.

The Chancellor Maria Donzelli (signed)

The President Duchi (signed)

The present notice is published in extract in execution of the relative judgement of the President of the Ordinary Tribunal of Ragusa by decree on the 17th February 2003. N.89

n.q. Damiano Bonventre
L.c. 19/0017 (in payment)

The independence of the courts and the validity of judgements vis-à-vis government and administrative agencies. - Gunnar Bramstang, Professor Emeritus of Public Law

Notes in connection with decisions in Italy on the case of the Royal House of Aragon, Majorca and Sicily

Through rulings by courts of law in Italy, the representative of the aforesaid mediaeval Royal House has been granted precisely defined princely prerogatives, rights and powers and the House has as such been designated as a separate subject of international law. I have been asked the question of whether Italian authorities, above all the Ministry of Foreign Affairs, are bound by these decisions. According to information received, there has been noted a certain resistance on the part of the Ministry to accept these judgments, which establish rights with regard to status, princely privileges and powers.

First, I would like to summarise again the main points of the judgements (1), then outline general historical trends of relevance in this context (2). A limited study of Italian and Swedish constitutional texts, shedding light on the independent and impartial position of the courts relative to the State and public administration merits general

attention and comment (3). Finally, space is given to a brief summary and overall reflections and conclusions (4).

1. Judgements from Italian courts in 1952 (Bari) and 1964 (Pistoia) established via the procedure of criminal law that the representative of the Royal House of Aragon is entitled to confer noble status, to be heirs to the House of Paternò Castello Guttadauro di Emmanuel and legitimate holders of that family's rights, including the exercise of *ius honorum*, that are sustained via the family tradition and cannot become void as a result of dethronement.

Particular attention should be focused on an arbitration judgment from 2003 by Tribunale Ordinario di Ragusa, according to which Francesco Nicola Roberto Paternò Castello di Carcaci was awarded several precisely defined prerogatives in his capacity as direct descendent and heir to the collateral line to the last Sovereign of the Royal House of Aragon, as legitimate heir and pretender to the throne, namely:
a) The quality of Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily.
b) The right to designate himself Sovereign and Head of the Name and Arms of the Royal House of Aragon, Majorca and Sicily, never renounced, with the right for himself and his successors for an unlimited period to all the qualities, prerogatives, attributes and styles of that rank and with the ability to use coats of arms, titles and designations that belong to him by heredity right.

c) Noble rank accompanying a number of titles associated with the Royal House and sovereign grandmastership relating to Orders of Aragon stated.
d) The sovereign prerogatives known as *jus majestatis* and *jus honorum*, with the ability to confer noble titles, with or without predicates, noble arms, honorific titles and chivalric distinctions relating to the hereditary dynastic Orders.
e) The quality of a subject of international law and of Grand Master of non-National Orders within the terms of the Italian law of 31 March 1951, no.178.
f) The present judgment has an irrevocable character under Italian law. As regards its geographical extent, reference was made to the New York Convention of 10 June 1958 (concerning the recognition and enforcement of foreign arbitral awards).

In summa, the above-mentioned legally binding judgements support the notion of a consistently positive view by the courts that is also legalistically well founded, on the continuing existence *in concreto* of extensive hereditary princely prerogatives, their recognition and enforcement. Their irrevocable nature is emphasized, and reference is made to an international convention that has been ratified by Italy and is of extreme importance to the current social activities of the Royal House concerned. The status of a subject of international law gives rise to the observation that, in Professor Jacob Sundberg's view (statement of opinion dated 15 September 2006) the representative of the Royal House concerned must «be considered as having rank equal to a head of state».

2. Constitutional ideologies were emphasized and intensively aired in European and Anglo-Saxon political philosophy during the Age of Enlightenment, heavily influenced by Montesquieu *et al.* (Charles Louis de Secondat, Baron de La Brède et de Montesquieu; 1689–1755). During this period, theories of separation of powers crystallized, in which the fundamental principle was that all concentration of power leads to abuse of power and legal uncertainty, whereas a separation of the state into different institutions able to balance and control each other fosters liberty and legal certainty for a country's citizens.

Theories of separation of powers and associated lists of civil liberties and rights eventually became the foundation for later constitutional ideologies, where one indispensable constituent is the independence of the courts vis-à-vis the governing and executive functions. The former must of course duly implement enacted laws, but in various systems have a right, to varying extents, to scrutinize laws. Without a fundamentally fully independent judiciary not susceptible to influence, enforcement of civil liberties and rights appears to be a fantasy. (On the subject of the political philosophical background and the effect thereof in developing European constitutions in the 16th, 17th and 18th Centuries, see Lex. Bramstång, *1809 års regeringsform och de administrativa frihetsberövandena* (The 1809 Instrument of Government and the Administrative Elimination of Liberties), *Skrifter utgivna av Institutet för rättshistorisk*

forskning, (Papers Published by the Institute of Legal Historical Research) Lund 1982).

While in Sweden the 1809 Instrument of Government was manifestly influenced by the theory of separation of powers, the current Instrument of Government, dating from 1974, is said to rest on the separation of functions principle. This terminological shift appears, in practice, to be minute. The essential point *in concreto* consists of the constitutional statute that in both Italy and Sweden may be considered to express the independence granted to the courts and the respect that on this basis should be accorded to their decisions by representatives of governing and executive institutions. Of course, laws and ordinances may be amended in democratic order, but then with the avoidance (one hopes) of unacceptable consequences in the form of negative retroactivity and infringement of «acquired rights». An ultimate line of defence against the latter-mentioned wrongs may be sought at the European Court of Human Rights or the European Court of Justice.

3. The Italian constitution of 1947, which I have consulted in English, is hardly surprising in giving expression to a separation of powers or functions. The republic's organization consists of Parliament, the government and the public administration, plus the legal system with the judiciary. The independence and impartiality of the courts are emphasized in several articles: «Judges are», states Art. 101, «subject only to the law». Art. 104 is particularly clear: «The Judiciary is a branch that is autonomous and independent of all other

powers» (my italics). The independence and impartiality of the judicial power can hardly be expressed more clearly.

