Heraldry and the Law
L'héraldique et le Droit

XXII[nd] Colloquium of the International Academy of Heraldry

XXII[ème] Colloque de l'Académie Internationale d'Héraldique

Lund 16–19 August/août 2023

Editor / Rédacteur Martin Sunnqvist

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Cover design Høgenhoff Media. The ceremonial staff of Societas Heraldica Scandinavica and the seal of the Faculty of Law at Lund University. Photo: Martin Sunnqvist. The *Académie Internationale d'Héraldique* celebrated its 75th anniversary in 2024, and the anniversary logo was designed by Tudor-Radu Tiron.

Heraldry and the Law – L'Héraldique et le Droit
XXIInd Colloquium of the International Academy of Heraldry held in Lund 16–19 August 2023
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Heraldry and the Law

Preface and Introduction

By Professor Dr. Martin Sunnqvist, A.I.H.

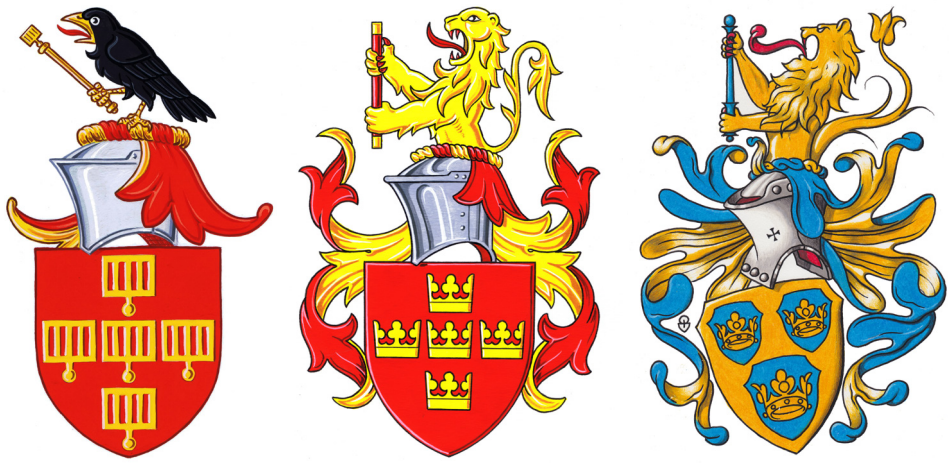

Fig. 1–3. Coats of arms of Societas Heraldica Lundensis (by Ronny Skov Andersen), Societas Heraldica Scandinavica (by Ronny Skov Andersen) and the Swedish Heraldry Society (by Davor Zovko)

1. The Organisation

The XXII[nd] Colloquium of the *Académie Internationale d'Héraldique* (the International Academy of Heraldry) was held in Lund, Sweden, from afternoon Wednesday 16[th] August 2023 to Saturday 19[th] August 2023. The colloquium was arranged by *Societas Heraldica Lundensis* (the Lund Heraldry Society) in cooperation with *Societas Heraldica Scandinavica* (the Scandinavian Heraldry Society) and *Svenska Heraldiska Föreningen* (the Swedish Heraldry Society) (see *fig. 1–3*). *Societas Heraldica Lundensis* is a local branch of both the Scandinavian and Swedish societies.

The theme of the colloquium was Heraldry and the Law. In the call for papers, the following examples of subject areas were mentioned:

– Authorities granting and registering arms, present and in history
– Legal protection of arms

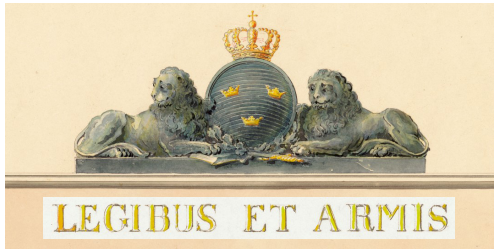

Fig. 4. The motto Legibus et Armis on the drawings for the building Stora Kronohuset in Kristianstad. Source: Swedish National Archives.

Fig. 5–10. Coats of arms of the members of the organising committee and scientific committee: First row from left Martin Sunnqvist (by Sunil Saigal), Henric Åsklund (by Sunil Saigal) and Claus K. Berntsen (by Björn Fridén), second row from left Henrik Klackenberg (by Davor Zovko), Nicolas Vernot (by Marco Foppoli) and Elsa Trolle Önnerfors (bookplate by Ronny Skov Andersen).

- Inheritance of arms
- The right to bear arms
- Symbols of courts, associations of advocates, etc.
- Symbols of law in heraldry

As a sort of motto for the conference, the phrase *Legibus et Armis* functioned (*fig. 4*). This was originally a motto for the combined building, erected in 1840, for a court of appeal and an artillery regiment in Kristianstad.

