

DYNASTIC AND NOBILITY LAW: THE END OF A MYTH

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Unfortunately the monarchy is fading in the world. This sad advent brings not only sorrow for the dissipation of great values and traditions, but also brings huge shadows of doubts regarding royal and noble titles.

On ruling monarchies, we have competent courts to rule over the subject, but when the matter is deposed monarchies or immemorial dynasties, it all goes to the interpretation of the law and mere opinions.

First of all, we have to understand Dynastic and Nobility Law not as a hermetic code; once not only the International law is applied, but basically jurisprudence, history, heraldry, genealogy, etc. Another problem is the lack of competent courts to rule over claims; in the case of deposed monarchies, we can't consider current republican courts as fair to rule over past kingdoms' issues for obvious reasons. [1]

The closest to a competent court to rule over these claims would be the International Court of Justice of the United Nations. But, its statutes of 1945 are very clear:

"Chapter II

The Court's Competence

Article 34

1. Only States may be parties before the Court."

So, again any personal claim cannot be examined or judged by the International Court of Justice of the United Nations.

A complete disregard is the fact when you establish what would be the Dynastic and Nobiliary Law is the immense difference between what is "Code of law", what would popularly known as "black on white" - based on real jurisprudence (court verdicts) and written codes of law; and "Moral law" which are publications based on tendencies and comments; in other words, opinions. Some of the cited "moral works" are from the XVI Century like Hugo Grotiu's books.

Here is a comment from Judge Beverly Tucker, Professor of Law in William & Mary College on the book "The Law of Nations" by Emerich Vattel:

"National law is more a moral than a legal science. Law is a rule of action prescribed by competent authority. Moreover, all Law implies some sanction to enforce it. Now National law is that which defines and regulates the social duties of Nation to Nation. Where then is the authority that prescribes such duties, and where the sanction that enforces them?"

Another point is basic worldwide law. Nothing is official before a verdict from a competent court. For example, it does not matter if someone killed another person on live TV, with millions of witnesses. This person is only considered officially a criminal after a competent court's verdict. There are even many kinds of appeals ("Mutatis, Mutandis") and higher courts until the last verdict is issued. [2]

Another important thing that must be considered is that every claim, royal or noble, is questionable; otherwise, it would not be a claim. Of course, there are more questionable and less questionable claims.

Another intriguing fact is that there is no legitimate or official organization that can certify any royal or noble claim. All of the so called "Commissions," even the ones with fabulous credentials, are no more than independent associations and their certification is only an allegory. Their appraisals and reports are mere opinions, some more or less well based than others. Of course, a claim with more support from commissions, lawyers or scholars, has more opportunity to be germane. But again, a claim with no certification, by this fact, is no less authentic.

Here is an extract from the book "Studies on Nobility Law" (Estudos sobre Direito Nobiliário), by Dr. Mario Silvestre de Meroe, pg. 65:

"It is worth mentioning also that the princely families, with the sovereign attributes, requires NO RECOGNITION by the government of their country of origin, or submit any record in countries where its members settle in residence. The dynastic and political independence is based on the sovereignty itself, which guides their social existence and regardless OF ANY LEGAL RECOGNITION, with respect to dynastic and private affairs. "

Other constantly misunderstood concept is sovereignty.

Sovereignty, by the entry of the Dictionary of Brazilian Legal Letters, comes from the Latin "super + omnium" (above all), and it becomes an essential peculiarity of state power, not subject to any restriction, unless the order dictated by Law.

According to Dr. Paulo Bonavides on his book "Political Sciences" (Ciência Política), page 126:

"Sovereignty is one and indivisible, it cannot be delegated, SOVEREIGNTY IS IRREVOCABLE, SOVEREIGNTY IS PERPETUAL, sovereignty is a supreme power, these are the main points of characterization that made Bodin's sovereignty in the seventeenth century an essential element of State"

Sovereignty goes from the independence of a State to when you buy a seat on a football game. THERE ARE LEVELS OF SOVEREIGNTY AND THEY'RE APPRAISED BY SPECIFIC RULES IN ALL LEVELS. Just some examples of sovereignties: Internal, External, Shared, Tribal, Exclusivity, Real-Estate, etc... EACH ONE WITH A SPECIFIC CODE OF LAWS.

We have the independence of the three powers in the major countries, so it is commonly said that the Executive, the Legislative and the Judiciary are independent and SOVEREIGN. Again another 3 different kinds of sovereignty.