Under the heading «Rules on Jurisdiction», several thought-provoking provisions are set forth on the scope of the important capacity of the judiciary from the viewpoint of legal certainty.

In this context, Art. 113 should be noted, with its introductory paragraph: «The judicial safeguarding of *rights and legitimate interests* before the bodies of ordinary or administrative justice is always permitted against *acts of the public administration*». It continues: «Such judicial protection may *not be excluded or limited* to particular kinds of appeal or for particular categories of acts. » (All italics mine).

The conclusions that may be drawn from the above as regards the independent role of the Italian courts vis-à-vis governing, executive and administrative institutions on the whole may now be compared with observations concerning Sweden's 1974 constitution; in part sparsely worded but essentially resting on a traditional foundation influenced by the philosophy of the Age of the Enlightenment. Attention is focused above all on Instrument of Government (*RF*), Ch. 11, with its introductory declaration in subsection 4, that the courts' administration of justice functions and the main characteristics of their organization are prescribed by law; unlike the administrative agencies, they are not accountable to the government (cf subsection 6).

Permanent judges may not be removed from their position.

In the case of the *administrative agencies,* higher government agencies are specifically prohibited from deciding how lower agencies should rule on issues that arise from the exercise of public authority vis-à-vis the individual or that relate to the implementation of a law (*RF*, Ch. 11, subs. 7). *A fortiori* the *principle of impartiality* prohibits any (attempted) influence by Parliament, the government or any administrative authority over any decision by a court. (For more on the independent status of the courts, see *Håkan Strömberg, Sveriges Författning* (Sweden's Statutes), 17 edition, Lund 2001, p. 64 *et seq.*)

In summa, the autonomy of the courts is guaranteed conclusively in the text of the Italian constitution and the comparable part of the Swedish constitution. It follows from this that the government in the countries concerned here, together with the administrative authorities and other institutions with a status or remit governed by public law must respect *in general* the integrity of courts and *in particular* legally binding rulings by courts, unless such decisions are tainted by objectively established *nullity*; i.e. are affected by clear, grave and indisputable irregularities. This is not in any way the case with Italian judgments of relevance here, establishing as they do confirmed inherited rights that have never been renounced.

Repudiating decisions by the courts is a *different matter entirely* from the government's traditional authority to grant *pardon and dispensation* and the existence of a system of checks based in constitutional law with regard to the official functions of judges and others exercising public authority.

The above immediately draws one's attention to Article 6 of the European Convention on Human Rights, which guarantees everyone, in the determination of their civil rights, a fair and public hearing within a reasonable time by an *independent and impartial tribunal* established by law. Such requirements have *in concreto* been satisfied, most recently via the 2003 arbitral award. Any *administrative rejection* of this judgment (wholly or partly) would *clearly conflict* with the said Article and also acquires the character of *discrimination* under Article 14. (Cf. also *ratione materia* Article 8 regarding protection of privacy, including respect for inherited and judicially confirmed *moral rights*.) An (admittedly difficult to imagine) action along these lines could without a doubt raise the issue of a breach of the convention. As a principle, the rules of the European Court of Justice take precedence over the laws of Member States.

4. In the above points, the rulings by the Italian court have been presented with the emphasis on the most recent arbitral award in 2003, which established important prerogatives and status relationships (point 1). A general background to contemporary constitutional ideologies and constitutions has been sketched, in which

separation of powers or functions is a basic principle of the utmost importance for the enforcement of civil liberties and rights. In this context, independent and impartial courts stand out as an essential constituent, as does *respect for their legally binding decisions*, including in cases where politicians in power may be less than enthused. Not least in the establishment of the legal position and legitimate interests of individuals, the importance of respecting court rulings emerges as binding and prescriptive (point 2). The constitutions of both Italy and Sweden express unequivocally this way of thinking, which also characterizes the European Convention on Human Rights and EU law, of which the above-mentioned Convention forms part (point 3).

Harmonized European law provides a basis for the following considerations and conclusions *in concreto*.

If the Italian authorities refuse to respect the 2003 arbitral award (and the preceding, above-mentioned judgments), the procedure will conflict uncomfortably with *domestic law* and will in addition will be *sharply at variance with the New York Convention*, whose ratification must reasonably be assumed to rest on the *basic premise* that the Member States recognize the validity of the rulings of their own courts. Otherwise, the absurd consequence *in casu* is risked, that the status and rights of HRH Don Francesco and the Royal House of Aragon are recognized, leading to concrete enforcement in all States signed up to the Convention other than in the country concerned, Italy.

The Italian judgments observed above – not least the arbitral award – refer to the confirmation of *inherited personal rights*, protected by the European Convention on Human Rights with a requirement (in Article 6) for a full and fair (in this case already completed) hearing in a court of law. Any infringement (in whole or in part) of HRH Don Francesco's rights as confirmed by the court could consequently result in Italy being sued at the European Court of Human Rights for breach of the convention – a situation that certainly should be avoided and is only pointed out as «*ultima ratio*».

Lund, Sweden, the 30th October 2009
Gunnar Bramstång
Professor Emeritus of Public Law at the Universities of Uppsala and Lund,
Doctor of Law, Bachelor of Arts

Regarding dethroned princely Houses and their legal rights - Professor Emeritus of Law Jacob W F Sundberg.

Reference is made to the decision of the United Court of Bari of the 1st April 1952 in the case of the prosecutor vs. Umberto Zambrini and to the decision of the Tribunal of Pistoia of the 5th June 1964 in the case of the appeal against the penal judgment given against Francesco Mario Paternò Castello having found Prince Francesco Mario Paternò Castello di Carcaci, in his capacity as the last representative of a sovereign dynasty (the Royal House of Aragon), entitled to confer titles of nobility (the Court of Bari), respectively being the heir to the House of Paternò Castello Guttadauro di Emmanuel and legitimate holder of the same family's rights, including the power of *ius honorum* which has been preserved by family tradition and which cannot disappear through dethronement (Pistoia).