Fig. 11–14. Seals and coats of arms of the institutions that supported the colloquium: Lund University, The Faculty of Law, The Municipality of Lund and the Royal Patriotic Society's Benevolent Fund.

The motto referred to the fact that the building was to be used *for laws and arms*.[1] The motto functions as well in the sense *for laws and coats of arms*.

Members of the organising committee were Professor Dr. Martin Sunnqvist, A.I.H., Dr. Henric Åsklund, a.i.h., and Claus K. Berntsen. Members of the scientific committee were Former State Herald of Sweden Dr. Henrik Klackenberg A.I.H., Former Secretary General of the *Académie Internationale d'Héraldique*, Researcher Dr. Nicolas Vernot A.I.H., Associate Professor Elsa Trolle Önnerfors and Martin Sunnqvist. See *fig. 5–10*.

The colloquium had not been possible to arrange, and this book would not have been possible to produce, without financial and practical support from various institutions. The organising committee would like to thank the following institutions for support: The Faculty of Law at Lund University, the Office of Special Events and Protocol at Lund University, The Municipality of Lund (*Lunds kommun*), and The Royal Patriotic Society's Benevolent Fund (*Kungl. Patriotiska Sällskapets Understödsfond*). See *fig. 11–14*.

The organising committee would like to thank members of the *Societas Heraldica Lundensis* helping out with practical details during the colloquium: Kim Dohm-Hansen, Per Nilsén, Lars Trägen, Martin Trägen and Malin Sjöstrand.

I would like to thank Dr. Simon Rousselot a.i.h. for assistance with translating abstracts to French and proof-reading texts in French.

Fig. 15. Martin Sunnqvist welcomes the participants. Claus K. Berntsen holds the ceremonial staff and Henric Åsklund sits next to the table banners of the Swedish Heraldry Society and the Societas Heraldica Lundensis. Photo: Selma Rosenfeld.

2. *The days of the colloquium*

The colloquium started in the afternoon Wednesday 16th August 2023. Martin Sunnqvist welcomed the about 100 participants (see list on p. 31) on behalf of the organising committee (see *fig. 15*). The Deputy Vice-Chancellor of Lund University, Professor Dr. Lena Eskilsson welcomed the participants on behalf of the university. As a researcher in human geography and economic geography, she highlighted the importance of heraldry symbolising geographical areas. Then, the Dean of the Faculty of Law, Professor Dr. Eva Ryrstedt welcomed the participants to the Faculty of Law. The organisers thanked the Dean for supporting the colloquium with the possibility to use lecture halls and other premises.

On behalf of the Municipality of Lund, The Mayor and Chairman of the City Council of Lund Mats Helmfrid welcomed the participants to Lund. He wore his mayor's chain (*fig. 16*) and presented the history of the coat of arms of Lund. The history of the coat of arms goes back to a seal from the mid-14th century. The coat of arms is frequently used by the city.

Then, the Bishop of Lund, Johan Tyrberg, welcomed the participants. He presented the thoughts behind his coat of arms with a lantern as one of the important symbols, symbolising the light of God (*fig. 17*). In the second half of the 20th century, the tradition

Fig. 16. The mayor's chain with the coat of arms of Lund, made by silversmith Wiwen Nilsson. The design is based on the medieval seal with the text SECRETUM CIVIUM LUNDENSIUM, Seal of the burghers of Lund. Photo: Lars Trägen.

Fig. 17–18. The coat of arms of bishop Johan Tyrberg (by Ronny Skov Andersen). The coat of arms of Elizabeth Roads (by Björn Fridén).

that bishops in the Church of Sweden assume coats of arms was reintroduced in Sweden through the work of Bengt-Olof Kälde A.I.H. and Dr. Jan Raneke A.I.H. The personal coat of arms of the bishop is quartered with the arms of the diocese, in this case the diocese of Lund with the gridiron of St. Lawrence.

Finally, the President of the *Académie Internationale d'Héraldique* Elizabeth Roads L.V.O., A.I.H., O.St.J. welcomed the participants on behalf of the *Académie Internationale d'Héraldique*. She also held the first lecture, *The law and Scots heraldry* (see pp. 89 ff).

The programme of the colloquium is presented on pp. 23 ff. There were parallel sessions in *Pufendorfsalen* (the Pufendorf Auditorium), where the welcoming ceremony also took place, and in *Rättegångssalen*, a hall for lectures and moot courts with furniture from the closed-down *Klippans tingsrätt* (Klippan District Court), formerly *Norra Åsbo dom-*

Fig. 19. Samuel von Pufendorf with his coat of arms as a Swedish baron. Engraving by Joseph de Montalegre, Public Domain.