The deposed monarch's sovereignty DOESN'T DEPEND ON TERRITORY, PEOPLE, POLITICS, etc. So, the use of any law applied to any other matter is UNNAPROPRIATED. In other words, if we use TERRITORY'S SOVEREIGNTY LAW or any other to appraise these cases, we will get into an impasse once it is well known that in territorial sovereignty law, you can have only one rightful owner to get both the "de jure" and "de facto" rights. In Dynastic Law of deposed monarchs, we can have two or more lawful pretenders for the same kingdom, even both the "de jure" and "de facto" rights belonging already to a new republican regime; this is absolutely impossible for territorial sovereignty law.

There are three different sovereignties constantly mixed. To understand that we have to see all the sovereign rights and powers [3]:

- "Ius Imperii" - the right to command and rule a territory;

- "Ius Gladii" - the right to impose obedience through command and also control armies;
- "Ius Majestatis" - the right to be honored and respected according with your title;
- "Ius Honorum" - the right to award titles, merit and virtue.

So, there are two "kinds" of sovereignty related with "Ius Imperii" and "Ius Gladii", one called "de facto" (by fact) and other "de jure" (by right), and both need to be attached to a territory and a people (in other words, a State). A third sovereignty is related to the other two rights "Ius Majestatis" and "Ius Honorum" and it's related to a Dynasty and a family and does not depend on a State.

Another common mistake is regarding the active use of the titles or the active claim of the rights over the State. It was said that it does not matter if the sovereign uses his title or not or claims his State or not. Nothing, absolutely nothing but the "subito la debellatio" and the peaceful acceptance of the new regime at the time of the deposition, makes the Dynasty forfeit its rights.

A very small percentage of jurists believe that, once the Sovereign is living in exile, HE'S FORCED to use his titles publicly and also protests publicly for his claims; otherwise, he'd forfeit his rights. The same is applicable to the descendants. That concept is a mere opinion based only in XVII Century's books (moral, not law codes) stating that if a "de jure" sovereign remains in silence it MAY PRESUME that he agrees with the current regime on his former State. There's not even one code of law saying this, nor real law to enforce it or even one court verdict with a case. What is a valid protest? How many times a year should someone protest to be valid? What kind of protest should be done? Maybe, one hears the most repeated line on action movies: "YOU HAVE THE RIGHT TO REMAIN SILENT..." That's based on CODE LAW and jurisprudence. It doesn't matter at all that you're agreeing with the accusation made against you.

The same books that support this HYPOTHETICAL PRESUMPTION also states that many situations should be considered to justify the silence in political or war situations, and any threat, objective or not, that the sovereign or his descendants might be facing or faced. The silence may be for many reasons. Each case should be appraised separately. Again, only peaceful acceptance AT THE TIME OF THE DEPOSITION, without any kind of sign of fear from the sovereign would be "Debellatio". Even if the Sovereign's descendant peacefully accepts the new regime after the act of deposition, it will only exclude him and his branch of the succession, it won't extinguish the Dynasty or its rights!

The Dynastic rights are based on the "jus sanguinis" (right of blood) legal concept. A parallel in jurisprudence example is: if someone, born in the US is an illegitimate grandson of an Italian citizen but he only finds out when 50 years of age, and can prove it, he has the right to request for his Italian citizenship. It doesn't matter if his father didn't request it in his lifetime or even if he knew his real father at all. His right of blood, once proven, ("Mutatis, Mutandis") is accepted by the international Law.

What may happen, and is commonly mistaken by many people regarding international law, is the forfeiting of the claim for the "de facto" rights. For example: in Brazil, the monarchy was deposed by a "coup-d'etat" in 1889. The Emperor Peter II was forced to go into exile with his family. There was no "debellatio" and no peaceful acceptance of the new regime at that time. So, by international law, the republicans were considered usurpers and even without the "de facto" rights, Emperor Peter II was the rightful Head of State. The republicans, at that time, had acquired illegally the "de facto" rights. If the Emperor decided no longer to use his title or actively claim his rights, he would forfeit his legality as legitimate Chief of State, and the republicans would hold legally the "de facto" rights over Brazil. But, it does not depend exclusively on the Emperor's acts. If the international community accepts the new regime, the rights are forfeited anyway (as it happened). Then, the emperor went to an interregnum period when he's "de jure" (by right) Emperor of the Brazilian Empire. Those rights cannot be forfeited.