Further reference is made to the decision of the Ordinary Tribunal of Ragusa of the 9th May 2003, in session as an international court of arbitration, in the case between the Higher Institute of Nobiliary Law vs. Francesco Nicola Roberto Paternò Castello di Carcaci. According to the findings of the court of arbitration the following rights belong to Francesco Nicola Roberto Paternò Castello di Carcaci, in his capacity as consanguineous and descendant in a collateral line of the last sovereign of the

Royal House of Aragon as his legitimate successor and as pretender to the throne:

a) the quality of Royal Highness and Royal Prince of the Royal House of Aragon, Majorca and Sicily;
b) the right to designate himself Sovereign and Head of Name and Arms of the Royal House of Aragon, Majorca and Sicily, never renounced, with the right for himself and his successors for an unlimited period, whether male or female, to all the qualities, prerogatives, attributes and styles of that rank and with the possibility to use coat of arms, titles and designations which belong to him by hereditary right;
c) the nobiliary style of Nobleman of the Dukes of Carcaci, Prince of Emmanuel, Duke of Perpignan and by the Grace of God and hereditary right as legitimate Pretender to the Thrones of Aragon, Majorca and Sicily, to the titles of Prince of Catalonia, Count of Cerdagne, Count of Roussillon, Patrician of Catania, Lord of Valencia, Lord of Montpelier, Count of Urgell, Viscount of Carlades, etc, etc, Sovereign Grand Master of the Military Order of the Collar of Saint Agatha of Paternò, Grand Master of the Order of the Royal Balearic Crown, Grand Master of the Royal Order of James I of Aragon, Grand Master of the Order of San Salvador of Aragon and of the Royal Aragonese Order of the Knights of Saint George and the Double Crown;
d) the sovereign prerogatives known as *jus majestatis* and *jus honorum*, with the ability to confer nobiliary titles, with or without predicates, noble arms, honorific titles and chivalric distinctions relating to the hereditary dynastic Orders; and

e) the quality of a subject of international law and of Grand Master of non-National Orders within the terms of the (Italian) Law of the 3rd March 1951, No. 178.

Taking into consideration what has been mentioned above and in particular the declaration that the Head of the Royal House of Aragon, Majorca and Sicily is recognised as a subject of international law, the question has been put to the Stockholm Institute of Public and International Law as to what this may involve within the framework of traditional European public law and which obligations, possibilities or limitations may follow from said recognition. On account of this, the Stockholm Institute of Public and International Law has compiled the following

Formal Opinion

The reference to traditional European public law requires that the case be put into its perspective.

The first thing that must be said is that the starting point for all lines of argument is the hereditary principality. This may be said to go back to what is called the Salic Law (*Lex Salica*), which was written down during the early 6th century under King Clovis as law for the Salian Franks, and which was the foundation for the empire of Charlemagne. As a current implication of the Salic Law it is still true in respect of the Channel Islands (Guernsey and Jersey), which are a separate feudal remain under British sovereignty within the Duchy of Normandy, so that the Queen of the United Kingdom is there referred

to as the Duke of Normandy (never as Queen) and saluted as “the Queen our Duke”. In a similar way in the British Isle of Man – an ancient Norwegian Viking realm – she is referred to as “Our Lord”. One regulation from the Salic Law would play an important part in European history from the feudal Middle Ages onwards, namely with regard to the inheritance of land. The law prescribed that “hat cometh and hood goeth” as it is expressed in Swedish medieval history. This law prohibited a woman from inheriting Salic land. All land through paternal inheritance should go to the men who are brothers, even if under King Chilperic I some time around 750AD there was an amendment which allowed the inheritance to go to a daughter if there were no male heirs. According to the custom prevailing in the hereditary principalities since the 15th Century, in order to safeguard agnatic succession, the Salic Law is regarded as excluding female succession. There was however also semi-Salic succession, which meant that, when all male heirs were extinct including those in the collateral lines, an inheritance would go the closest female heir (the daughter of the last male heir) and after her revert to male Salic succession.

The Salic Law and its various interpretations lies behind a number of European wars, including the Hundred Years War, but also more recently such as the Carlist Wars in 19th century Spain, the Miguelite Wars in Portugal of the same period and still closer to us the war of 1848 concerning the right to Schleswig-Holstein.

Until the dissolution of the universal monarchy and its emperors and popes, which has characterised the so-called New Age, and the transition to an international community of states and a public law between sovereign princes based on the Peace of Westphalia (1648), political life was characterised by continued dynastic politics carried out between kings and emperors appointed by the Grace of God. Between them there was formed a special public law of the princely Houses, which found its most distinguished expressions in the Treaty of Utrecht 1713. This succession of peace treaties concluded the War of the Spanish Succession 1701–1713, which raged at a time when Sweden was afflicted by the Great Northern War (1700–1721) and thus it followed that the Swedish interest in it was very moderate. The war was primarily between on the one hand Louis XIV of France and Philip V of Spain and on the other the so called Grand Alliance of Queen Anne of Great Britain, the Low Countries, the Duchy of Savoy and others. King Charles II of Spain was childless, sick and himself the last male member of the Spanish branch of the House of Hapsburg. The entire Spanish Empire would therefore be without direct heir when he died (as transpired on the 1st November 1700). Charles had two aunts. Claims to inherit from him were made on behalf of their respective sons, Louis XIV of France and Leopold I of Austria. Furthermore, both were married to the sisters of Charles II, Maria Theresa and Margarita Theresa respectively. It is true that the former had renounced her claims when she married Louis XIV, but this did not prevent her husband from re-activating those claims and they received a certain recognition. But in

order not to stir up bad blood among the opponents both monarchs transferred their claims to relatives, Louis XIV to his second grandson Philip the Duke of Anjou, and Leopold I to his younger son by his third marriage the Archduke Charles. As a possible compromise claims were also made by the Bavarian Prince Elector Joseph Ferdinand, who was the son of Leopold's daughter Maria Antonia.