Fig. 20–21. The coat of arms of *Norra Åsbo härad* in *Rättegångssalen*. The audience in Rättegångssalen during the colloquium and the banner of *Norra Åsbo härad*. Photos: Martin Sunnqvist.

sagas häradsrätt (Norra Åsbo District Court). The Pufendorf Auditorium has its name from the famous scholar of natural law and international law Baron Samuel von Pufendorf (1632–1694), one of the first professors at the Faculty of Law when it started to function in 1668 (*fig. 19*). When he was created a baron by King Charles XI in 1694, he was also granted a quartered coat of arms with two crests according to the model normally granted to Swedish barons.

In *Rättegångssalen*, there are the coat of arms and the banner of the rural district of *Norra Åsbo* (*fig. 20–21*). Originally, the court district had a half donkey in its seal, because of the similarity between the name *Åsbo* and the word for donkey, *åsna*. During the late 17th century, the then district judge considered that the district should have the rear part of the donkey, and *Södra Åsbo* the front part, something that upset the peasants in *Norra Åsbo*. They eventually wrote to the King, and in the Royal Chancery it was soon established that the district should have a ridge in its coat of arms, since the name *Åsbo* comes from *ås*, which means ridge. In 1733, the district was granted a coat of arms with a ridge. When the banner and coat of arms were made in 1914, this development was forgot-

Fig. 22. Participants in one of the meetings gathered in the library of the Law Faculty: Peter Kurrild-Klitgaard, Martin Sunnqvist, Robert Watt, Henrik Klackenberg, Kaare Seeberg-Sidselrud, Elizabeth Roads, Maria Loredana Pinotti, Pier Felice degli Uberti, Davor Zovko, Joseph McMillan, Pedro Sameiro and Remigijus Bimba.

ten and the old seal with the donkey served as a model again, but now understood as a lynx because of the donkey's prominent ears. Hence, the charge on the coat of arms and the banner in *Rättegångssalen* is a lynx.[2]

Besides the sessions with lectures, of which most are published in this volume, there was also a series of Hands-on Workshops on the *Digital Heraldry Research Environment*. These workshops introduced the *Digital Heraldry Research Environment*, a new web-based tool to describe, find, identify, and contextualise coats of arms using the *Digital Heraldry Ontology*.[3] The tool is being developed as part of the research project *Coats of Arms in Practice*, which explores the development of heraldry throughout the Middle Ages using various AI-based methods (e.g. image detection, ontology engineering). The project is based at the Professorship of Digital History, Humboldt University of Berlin.

During the workshop, the participants were given a short introduction on how to use the tool to describe coats of arms in a structured way, as well as to search for and identify coats of arms. The organisers, Sophie Eckenstaler and Philipp Schneider, also hoped to get first-hand feedback from experienced heraldists for further enhancements and developments.

In this context, it can be noted that besides the *Digital Heraldry Research Environment,* there is also another project for identifying coats of arms with the help of AI, *Webaldic*.[4] The initiator of *Webaldic*, Evrard

Fig. 23. Elizabeth Roads examines the medal on the Vice-Chancellor's chain. Photo: Selma Rosenfeld.

van Zuylen van Nyevelt, also attended the colloquium.

Lunches were arranged in the main faculty building, and the participants were served Danish *smørrebrød* (open-faced sandwiches). During the colloquium, there were also meetings and gatherings of organisations, such as the general assembly of the *Académie Internationale d'Héraldique*, the annual meeting of the *Bureau permanent des congrès internationaux des sciences généalogique et héraldique*, and informal meetings of the *Confédération Internationale de Généalogie et d'Héraldique* (CIGH) and the *International Commission for Orders of Chivalry* (ICOC) (*fig. 22*). During the general assembly of the *Académie Internationale d'Héraldique*, three new academicians were elected: Andriy Grechylo (Ukraine), Joseph McMillan (United States) and Attila István Szekeres (Romania).Three new associate members were also elected: Peter O'Donoghue (United Kingdom), José Manuel Valle Porras (Spain) and Davor Zovko (Sweden).

On Thursday evening, the Office of Special

Fig. 24. Lamp heraldry. Photo: Martin Sunnqvist.

Events and Protocol at Lund University hosted a reception in the Main University Building (*fig. 23*). There, Charlotta Sokulski Bateld showed the Vice-Chancellor's chain and the University's sceptres from the 1660s to the participants (see pictures page 442), and a speech was held by the Deputy Vice-Chancellor Lena Eskilsson. The sceptres are normally carried before the Vice-Chancellor in ceremonies and represent *Sapientia Divina* and *Sapientia Humana*, divine and human wisdom.