A Court sentence of the Republican Italy (Pretoria de Vico Del Gargano, Repubblica Italiana sentence number 217/49) corroborates the above mentioned:

"(...) it's IRRELEVANT if that Imperial family is no longer ruling FOR CENTURIES, because the deposition does not harm the sovereign prerogatives even if the sovereign renounces, spontaneously, the throne. In substance, in this case, the Sovereign does not cease to be King, even living in exile or IN PRIVATE LIFE (WITHOUT CLAIMING HIS SOVEREIGNTY), because his prerogatives are, itself, by birth and CANNOT BE EXTINGUISHED, but remains and may be transmitted in time, from generation to generation."

So, Dynasty never forfeits its rights. It does not matter how long ago the Dynasty ruled and the duration of the reign. If there's no "subito la debellatio" total family's extermination or the agreement of the new regime by the head of the Dynasty at the time of the deposition, there's no extinction of the Dynasty and its sovereignty.[4]

Here is an extract from the book "Chivalry Orders and Nobility titles in Italy " (Ordine Cavallereschi e titoli nobiliari in Italia), Basilio Petrucci, pg.87:

"So does the former King Umberto II of Savoy , once there was no 'subito la debellatio, he conserves the royal prerogative in granting honorific titles of nobility and chivalry, along with other sovereigns of the former Italian and foreign states..."

Here is an extract from the book "Studies on Nobility Law" (Estudos sobre Direito Nobiliário), Dr. Mario Silvestre de Meroe, pg. 63:

"There outbreaks of political crises in front of which the monarch himself voluntarily accepted - sometimes even want to - that institutional rupture, expressly agreeing with the new order of things. In such cases, AND ONLY THOSE, he loses the dynastic rights, retaining only the princely qualities inherited and transmitted to their descendants, without, however, the attributes of 'pretender'."

Today we have 70-80% of the European stock descending from some royal family. Does that make everyone of them sovereign? Of course not. There are basic rules to determinate the sovereignty of a Dynasty like the firstborn in the blood line, etc... There can be only one head of each Dynasty; therefore, one sovereign. But, there's no limit for princes or princesses in each Dynasty; for example, the Saudi Arabian Royal Family have over 7.000 people, and from that, at least 500 princes. But, the only person allowed to give titles is His Majesty King Abdullah Bin Abdul. [5]

Sometimes, the concept of Dynasty may be confused with "family". The most accurate definition of Dynasty is a "Family ruling - or ruled - over a State". You can have one family with many Dynasties like the Bourbons (France and Spain) and only one State with many Dynasties like France (Valois, Bourbons and Bonapartes).

Another vital fact is that Sovereignty of a Dynasty cannot be sold. [6]

Even the legitimate Sovereign cannot do anything but abdicate his personal rights and then they will be transmitted "in totum" to his descendants. Only the sovereignty over part of a territory can be sold - like Alaska and Louisiana were sold to the United States . Never in history has a whole kingdom or empire been sold "in totum" (in full), only parts of its territory. Legally, it's similar to what happens with the name

and the rights to explore a Copyright. For example, anyone can buy the rights of the Beatles songs, but even being rightful owner, none can state that he is the composer of the referred songs but The Beatles themselves.

Here is an extract from the book "Studies on Nobiliary Law" (Estudos sobre Direito Nobiliário), Dr. Mario Silvestre de Meroe, pgs. 49-50:

"The transfer of dynastic rights

The rights of the dynastic leadership can be transferred from one owner to another person. It is not, of course, a TRANSACTION IN THE USUAL SENSE, but a transfer of rights and 'ideal' powers, reflecting the country's history or in the case of the former ruling houses, in line with expectation of inheritance of a vacant throne - a dynastic claim. For these reasons, the abdicating monarch's rights claim CAN ONLY BE DONE FOR A PERSON IN HIS FAMILY, OR LINKED TO THE CROWN'S TRADITION BY BLOOD TIES."

The examples given of "sovereignty sells and cessions" are, at least, ludicrous:

- The Treaty of Troyes - The treaty was only possible because it involved the marriage of King Henry V with the French King's daughter Catherine; in other words, French royal blood, which wasn't a simple business transaction.