It was considered permissible according to current public law at that time for a prince to transfer sovereign rights by means of an act of law *inter vivos*, see Hugo Grotius, "*De jure belli ac pacis libri tres*", book II, chapter VI, numbers 3 and 14, and book I, chapter III, number 12. Thus the prince was entitled to lay down by means of a Will or other provision in the event of his death which succession would be valid for subjects or objects of public law. The testamentary provision made by King Charles II of Spain in favour of the grandson of Louis XIV, a Bourbon, was therefore completely in accordance with this practice. See here Samuel von Pufendorf, "*De officio hominis et civis juxta legem naturalem libri duo*", book II, chapter 10, number 6 and chapter 7 number 11 (cf. Johann Wolfgang Textor, "*Synopsis iuris gentium*", chapter IX, numbers 26 and 27).

A preliminary treaty of distribution had been made in October 1698 between France, England and Holland who divided a number of European territories between the claimants to the throne but gave the rest of the Spanish empire to the Prince Elector Joseph Ferdinand, however this settlement came to nought through the

sudden death of Joseph Ferdinand. A second treaty of distribution between the same powers was made in 1700, which gave the crown of Spain to Archduke Charles and compensated France with a number of other areas. But then King Charles II died and in his Will he had given the 17 year old Duke Philip of Anjou as the heir to all his states and, with the consent of Louis XIV, Philip accepted the Spanish crown and on the 18th February 1871 entered Madrid. With this the War of the Spanish Succession broke out.

It ended in the same dynastic manner. Leopold of Austria died in 1705 and was succeeded by his son Joseph I, who in turn died in 1711. His closest heir was Archduke Charles. This would have meant a union between Spain and Austria under the same ruler which was not in the interests of the Grand Alliance. Hence in January 1712 the Peace Congresses of Utrecht were initiated, which finally led to the conclusion of peace between England and France on the 11th April 1713. According to this treaty Philip of Anjou kept the Spanish empire, on condition that the crowns of Spain and France were never to be united.

The settlement should also be viewed against the background of the special dynastic structure of Austria. The Austrian monarchy was until the reign of Maria Theresa only a conglomerate of countries that in many cases had nothing in common except the same ruler. To a great extent the empire had been brought together through dynastic liaisons and Austrian dynastic politics were considered especially successful, as is apparent

from the well-known maxim *Bella gerant alii, tu felix Austria nube* (Others may make war, you happy Austria get married).

With the Treaty of Utrecht a rule of public law was confirmed which demanded that a prince or princess with hereditary rights should renounce such rights when he or she married into a foreign princely family. The issue has been commented on by Professor J.W.H. Verzijl in "International Law in Historical Perspective", book III, p. 332, as follows:

> The inconvenience of such hereditary acquisitions of territorial sovereignty had already become obvious long ago, owing to the danger of the accumulation of power and the consequent disturbance of the existing political equilibrium. This has led to the express prohibition of concentrating two specific crowns on one head …

According to this rule of common and public law (royal connivance) it became customary within the royal Houses of Europe that when a prince or princess (with hereditary rights in his or her own royal House) married into a foreign royal House, he or she would renounce the hereditary rights in his or her own House in order to enter the royal House of the husband or wife and assume the titles of that House and become the subject of its sovereign, all in order to prevent a union of hereditary claims on different subjects of public law.

Such provisions and agreements made by a sovereign *de jure* in his public capacity are subject to the rules on treaties in public law (Emmerich Vattel, "*Le droit des gens"*, numbers 214 – 215). Testamentary regulations (political testaments) include public unilateral international transactions, see in greater detail Oppenheim-Lauterpacht "*International Law"* 8th ed. vol. I, numbers 486, 488 (cf. J.W.H. Verzijl in "International Law in Historical Perspective" vol. II, p. 17, and vol. III, pp. 304-7). If the person who in this way by means of a Will or other provision has lost his or her hereditary right has failed to protest against the Will or provision, a prescription of public law sets in against every later questioning of such a public legal disposition on behalf of the descendants, see Emmerich Vattel, "*Le droit des gens"*, book II, numbers 145-146 (compare the Vienna Convention from 1969 on the law of treaties, art. 31.3(a).).

Should a dispute arise concerning which succession may be valid it was recommended in the doctrine of public law that succession is lawfully settled by the members of the sovereign house in question, e.g. Samuel Pufendorf, "*De officio hominis et civis libri duo"*, book II, chapter 10, p 135 ff. :

> In case a controversy should arise in regard to the succession in a patrimonial kingdom, it will be best to take the matter before arbitrators among the royal family.

(cf. Hugo Grotius, *"De jure belli ac pacis libri tres"*, book II, chapter 7, nr 27(2)).

An interesting illustration of this practice is offered by the Pragmatic Sanction of the 6th October 1759 which became the constitution of the Kingdom of the Two Sicilies. When King Charles II of the Two Sicilies (later to be King Charles of Spain) was to inherit the throne of Spain after his elder brother's demise he issued this Pragmatic Sanction which defined the relationship between the succession in the royal House of the Two Sicilies and the Spanish royal House. He abdicated from the throne of the Two Sicilies in order to deny Spain any intervention or participation in Italian affairs, in accordance with the principles of the Treaty of Utrecht. Thereby the future King of the Two Sicilies, his son Ferdinand I, whose successors made up the royal House of the Two Sicilies, was liberated from the paternal power and the authority and jurisdiction of the King of Spain. Thus the royal House of the Two Sicilies was established as a new and completely independent royal House.

The issue arose again when Prince Charles, pretender to the throne of the Two Sicilies as second son of the Count of Caserta, married the Infanta Mercedes, elder sister and heiress to King Alfonso XIII of Spain. Charles renounced his dynastic claims to the succession in the royal House of Bourbon Two Sicilies on the 14th December 1900. Thereby he wished to ensure that his children by his marriage to Mercedes would irrevocably

become members of the royal House of Spain and entitled to the Spanish succession.

In accordance with the principles of Utrecht against any such union of royal crowns, Prince Charles of Denmark gave up his claims of succession in the Danish royal House when he in 1905 was elected King of Norway.