On Friday evening, the Conference dinner was held in *Lilla salen*, at *Akademiska Föreningen* (the Academic Society). Following a long-established tradition of Lund University, gentlemen were invited to wear

Fig. 25. Charlotta Sokulski Bateld, dressed in the national costume of Östergötland, holds the banner of the student nation of Östergötland. The coats of arms on the present set of banners are painted by Ronny Skov Andersen. Photo: Martin Sunnqvist.

white tie. Black tie, mess dress uniform, dark suit or national costume could also be worn. *Akademiska föreningen* was established in 1830 in order to arrange a common gathering point for the students in Lund. The idea came from the English system with colleges and from *Studenterforeningen* (the Students' Association) in Copenhagen. In *Lilla salen,* the lamps are decorated with the coats of arms of the provinces, representing the students' nations (*fig. 24*). With these decorations, *Lilla salen* is a most suitable room for a conference dinner at a heraldic colloquium.

The students in Lund are, based on a model from the medieval universities, organised in nations. Originally, they were supposed to join the nation representing the province where they came from. Each student nation has a banner, which is used on solemn occasions of that nation. All banners together are used in processions at the university's ceremonies. Before the conference dinner, all banners were present (*fig. 25*). After refreshments in a room adjacent to

Fig. 26. Martin Sunnqvist says some words of welcome to the conference dinner, and Elsa Trolle Önnerfors is toastmaster and holds the ceremonial staff. Photo: Remigijus Bimba.

Fig. 27. The participants during dinner. Photo: Malin Sjöstrand.

Fig. 28. During the concluding ceremony, Henric Åsklund presented Elizabeth Roads with a diploma showing that she was elected an honorary member of Svenska Heraldiska Föreningen. Photo: Remigijus Bimba.

Lilla salen, where the banners could be seen as well as the new ceremonial staff of the *Societas Heraldica Scandinavia* (*fig. 26*), the dinner could begin. Elsa Trolle Önnerfors acted as toastmaster.

The first course was either tartar on lightly smoked cod with tarragon and leek emulsion, croutons and cress, or baked celeriac with herb crème, kale, pickled mustard seeds, salt-roasted pumpkin seeds and herbs. The main course was either oven-baked rooster with apple sauce, silver onion, apple and sage-baked summer cabbage and roasted potatoes, or sage-spiced black bean patty with red wine sauce, silver onion, apple and sage-baked summer cabbage and roasted potatoes. Finally, the dessert was milk chocolate mousse with crumble and raspberries. To this, Charles Wantz Crémant d'Alsace Carte Noir Brut 2019, Saint Clair Origin Pinot Noir 2021, and Bacalhoa Moscatel de Setúbal 2019, were served. The participants enjoyed themselves with discussions on heraldic and other matters (*fig. 27*).

Towards the end of the dinner, members of *Lundaspexarna* entertained the participants. *Spex* is a form of amateur comedy theatre, often with a historical theme, performed by university students in Sweden and parts of Finland. In Lund, the tradition goes back to 1886. The most popular song sung by the members of *Lundaspexarna* was not from one of the *spexes* but a song following that tradition, using a well-known melody – in this case *Yesterday* by The Beatles – but adding a new text:

Heraldry
Deals with coats-of-arms in history
It's the emblem of a family
Now that kind stuff is heraldry

Semiotics
is a study of the symbolics
signs and logos, all informatics
It's kinda close to heraldry

Designing coat-of-arms
is a task I like to do
How to make it nice
and to please both me and you

Heraldry
is graphic arts in way most visually
It's designing emblem for your family
Oh, how I like the heraldry [5]

During the last day of the colloquium, there were lectures in the morning and a concluding ceremony. During that ceremony, Henric Åsklund as chair of the Swedish Heraldry

Fig. 29. During the tour in the Student Museum, banners for students' nations were shown. Here, we see the banner of Malmö nation from 1891. Photo: Martin Sunnqvist.

Society presented Elizabeth Roads with a diploma showing that she was elected honorary member of the society (*fig. 28*). The following year, March 16th, 2024, she attended the annual meeting of the Swedish Heraldry Society and was then given the society's medal of merit. This medal is handed out to those who made great contributions to heraldry in Sweden, among them the honorary members. As regards Elizabeth Roads, her work for heraldry internationally and generally has also benefitted heraldry in Sweden, and more specifically she has contributed directly to Swedish heraldry through her interest in the heraldic and genealogical links between Scotland and Sweden.[6]

On Saturday afternoon, some excursions within Lund took place, and participants could sign up to participate in them.