- Principality of Mônaco - The Principality sovereignty wasn't bought by the Grimaldis. The LAND was bought from the Republic of Genoa. Following a land grant from Emperor Henry VI in 1191, Monaco was re-founded in 1228 as a colony of Genoa. Monaco has been ruled by the House of Grimaldi since 1297 but its sovereignty was only recognized by the Franco-Monegasque Treaty of 1861. So, the sovereignty wasn't bought at all, but the LAND, for the simple reason that you can't buy or sell sovereignty!

- The Byzantine Empire - This is the worst. Andreas Palaiologos, the "de jure" Emperor of the Palaiologos Dynasty (all the Byzantine Dynasties can claim the "de jure" rights) "sold" to France and others his "de jure" rights. That was an illegal transaction and the greatest proof of it is that not even one of the buyers' descendants ever claim anything regarding the bogus transaction. Wouldn't it be their right if the transaction was legal? But nobody complained knowing that the sale was null and void. The "in totum" State's sovereignty sale is impossible and even worst is the sale of the Dynasty. That is the opinion of over 80% of the international jurists. Following the example of Spain, many branches of the same family may legally claim the "de jure" rights, or, that the different Dynasties of France can claim the same State. For both examples, the only qualification is that a member of that Family or branch had reigned at least one day; it did not matter if it was yesterday or 3.000 days ago, once it has established the genealogic connection and has no "Debellatio", the head of the Dynasty can claim the rights.

Therefore, any so called transaction of Dynastic rights is considered null and void once these rights, as well as any nobility title, are considered immaterial property. [7]

As regarding nobility titles, on the contrary, many people think they cannot be legally sold. [8] The only thing that can be sold is a real state linked to it. The reason is because it does not belong to the person who uses it, but to the crown that bestows it. It can be revoked by the lender's crown any time, once it is its property. One important point is that even the rightful titled owner cannot decide to whom he'll pass the title. That would be a violation of the "fons honorum" of the lender's crown.

Here is an extract from the book "The Law of Nations", Emerich Vattel, Book I, Chapter V, #69:

"§ 69. Every true sovereignty is unalienable.

But when a prince chooses his successor, or when he cedes the crown to another, - properly speaking, he only nominates, by virtue of the power with which he is, either expressly or by tacit consent, intrusted - he only nominates, I say, the person who is to govern the state after him. This neither is nor can be an alienation, properly so called. Every true sovereignty is, in its own nature, unalienable."

"We do not find in Europe any great state that is reputed alienable. If some petty principalities have been considered as such, it is because they were not true sovereignties."

"Let us conclude then, that, as the nation alone has a right to subject itself to a foreign power, the right of really alienating the state can never belong to the sovereign, unless it be expressly given him by the entire body of the people.¹⁴ Neither are we to presume that he possesses a right to nominate his successor or surrender the sceptre to other hands, - a right which must be founded on an express consent, on a law of the state, or on long custom, justified by the tacit consent of the people."

"CHAPTER XXI

§ 260. He cannot alienate the public property.

The prince, or the superior of the society, whatever he is, being naturally no more than the administrator, and not the proprietor of the state, his authority, as sovereign or head of the nation, does not of itself give him a right to alienate or mortgage the public property. The general rule then is, that the superior cannot dispose of the public property, as to its substance - the right to do this being reserved to the proprietor alone, since proprietorship is defined to be the right to dispose of a thing substantially. If the superior exceeds his powers with respect to this property, the alienation he makes of it will be invalid, and may at any time be revoked by his successor, or by the nation. This is the law generally received in France; and it was upon this principle that the duke of Sully¹ advised Henry IV. to resume the possession of all the domains of the crown alienated by his predecessors."

Another cited fact to be pointed out is that, as said, the very same empire or kingdom (ruling or deposed) can have two or more legitimate pretenders. Sometimes, as said, you may have two Dynasties in the same Family not only in different States but also in the same. The example in Spain, the heir of King Carlos V (1788-1855), a different line of the Bourbon Family (called "Carlist ") is a legitimate pretender of the throne in exile. The ruling King Juan Carlos himself recognized many titles from that Dynasty and therefore their rights.

So, there are no limitations of claimants per current State. Back to France's example, there are at least two legitimate pretenders: the Bourbons (Kingdom of France) and the Bonapartes (Empire of France). As long as the monarchy isn't restored in France, nobody in the world can decide who is the more rightful pretender to the throne of France. It doesn't matter how incredible is the scholar, jurist, historian, authority of any kind, nobody can decide whose claim is valid or not.