The revolutionary frenzy of the Napoleonic era brought many and violent upsets in the dynastic policies of Europe. Emperor Napoleon expelled a countless number of legitimate monarchs and replaced them with his own relatives on their European thrones. There was a completely new set of monarchs and an entirely new French imperial aristocracy. The principality of Pontecorvo in the Papal States was, for example, awarded to Marshal Jean-Baptiste Bernadotte, and the house of Bernadotte has to this day preserved its claim to this princely title. The position of the Napoleonic monarchs was however precarious because it was exceedingly dependant on Napoleon's own power. When this tottered, in most cases the monarch also fell and the end of the story was a special public law treaty made by the powers who were eventually victorious : Austria, Prussia and Russia on the one hand and Emperor Napoleon himself on the other. Professor Frede Castberg (Folkerett /Public Law/, Oslo 1937, p. 36) refers to this as :

> The agreement concerning the abdication of Napoleon I made in Paris on the 11th April 1814 … in article 1 of the treaty Napoleon

> renounced for himself and his descendants all sovereignty over France, Italy and all other countries. In article 3 he was granted "sovereignty and proprietary rights" over Elba, and a series of other personal rights. This agreement must be viewed as a treaty and hence subject to the rules of public law in terms of interpretation etc.

The dynastic politics would however get a splendid revenge at the Congress of Vienna of 1815, the leading principle of which was legitimacy and which aimed at reinstating the rulers previously removed from their thrones by Napoleon. The continuity in the dynastic system was dependant not least on the central position of Austria in the Europe of the Congress of Vienna and the statesmanlike genius of Prince Metternich. Henry Kissinger describes Austria in those days in the following manner:

> A vestige of feudal times, Austria was a polyglot empire, grouping together the multiple nationalities of the Danube basin around its historic position in Germany and Northern Italy ("Diplomacy", p. 82).

As for Sweden there is reason to recall the marriage treaty made on the 8th November 1822 between the princely Houses of Bernadotte and Leuchtenberg, which stipulated in article 3 that the Princess Joséphine retained the right, in spite of the decree about strict evangelical doctrine in the Constitution of 1809, to the free exercise

of her Catholic religion as Crown Princess and Queen of the united kingdoms of Sweden and Norway. King Charles John Bernadotte, whose position in post-Napoleonic Europe was somewhat precarious, wanted through this dynastic liaison with the house of Leuchtenberg (and hence with the ancient house of Wittelsbach) to confirm his recently acquired legitimacy. Thanks to the marriage treaty a Catholic chapel was arranged in Stockholm Palace and Joséphine was given a Catholic confessor. This state of things continued until 1862, when the dissenter law was passed in Sweden which included freedom for all Christians to practice their religion in the country, after which the treaty lost its purpose.

During the Congress of Vienna of 1815, on the initiative on Tsar Alexander, Russia, Prussia and Austria formed the Holy Alliance, which designation would stand for more than a century as a symbol for powers united to suppress revolutionary movements. What the Tsar proposed was in reality only a personal union of sovereigns in order to apply the principles of Christian morality in both domestic administration and international activities. Understood in this manner, the Alliance later won adherence from most of the states in Europe apart from Great Britain which refrained, not so much because of its aims as because of its ties with the persons of the enlightened despots. However, in opposition to this idealistically conceived Alliance, the so-called Quadruple Alliance was reborn which had been brought about in the previous year to fight Napoleon. With this the alliance of the great powers of the 20th

November 1815 was formed in order to keep the European calm, a sort of a directorate of states which, without formally opposing the equality of the members of the international community of states, awarded to themselves quasi-legislative authority and by and large decided how Europe should be governed. The Quadruple Alliance or Tetrarchate of 1815 became with the entry of France 1818 the Quintuple Alliance or Pentarchate. At the congress of Aix-la-Chapelle in 1818 a declaration was signed in which the assembled powers recognised public law as the foundation of the international relations and committed themselves to act in future in accordance with its rules. At the Congress of Troppau in 1820 the Alliance was reduced to three by the defection of France and Great Britain, but decided to declare the principle of armed intervention. The famous Troppau protocol declared that “states, which have undergone a change of government due to revolution, the result of which threatens other states, ipso facto cease to be members of the European (Holy) Alliance and remain excluded from it until their situation gives guarantees for legal order and stability”. The three remaining allies, Russia, Prussia and Austria, committed themselves to take up arms to return the malefactor to the bosom of the Holy Alliance, if on grounds of such revolutionary changes there was immediate danger to other states (see Hayes, “A Political and Social History of Modern Europe”, II, pp 13 ff).

The Congress of the super power Alliance in Aachen (Aix-la-Chapelle) in the autumn 1818 was of significance for the negotiations between Sweden and Denmark regarding the implementation of the

regulations of the Peace of Kiel. Notes in favour of the Danish claims were exchanged, conferences held and pressure applied on Sweden. At last the issue was raised in Aachen, in spite of the fact that neither Denmark nor Sweden was represented there, and the sovereigns of Russia, Prussia and Austria each issued an identically worded communiqué to King Charles John with the rather harsh request to bring the conflict with Denmark to an end before long. “It now falls to Your Majesty not to fail our expectations” was the last phrase in the communiqué.

The Norwegian Parliament (the Storting) raised yet another intervention by its decision to cancel existing nobiliary privileges. King Charles John had, however, refused his assent and in 1821, when the Storting renewed its decision and thus intended to carry through the law against the will of the King, the European reaction was obvious. The super power Alliance in the congresses of Troppau (at the end of 1820) and Laibach (at the beginning of 1821) laid down the principle of intervention as a universal rule against revolutionary movements in other states. Revolutions had broken out in Spain, Portugal and Naples, and Austria began its armed incursion into Italy. Because the nobility was seen as a mainstay of the monarchy, the Norwegian decisions aroused the concern of the cabinets of the super powers and, faced with the threat of armed intervention, Charles John requested among other things a larger loan in order to put his kingdom in a state of defence, if need be. None the less, with a small majority, the Storting passed the Norwegian law for the third time.