– **Public heraldry in the city of Lund.** In the central parts of Lund, there are many buildings decorated with heraldry. Lars Trägen guided participants through central Lund and told them about the history of Lund and its coat of arms and about other heraldic decorations as well.
– **The History of Lund University.** Lund University was founded in 1666 in the formerly Danish province at that time recently conquered by Sweden. Per Nilsén guided participants to the buildings and statues in central Lund that tell the history of the university.
– **The Archives of Akademiska Föreningen and the Student Museum.** The Archives of Akademiska Föreningen and the Student Museum preserve and exhibit historical objects from the Academic Society and the students' unions, nations and societies. During the tour, an exhibition of old banners for students' nations were shown (*fig. 29*).

Fig. 30. Medieval heraldic artefact in the Historical Museum with the coat of arms of the King of Denmark. Photo: Martin Sunnqvist.

– **The Historical Museum.** The Historical Museum at Lund University is the largest museum for archaeological finds, coins, and medieval church art in southern Sweden. The focus of the tour was the coin exhibition and other parts of the collections of a heraldic interest (*fig. 30*).
– **Lund Cathedral.** In 2023, the 900-year-anniversary of the cathedral was celebrated, as the first altar in the crypt was consecrated in 1123. In the crypt, there are tombstones with coats of arms of medieval bishops and noblemen. The tour was be divided into three parts, the crypt, the choir and the astronomical clock.

3. The chapters in this book

The chapters in this book are arranged in another way than the sessions at the colloquium were organised, and they are also not in the alphabetical order of the authors. Instead, they are arranged thematically in a way that will now be described more in detail. Not all speakers have had their papers included in the volume, and the paper of one speaker, whose paper was accepted but who could not attend the colloquium, is included.

Most of the chapters are written in English, and some are written in French or German. The chapters in English have abstracts in English and French, the chapters written in French have abstracts in French and English and the chapters written in German have abstracts in German and English.

First, heraldry as intangible cultural heritage is discussed. **Nicolas Vernot** contributes with a chapter where he argues that considering heraldry from the angle of intangible cultural heritage rather than as an "auxiliary science" offers real opportunities, particularly in countries where legislation is deficient: better identification and networking of those involved in contemporary heraldry, a better understanding of the socio-cultural interest of heraldry, the possibility of improving heraldic culture, and opportunities to dispel a number of misunderstandings about heraldry.

Heraldry placed in its legal historical context is the next part. **Pedro Sameiro** analyses the law of heraldry in Portugal using his collection of 258 legal texts issued between the thirteenth and twenty-first centuries. Thus, he attempts to establish a theory of the major principles that inspired their creation. **Elizabeth Roads** deals with the law and Scots heraldry, tracing the function of the Lord Lyon back to the Acts of Parliament during the 16th century which endeavoured to put heraldry into a legal context. **Marc Baronnet-Steinbrecher** discusses what the state of heraldic law in France is, considering that heraldry was abolished during the French revolution but then revived. **Jos van den Borne** discusses the development from no regulation through regulation to deregulation of heraldry in the Dutch Republic, the Kingdom of Holland and the United Netherlands.

Coats of arms of territories, states and state authorities are discussed in five chapters. **Antoine Robin** analyses the practices of the dukes of Bourbon, between 1400 and 1531, as regards the boundary stones, signs or coats of arms indicating the limits of a territory or a jurisdiction. **Justina Sipavičiūtė** presents the seals of Lithuanian courts and judges 1564–1792, especially as regards the

symbols chosen for theses seals. **Gerard Marí Brull** discusses the destruction of heraldic emblems relating to the reign of King Fernando VII of Spain 1808–1833. **Drăgan-George Basarabă** analyses the legal history of the coat of arms of Romania from 1859 to the present day. Finally in this part, **Davor Zovko** analyses four state coats of arms – of Croatia, Germany, Norway and Sweden – and questions how legislative acts respect the heraldic tradition that arms are defined by the blazon and not by an image.

Coats of arms of cities and municipalities are discussed in four chapters. **Luis Fernando Herrera Valdez** discusses the process behind the assumption of coats of arms by city councils in Spanish America in the 16th century and its legal implications. **Andriy Grechylo** analyses the problems of legal regulation as regards municipal and territorial symbols in Ukraine and especially the development after 1990. **Karl-Heinz Steinbruch** compares how new civic coats of arms are approved in the states Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia after 1990. **Lyder Marstrander** discusses the recent changes in the Norwegian legislation regarding civic arms and flags and how they will influence Norwegian heraldry.

Two contributions consider specifically granting or registration procedures for coats of arms of families or individuals and various legal entities. **Cédric Pauwels** analyses heraldic law in French-speaking Belgium and the granting of coats of arms, whilst **Henric Åsklund** discusses how coats of arms can be registered in countries where the state offers no possibilities for individuals of obtaining a grant of a coat of arms. A third chapter in this part is the contribution by **Ronny Skov Andersen**, discussing the heraldic effects of the Danish 1776 Act of Citizenship which led to a series of naturalizations of foreign officials and in some cases, a family's heraldic identity was affected – such as in the case of Jobst Gerhard von Scholten.