The Dynasty can be restored any time by the rightful heir, and unfortunately, any family dispute cannot be solved until the monarchy is restored in that particular State. One perfect example of this is the Brazilian Imperial Family. The firstborn branch, popularly called "Petropolis Branch", had an abdication document signed by its ascendant, including his person and all his descendants. Therefore, the cadet branch, popularly called "Vassouras Branch", is supposed to be the rightful owner of the "de jure" rights. What happens is that there's no abdication for the descendants according with the Dynastic Law. At least it isn't accepted by the majority of the jurists. Many international ruling and deposed courts accepted both claims. Many highly acclaimed jurists support both sides; so, there's no way of saying who's valid until a

monarchy is restored in Brazil . All we can do is to give opinions.

Another frequent mistake is with regard to the "fons honorum" (fountain of honor). The authentic fountains of honor are [8]:

- Heads of State (both monarchists or republican - although the republicans don't give nobility titles only merit awards),
- Heads of Dynasty (deposed monarchies)
- Heads of Traditional Churches (both Roman Catholic and Orthodox) following authentic apostolic succession. In other words, the Head of the church should prove direct lineage of ordination from the apostle Saint Peter.

Regarding the Episcopal "fons honorum", there's an important point to be clarified. A few jurists don't accept Episcopal "fons honorum" alleging that the only Episcopal legitimate fountain of honor is the Pope. Not because he's from the clergy or successor of the apostle Peter, but because he's a sovereign of an actual State, the Vatican . This is a mistake, because it's known that the Vatican State only exists after the Lateran Treaty in 1929. Even stating that the Pope was the sovereign of the so called Papal States, that only happened at the end of the VIII century and is known that, long before that, the Pope and other bishops were already "legalizing" kings all over Europe. From 1870 to 1929 the Pope didn't have any territory at all, and legally kept all his powers as sovereign, naming ambassadors, giving titles, etc...

About the legitimacy of the Ecclesiastical "fons honorum" it can be proved by the following court verdicts:

- The CISCA (Corporazione Internazionale Stella Croce D'Argento). Sovereign Bishop of Assis (Roman Catholic). Rights recognized by the Government of Italy in 1944 and after that by a higher court verdict in 05.19.1956 by the Court of Potenza.
- The "Ordine Internazionale della Legion d'Onore de l'Immacolata" Sovereign Bishop of Acireale (Roman Catholic), recognized by the Pretoria of Palermo in 11.13.1923
- The "Ordine Capitulare di Santo Humberto di Lorena". Sovereign Bishop of Fiesole, recognized by the Pretoria of Bressanone in 03.14.1944.
- The "Sovrana Ordine dei Cavalieri del coniglio d'oro". Had all the rights recognized by the Italian Ministry of Justice under the decree number 22641 of 12.23.1981. And it was an Order validated by the Orthodox Church.

The reason why Canonical Law is accepted and it's an important part of many court verdicts regarding Dynastic and Nobiliary Law (creating jurisprudence) is the fact that Monarchy itself is based on Divine Rights. All concepts of sovereignty are based on that. So, there's no reason to consider Canonic Law out of the context.

A great enlightenment about the Episcopal matter can be achieved here:

http://www.apostoliccommissionroyaltnobility.com/fons_holy.html

Finally, the myth of the Dynastic and Nobiliary law is finished.

References:

[1] International Nobiliary Traditions (Tradições Nobiliarias Internacionais) , Dr. Mario Silvestre de Meroe, pg.62-63

- [2] Principles of Public International Law, Ian Brownlie Q.C., pg.615
- [3] Studies on Nobiliary Law (Estudos sobre Direito Nobiliário), Dr. Mario Silvestre de Meroe, pg. 61
- [4] Studies on Nobiliary Law (Estudos sobre Direito Nobiliário), Dr. Mario
- [5] The House of Saud, David Holden and Richard Johns, pg. 14
Silvestre de Meroe, pg. 63
- [6] Studies on Nobiliary Law (Estudos sobre Direito Nobiliário), Dr. Mario Silvestre de Meroe, pg. 49
- [7] International Nobiliary Traditions (Tradições Nobiliárias Internacionais) , Dr. Mario Silvestre de Meroe,
pgs.77-78
- [8] International Nobiliary Traditions (Tradições Nobiliárias Internacionais) , Dr. Mario Silvestre de Meroe,
pg. 85