The repercussions of the protocol from Troppau were far-reaching. The interventions in Naples and Spain passed indeed without protest, but when the Alliance went further and offered Spain support in a war to re-conquer her colonies in America, which had declared themselves independent, the United States discovered their interests were deeply implicated and this caused President Monroe on the 2nd December 1823 to announce the so-called Monroe Doctrine. This declared the American continents no longer open to the colonisation of European powers and that the United States would regard every attempt from the Alliance "to expand its system" to the Western hemisphere as a danger to its own peace and security.

The principle of intervention was thus a reality, while at the same time dynastic disputes provoked bloody armed conflicts in some places. The losing side normally never surrendered its claims to the throne and thought themselves, in spite of the dethronement, to have reasonable hope of future reinstatement. The esteem in which the surviving dynastic principle was held was of course dependant on the central position in Europe held by Austria. As Henry Kissinger in his above mentioned analysis of the days of the Holy Alliance described Austria and the term "the European concert":

> A vestige of feudal times, Austria was a polyglot empire, grouping together the multiple nationalities of the Danube basin around its historic positions in Germany

> and Northern Italy … Austria sought to spin a web of moral restraint to forestall tests of strength. Metternich's consummate skill was in inducing the key countries to submit their disagreements to a sense of shared values.

The violent changes for the sovereigns of Europe brought about by Napoleonic politics and the restitutions entailed by the legitimacy principle of the Congress of Vienna also included the situation of the Pope. The Papal States were abolished and re-introduced, the Pope fled from Rome and found a place of refuge in Naples after which the Papal States were re-created and the Pope returned to Rome under French protection, until the city was conquered by the Piedmontese forces in 1879 and the Pope lost all his territorial possessions. Although thus dethroned he preserved his sovereign position as a subject of public law, and the new Italian kingdom under the House of Savoy found itself forced out of consideration for the Catholic powers, who refused to accept the dethronement, to grant him by the so-called Law of Guarantees of the 13th May1871 the position in public law which perhaps the loss of the Papal States would have nullified.

A country which made the most of dynastic politics was Denmark, which had ended up on the losing side in the dynastic dispute over Schleswig-Holstein. Through an assiduous matrimonial policy King Christian IX acquired the epithet of Europe's father-in-law. His first daughter became Queen Alexandra of England, his second

daughter became Empress Dagmar of Russia, his second son became King George I of Greece, his grandson Charles became King Haakon VII of Norway, not to mention other alliances at lower levels. Because of this Danish literature has not surprisingly devoted much attention to the legal position of princely houses, see e.g. Knud Berlin, "Den Danske Statsforfatningsret" (The Danish Constitutional Law), part 1, 1916, p 263 ff, with references to H. Rehm "Das landesherrliche Haus, sein Begriff und die Zugehörigkeit zu ihm" (The Sovereign House, its Concept and Membership of it), 1901 and "Modernes Fürstenrecht" (Modern Princely Law), 1904. (Cf. the judgment of the German National Court 28.9.1891 (XXII Entsch. Reichsgerichts in Strafsachen 141).

During the rest of the 19th Century the unification activities of top level politics in the wake of triumphant nationalism would lead to a total transformation of the map of Europe. Germany and Italy established themselves as great European powers under their own princely Houses. The old dynasties became subordinate and some gave up their claims. Others did not, such as the Bourbons of the Two Sicilies and the royal Houses of Prussia and Würtemberg.

It is against this background that one should see the words in C.A. Reuterskiöld's textbook on public law ("Folkrätt, särskildt såsom svensk publik internationell rätt", p. 47 f, /Public law, especially as Swedish public international law/, published as late as after the 1927 edition of Strupp: Elements; compare Reuterskiöld,

“Stater och internationella rättssubjekt”/States and subjects of international law/, 1896).

> The most important of these [subjects of public law] is the Papal Church, which, even after the loss of the Papal States, through the Italian Law of Guarantees of the 13th May 1871 is recognised as sovereign, that is completely independent of the Italian state, on the site where the Pope has his residence, and which like other states has both right to ambassadors and the conclusion of agreements (concordats) with other subjects of international law. To this category of subjects of international law belong also dethroned sovereign princely Houses. In as much as they are kept together as princely Houses with claims of sovereignty and have not become subjects of a particular state; it is usually thought that those only “par courtoisie” are treated as still sovereign, but in reality this is a consequence of the non-intervention principle, which since the cessation of the Holy Alliance is generally recognised concerning the internal matters of states - as long as the princely House has not given up its claims, the question of its rights is left open, even when the actual head of state, who has come in its place, is recognised as the actual representative of the state in question.

The Order of St. John - also called the Order of Malta - is recognised as a sovereign subject of public law in the modern sense ever since Emperor Charles V awarded the Order the island of Malta, after its former tenancy of Rhodes was lost to the Muslim Turks. The Order participated, for example, with its own naval force in the battle at Lepanto in 1571 and with its own delegations at the Peace of Westphalia of 1648 as well as in the peace negotiations of Utrecht of 1713. France under Louis XIV even gave to the Order in 1653 the West Indian islands of St. Christophe, St. Martin, St. Bartholomé and Ste. Croix, although in 1798 when Napoleon conquered Malta, they returned to French sovereignty. On the occasion in 1653 the issue of protocol was regulated in as much as the envoys of the Order were given precedence immediately after the king's own ambassadors and this issue of protocol was brought up again inter alia in 1747. The Grand Masters of the Order were regarded and treated after the loss of Malta as a dethroned princely House and kept their diplomatic representation at a number of European princely courts. The Order still has a special status at the Holy See, which once created the same (letter of confirmation from Pope Paschal II of 1113AD) and has diplomatic relations with the Pope and the Order nowadays has bilateral diplomatic relations with about 80 states. When the Italian kingdom prepared to conquer Rome and abolish the Papal States, in 1868 Count Cibario made a special report which established "that the Order according to European public law has never ceased to be sovereign" (see Georg B. Hafkemeyer, "Der Malteser-Orden und die

Völkerrechtsgemeinschaft", p. 448-456, at p. 455 with further reference, in Adam Wienand, ed., "Der Johanniter-Orden, der Malteser-Orden", 2 ed, Cologne). It has observer status at the UN since 1994 and enjoys the same privileges as the Red Cross, including the right to address the General Assembly. In the Swedish textbook Eek-Hjerner-Bring, "Folkrätten" ("The Public Law"), 4 ed., they have - setting aside the historic elements - explained the status of the Order as a subject of public law as follows:

> Its exceptional position is connected with the task of being an association for bringing help to casualties of war and therefore being active within the state community and on its behalf. In the final part of the diplomatic conference which accepted the Geneva Convention of 1929 about the treatment of wounded and sick among armed forces in the field of battle a statement was made according to which the Order of Malta was to be regarded as a recognised relief organisation in aiding the casualties of war…. At the diplomatic conference on the rules of war 1974 - 1977 the Order of Malta had observer status. (p. 220).