In three chapters, different aspects of the importance for heraldry of dispute resolution are discussed. **Dominique Delgrange** analyses disputes over coats of arms in French Flanders in the middle of the 18th century. **Joseph McMillan** discusses heraldic episodes in American legal history under the subtitle 'Stray Voltage or Saving Remnant?', indicating the underlying question whether the cases discussed were just one-off events or signs of a stable legal situation to be built on. And **Mark Watson-Gandy** provides anyone who would like to have a heraldic case tried at the High Court of Chivalry with a How To Do It Guide.

The next theme is heraldic offices, first in the German-speaking area and then in Scotland. As regards the German-speaking area, **Michael Göbl** deals with the imperial chancellery in the time of the Holy Roman Empire and the Austrian court chancellery as heraldic authorities. **Clemens L. Herzog** then discusses the heraldic activities of officials in Württemberg 1806–1918. As regards Scotland, two texts – besides the overview of Scots heraldic law provided by Elizabeth Roads and mentioned above – deal with the activities of the Lord Lyon. **Huw Sherrard** analyses, not without criticism, the activities of Lord Lyon Sir Thomas Innes of Learney, and **Bruce Durie** follows up with a discussion

of grants of arms from the period 1976–2017, that is, after the time of Innes of Learney.

Another type of theme forms the connection between the following three chapters. Not only is heraldry regulated by law, but heraldry also contributes to law with different types of symbols for this subject area. **Magnus Bäckmark** provides some examples of symbols of law in historical personal arms in Sweden. **Agnė Railaitė-Bardė** identifies signs of Themis in Lithuanian heraldry. Finally, **Klaas Padberg Evenboer** investigates the symbols of law in coats of arms from Waldeck during a long period of time.

The volume ends with three chapters discussing new approaches and ongoing changes. One important question, discussed by **Gillian Black**, is how succession to arms and other heraldic rules could be reconciled with changes in family law and modern ways of understanding family relations. **Samy Khalid** discusses the development of heraldic rules in the context of national symbols and indigenous emblems. And just as during the colloquium, **Eric Bylander** concludes with discussing a theme underlying the discussions in many of the other chapters: what types of norms are the heraldic norms?

Before the colloquium, there were plans to make a comparative survey of the legal rules on heraldry. This was also realised to a certain extent, and on the website of the Societas Heraldica Scandinavica (www.heraldik.org), the reports from Austria, Croatia, Georgia, Lithuania, Romania, Slovakia and the USA are published.[7] We still hope to be able to add information about more countries, but whether the reports will be published in print or online remains to be seen.

Notes

1 See Martin Sunnqvist, ”The Eye of the Law and the Scales of Justice: Law and Art in the Scania and Blekinge Court of Appeal 1821–1917” in Giovanni Rossi and Pietro Schirò (eds.), *Law and Art in the 19th Century: Power in Images*, Immagini Diritto e Storia vol. 1, Pisa: Pacini Editore, 2024, pp. 379–395.

2 See Martin Sunnqvist, “Ängelholms kommunvapen – ett exempel på god heraldik” i *Heraldisk Tidsskrift*, vol. 13, no 122, 2020, pp. 187–197.

3 https://digitalheraldry.org/

4 https://www.webaldic.com/

5 Text by Susanna Viljanen, http://www.amiright.com/parody/60s/thebeatles1003.shtml

6 See Henric Åsklund, ”2024 års medaljörer” in *Vapenbilden*, no. 136, December 2023, pp. 6–7.

7 https://heraldik.org/colloquium-lund-2023/in-english/comparative-survey/

Programme (English)

Wednesday 16th August 2023

Venue: Pufendorf Auditorium, Tryckeriet, Faculty of Law, Lilla Gråbrödersgatan 3 C

14.00 Welcome and introduction
- Professor Dr. **Martin Sunnqvist** A.I.H. for the organising committee
- The Deputy Vice-Chancellor of Lund University, Professor Dr. **Lena Eskilsson**
- The Dean of the Faculty of Law, Professor Dr. **Eva Ryrstedt**
- The Mayor and Chairman of the City Council of Lund **Mats Helmfrid**
- The Bishop of Lund **Johan Tyrberg**
- The President of the Académie Internationale d'Héraldique **Elizabeth Roads** L.V.O., A.I.H., O.St.J.