The First World War brought further upsets to in the European system of states which were not less than those in the Napoleonic period and a multiplication of dethroned princely Houses, above all arising from the

collapse of the dynastic Empires (the German Empire, the Austro-Hungarian monarchy, Tsarist Russia). Many of the princely Houses accepted dethronement by means of abdications or in other ways (the House of Habsburg), others such as the House of Hohenzollern did not.

In the new Europe anti-clericals and republicans had their days of glory after the dissolution of the Metternich state system and their positions of power were used as much as possible to repudiate nobility and princes. A French prefectorial decree of the 16th February 1894 prohibited the use of all flags, except the French and those of foreign powers' national colours and the insignia of authorised or approved associations. At the canonisation of Joan of Arc on the 4th July 1909 a number of buildings in the French city of Mans were decorated with the papal flag (yellow and white with the papal keys in black) but this bravado led to an indictment against those responsible in accordance with the decree, however they were acquitted in the court of first instance because the personal flag of a sovereign had the same privileges as that of a state, and all foreign powers undisputedly recognised the Pope's sovereignty until the issue of a new French law on the 9th December 1905. Changes in the French political leadership in that year led to France withdrawing its recognition of the Papal See. The Court of Cassation overturned the outcome in its judgment of the 5th May 1911 with the argument that the papal flag was no longer the national colours of a foreign power since the pope's sovereignty had come to an end through the incorporation of the Papal States into the kingdom of Italy (see the case Gustav Gaultier et alii,

ref. in Scott, “Cases on International Law”, nr. 49; cf. Philippe Simonnot, “Les papes, l’église e l’argent, Historie économique du christianisme des origines à nos jours” , Bayard).

The period between the World Wars saw a number of attempts to abolish nobiliary titles which normally were granted by a sovereign being in possession of *fons honorum*. Thus in the constitution of the Weimar Republic it was declared that nobiliary titles were only recognised as part of the surname and that no new such titles were to be conferred. In a similar manner it was prescribed in the constitution of the new state Czechoslovakia that no titles were to be conferred unless they showed an occupation or profession. In connection with the assumption of power by Mussolini in Italy a prohibition was issued on the 28th October1922 against the granting of new nobiliary titles. This was then reflected in the post-fascist Italian constitution of 1948 which in Art. XIV prescribed that nobiliary titles should not be recognised, but that titles and designations in existence before the 28th October 1922 were valid as part of the name (“*valgono come parte del nome*”). In the Italian law of the 3rd March 1951 the constitutional prohibition was reinforced. Art. 7 declared that Italian citizens could not within the territory of Italy use honorific distinctions and chivalric distinctions which had been conferred upon them without having previously been authorised by the Italian President, however the awards of the Holy See and the Order of Malta were exempt from this. To the regulation were joined penalties by Article 8. In Italian legal usage the rules and

regulations have however been interpreted to mean that they only prohibit Italian civil servants from referring to nobiliary titles in their work. Titles which had been conferred before the 20th October 1922 have a life of their own and thus exist, but cannot be used in the Italian territory without express permission of the President. It is the same thing with titles conferred by non-national Orders or foreign states. It was however possible subsequently to have a surname revised to include in such manner titles created or pre-existent.

The dethronement which previously had been characteristic of the various princely Houses of Europe characterised by dynastic rule (monarchical Heads of State) would with the transition of many states to republican forms of government entail a new type of dethronement, namely so-called governments in exile. Such appeared already during the First World War. The Czech Legions entered an agreement with certain states and in 1917 France recognised the Polish National Committee in Paris as an "organisation officielle polonaise". Corresponding recognition by the Allied Powers was given to the National Committee of "Free France" in 1941 which made public law agreements with various states at war. The German Neuordnung during the Second World War and the Communist revolutions in Europe during the time thereafter multiplied of course the number of dethroned princely houses.

After the Great War there was, however, a change in attitude which is reflected in the 2nd edition (1950) of

Halvar Sundberg's textbook of public law in the following words:

> As is apparent from the above, subjects other than states can also act as subjects of public law, i.e. as parties in public law relationships. This is however not generally recognised in public law literature. One reason for this has been that when individual subjects appear, the foundation for this is usually a treaty made between states, in which case the capacity of the subjects of private law is derived from this treaty. This undisputed case can however not prevent that the individual subject, who with the support of the treaty brings a claim of public law to bear, just as undeniably appears as a subject of public law to the extent determined by the treaty and for its duration.

The judgment pronounced in the interwar period by the Upper Silesian court of arbitration in the case of Steiner and Gross v. Polish State is usually seen as a predecessor of a more general change of attitude, where the court rejected the objection that an individual subject according to international law could not enter a dispute with its own state (in this case thus the state of Poland) before an international instance (Annual Digest 1927-1928 nr. 188). But after the war this situation became very common. Professor Frede Castberg expresses in his book "Studier i folkerett" (Studies in public law) p. 17:

> That private individuals can have public law claims against their own or foreign states may now be said to have reached an extended recognition. The international protection for human rights may well in principle be thought of as established in the shape of a system of public law rules which only gives rights to states and international institutions. But it is a reasonable consequence from the political ambitions one here faces that the individuals themselves can assert their rights, independent of the agencies of the states. The last witness to this tendency of development is "the convention for the protection of human rights and fundamental freedoms", as adopted under the auspices of the Council of Europe in 1950.

Today, 50 years later, the Europe convention in question has developed into an enormously extensive system which covers an area between Reykjavik and Vladivostok and has had an influx of complaints from private individuals to an extent which has entailed 85,000 cases in balance. Among the plaintiffs has been a number of representatives of dethroned princely Houses, who also in this manner have won recognition as subjects of public law, e.g. former King Constantine of the Hellenes, Prince Sigvard Bernadotte and Princess Caroline of Hanover (née of Monaco). To the extent that dethroned princely Houses previously have been

recognised as subjects of public law “par courtoisie”, they have in any case not lost their position through the later development.

As far as the head of a dethroned, formerly ruling princely house is concerned, in this particular case the Royal House of Aragon, Majorca and Sicily, which was once of massive importance in the Western Mediterranean, has had its position as a subject of international law recognised, this should imply that the person concerned may on this account be considered as having rank equal to a head of state and such rights and obligations which go with it.

Stockholm 15th September 2006

Jacob W.F. Sundberg
Professor Emeritus of Law

Opinion of Karin Ehnbom-Palmquist, Ambassador, former Head of Protocol The Swedish Foreign Office

I have been asked about the manner in which the insignia of state and dynastic Orders should be worn with particular reference to the sequence of same.

Regarding the wearing of Orders and Medals I generally agree with the directions in the book "Swedish Orders and Medals" by Fredrik Lowenhielm, namely that foreign state Orders should be worn in alphabetical order according to the name of the countries of issue in French and that dynastic Orders such as the Militare Ordine del Collare should be worn after state Orders and in corresponding manner in alphabetical order in French.

Stockholm 5th October 2009

Karin Ehnbom-Palmquist

Ambassador, former Head of Protocol
The Swedish Foreign Office

The Militare Ordine del Collare di Sant'Agata dei Paternò ("MOC") and the Roman Catholic Church - Marquis J-O. von Wowern

The MOC is not a Catholic Order but is rather a dynastic Order of Knighthood belonging to a sovereign Royal House in exile, the Dyanasty of Paternò Castello Guttadauro of Aragon Ayerbe. Hence it is accustomed to receive not only Catholics as Knights and Dames of the Order but also Christians from other recognized denominations. However the Order and the Royal House have longstanding, close and indissoluble ties with the Catholic Church. Catholic priests, prelates, bishops and archbishops who are Knights of the Order are held in the highest esteem and only Catholic clergy are appointed as Chaplains of the various jurisdictions of the Order.

The position of the Holy See in relation to various chivalric Orders is absolutely clear. The following official statement was published in *L'Osservatore Romano*, the Vatican official journal, on the 1st December 1976: "… The Holy See, in addition to its own Equestrian Orders, recognises only two Orders of Knighthood: The Sovereign Military Order of St. John of Jerusalem, called The Order of Malta, and the Equestrian Order of the Holy Sepulchre in Jerusalem. No other Order, whether it be newly instituted or derived from a medieval Order having the same name, enjoys such

recognition, as the Holy See is not in a position to guarantee its historical and juridical legitimacy."

The Militare Ordine del Collare, being not a Catholic but a dynastic Order of Knighthood, cannot therefore, just like other legitimate dynastic Orders such as the Order of St. Maurizius and St. Lazarus or the Constantinian Order of St. George, seek recognition from the Holy See as they do not come under its Canon Law. The MOC was however granted *nihil obstat* on 4th November 2009 by Father Pascal René Lung OP MOC, Episcopal Vicar for Religious in the Catholic Diocese of Stockholm, with the approval of the reigning bishop H.E. Anders Arborelius OCD. The *nihil obstat* followed after a sequence of expert opinions, most recently by Professor Edward N. Peters JD JCD (on Canon Law) and Professor Dick Harrison PhD (on the historicity of the Order). It therefore seems correct to say that the MOC, not being a Catholic Order and so not eligible for recognition by the Holy See, is however approved by the Catholic Church.

According to Canon Law matters of Church authority such as *nihil obstat* are not to be taken lightly. Canons 212, 1371 and 1373 stipulate harsh punishments for those who disobey the authority of the Church, up to and including interdict.

Nihil Obstat

DIOCESE OF STOCKHOLM
ROMAN CATHOLIC CHURCH IN STOCKHOLM

To the Grand Priory of Terra Nordica

I hereby confirm that as of this day, in accordance with Canon Law, I will grant a Nihil Obstat to Catholic men and women wishing to be invested as knights and dames in the Militare Ordine del Collare.

Lund, the 4th November 2009
(signed)

+ Pascal René Lung OP
Episcopal Vicar for Religious
The Catholic Church in Stockholm
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Liceity of Catholics accepting investiture in the MOC - Dr. E.N. Peters

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17 October 2009

[redacted]

[redacted]

You have asked me to offer an opinion on the liceity of Catholics accepting investiture as a knight or dame in the Militare Ordine de Collare di Sant'Agata dei Paternó, specifically, whether anything about affiliation with the MOC is incompatible with the obligation incumbent upon Catholics, in accord with, *inter alios,* Canon 209 of the Johanno-Pauline Code of Canon Law, to maintain communion with the Catholic Church. I understand that the MOC. does not at present assert public or private juridic personality in the Church (per1983 CIC 113 - 123) nor does it claim status as a public or private association of the faithful (per 1983 CIC 298 - 327), a1though it may choose to seek such recognition(s) in the future.

Pursuant to your request, I have examined:

- the "General Statutes of 2007" of the MOC, also known as the “Codex" of the MOC, along with its various attendant documents in 38 sequential pages;
- the MOC *programme* of the "Holy Mass and Ceremony of investiture, Stockholm 2009" in 19 sequential pages; and
- the English version of MOC website at www.mocterranordica.org/eng/hist5.html (last accessed 16 Oct. 2009).

Based on my review of the above-cited materials, it is my conclusion that investiture as a knight or dame in the *Militare Ordine de Collare di Sant’Agata dei Paternó* can be undertaken consistently with the fulfillment of one’s obligations of communion towards the Catholic Church.

Please feel free to share my opinion with any who might have an interest my findings.

Yours truly,
Dr. Edward N. Peters
www.canonlaw.info

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