14.45 Session 1 *Contemporary Heraldic Law I*
Chair: Professor Dr. **Peter Kurrild-Klitgaard** A.I.H.
Elizabeth Roads A.I.H.: The law and Scots heraldry

15.30 *Coffee and tea*

16.00 Session 2 *Contemporary Heraldic Law II*
Chair: Dr. **Nicolas Vernot** A.I.H.
- **Marc Baronnet-Steinbrecher**: Quel est l'état du droit héraldique en France ? Forces et faiblesses, 230 ans après la suppression révolutionnaire des armoiries
- Dr. **Samy Khalid** a.i.h.: Creation and maintenance of a Canadian heraldic system
- **Cedric Pauwels** a.i.h.: Heraldic law in French-speaking Belgium

17.30 End of the first day's sessions

17.45 Meeting of the *Council of the Académie Internationale d'Héraldique,* Pufendorf Auditorium

Thursday 17th August 2023

Venue: Pufendorf Auditorium & Rättegångssalen, Tryckeriet, Faculty of Law, Lilla Gråbrödersgatan 3

09.00 Session 3A, Pufendorf *A French and Portuguese heraldry from 1400 onwards*
Chair: Dr. **Simon Rousselot** a.i.h.
- **Antoine Robin**: Signifier et contester en image les droits de justice. Les conflits de bornage héraldique aux frontières de la principauté bourbonnaise, 1400–1531
- Dr. **Pedro Sameiro** A.I.H.: Caractèristiques principales du Droit Héraldique Portugais selon le Corpus du Droit Héraldique Portugais (XV – XXI siècles)

09.00 Session 3B, Rättegångssalen *Municipal heraldry 20th–21st centuries*
Chair: Dr. **Michael Göbl** A.I.H.
- **Lyder Marstrander**: Recent changes in the Norwegian legislation regarding civic arms and flags

– **Karl-Heinz Steinbruch** a.i.h.: Zur Situation der regionalen und kommunalen Heraldik in den fünf ostdeutschen Ländern der Bundesrepublik Deutschland

10.00 *Coffee and tea*

10.30 Session 4A, Pufendorf *Law, usages and their effects*
Chair: Dr. **Paul Fox** A.I.H.
– Dr. **Agnė Railaitė-Bardė** A.I.H.: Signs of Themis in Lithuanian heraldry
– **Ronny Skov Andersen** A.I.H.: The Heraldic Consequences of the passing of a Law – a Case Study

10.30 Session 4B, Rättegångssalen *Symbols of law in heraldry*
Chair: **Marc Baronnet-Steinbrecher**
– **Klaas Padberg Evenboer** a.i.h.: Symbols of law in heraldry
– **Bruce Patterson** a.i.h.: The Law as a theme in Canadian grants of arms
– **Magnus Bäckmark** a.i.h.: Symbols of Law in Historical Personal Arms in Sweden

12.00 *Lunch,* The Gallery, Faculty of Law
Meeting of the *Bureau permanent des congrès internationaux des sciences généalogique et héraldique*, in Röda Tornrummet, next to The Gallery

13.30 Session 5, Pufendorf *Law and other types of norms*
Chair: Dr. **Agnė Railaitė-Bardė** A.I.H.
– Professor Dr. **Fernando Herrera**: The heraldry of Spanish America in the 16th Century: legal process and implications
– **Joseph McMillan** a.i.h.: Heraldic Episodes in American Legal History: Stray Voltage or Saving Remnant?
– Dr. **Henric Åsklund** a.i.h.: In the Absence of Heraldic Law: Scandinavian Examples of how Registration of Burgher Arms has been Organized by Private Initiatives or Associations

15.00 *Coffee and tea*

15.30 Session 6A, Pufendorf *Holy Roman Empire and Germany*
Chair: Dr. **Nils G. Bartholdy** A.I.H.
– Dr. **Michael Göbl** A.I.H.: Die Reichskanzlei des Heiligen Römischen Reiches und die Österreichische Hofkanzlei als Wappenbehörden
– **Clemens Herzog** a.i.h.: Inspecting the Coat of Arms Censors in Württemberg 1806–1918

15.30 Session 6B, Rättegångssalen *Law and practice in Scotland*
Chair: **Bruce Patterson** a.i.h.
– **Huw Sherrard**: Sir Thomas Innes of Learney (Lord Lyon King of Arms, 1945–1969): a 'Ventilation'
– Dr. **Bruce Durie**: Scottish Heraldry 1971–2017: Changes to Practice and Law

16.30 End of the second day's sessions

16.45 *General Assembly of the Académie Internationale d'Héraldique*, Pufendorf Auditorium (for members and associate members of the Academy)
18.30 *Reception hosted by Lund University* (for all participants), The University Building, Paradisgatan 2

Friday 18th August 2023

Venue: Pufendorf Auditorium and Rättegångssalen, Tryckeriet, Faculty of Law, Lilla Gråbrödersgatan 3 C

09.00 Session 7A, Pufendorf *How to do it – litigation and legislation*
Chair: Professor Dr. **Gillian Black**
– **Mark Watson-Gandy**: The Court of Chivalry: A simple how to do it guide
– **Davor Zovko**: Heraldry and the Law: often – but not always – in harmony

08.30 Session 7B, Rättegångssalen *Hands on Workshop I*
– **Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider:** Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing upf or different time slots will be available on Wednesday and Thursday)

10.00 *Coffee and tea*

10.30 Session 8A, Pufendorf *Heraldry and authority*
Chair: **Ronny Skov Andersen** A.I.H.
– Professor Dr. **Gerard Marí Brull**: Law against Arms: Obliteration of Seals, Emblems and Coats of Arms by Fernando VII, King of Spain (1808–1833)
– Dr. **Justina Sipavičiūtė:** The Statutes of Lithuania – Seals – Heraldry
– **Drăgan-George Basarabă**: The Legal History of the Coat of Arms of Romania

10.30 Session 8B, Rättegångssalen *Hands on Workshop II*
Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider: Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing up for different time slots will be available on Wednesday and Thursday)

12.00 *Lunch,* The Gallery, Faculty of Law
Meeting for informal discussions within *CIGH/ICOC*, in Röda tornrummet, next to The Gallery

13.30 Session 9A, Pufendorf *Heraldry and cultural heritage*
Chair: Professor Dr. **Martin Sunnqvist** A.I.H.
– Dr. **Andriy Grechylo** a.i.h. (online): Municipal and territorial symbols of Ukraine: problems of legal regulation
– Dr. **Nicolas Vernot** A.I.H.: Heraldry as "Intangible, Cultural Heritage" (UNESCO): a relevant institutional recognition?
– Dr. **Simon Rousselot** a.i.h.: The right to bear arms in a fantasy universe: The example of Andrzej Sapkowski's The Witcher

13.30 Session 9B, Rättegångssalen *Hands on Workshop III*
- **Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider**: Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing up for different time slots will be available on Wednesday and Thursday)

15.00 *Coffee and tea*

16.30 End of the third day's sessions

18.00 *Conference dinner*. Venue: Lilla salen, Akademiska Föreningen, Sandgatan 2, Lund. Dress code: Evening dress with decorations. Following the long-established tradition of Lund University, gentlemen are invited to wear white tie. Black tie, mess dress, dark suit and national costume could also be worn.

Saturday 19th August 2023

Venue: Pufendorf Auditorium, Tryckeriet, Faculty of Law, Lilla Gråbrödersgatan 3 C

09.30 Session 11 *Contemporary changes*

Chair: Dr. **Henrik Klackenberg** A.I.H.
- Professor Dr. **Gillian Black**: Succession to Arms in the 21st Century
- **Ross M. McEwen**: Heraldry in Chief: … a critical analysis of the Succession of Chiefs of Clan and Families in the 21st century

10.30 *Coffee and tea*

11.00 Session 12 *Legal norms or not?*

Chair: **Robert D. Watt** A.I.H.
- **Jos van den Borne**: No regulation, regulation and deregulation. Republican tradition and government interference in Dutch heraldry
- Professor Dr. **Eric Bylander**: Heraldic norms as (non-)legal norms from a Swedish perspective

12.00 End of the colloquium

13.15 *Time for lunch*

14.30 Seeing sights of heraldic and historic interest in Lund. Separate programme, see pp. 19–20.

Programme (Français)

Mercredi 16 août 20233

Lieu: ***Salle Pufendorf, Tryckeriet, Faculté de droit, Lilla Gråbrödersgatan 3 C***

14h00 Accueil et ouverture du colloque
- M. le Professeur Dr. **Martin Sunnqvist** A.I.H., pour le comité d'organisation
- Mme la Vice-Présidente adjointe de l'Université de Lund, la Professeure Dr. **Lena Eskilsson**
- Mme la Doyenne de la Faculté de Droit, la Professeure Dr. **Eva Ryrstedt**
- M. le Maire et Président du Conseil municipal de Lund, **Mats Helmfrid**
- Monseigneur l'Évêque de Lund, **Johan Tyrberg**
- Mme la Présidente de l'Académie Internationale d'Héraldique, **Elizabeth Roads** L.V.O., A.I.H., O.St.J.

14h45 Session 1 *Droit héraldique contemporain I*
Président: Professeur Dr. **Peter Kurrild-Klitgaard** A.I.H.
Elizabeth Roads A.I.H.: The law and Scots heraldry

15h30 *Café et thé*

16h00 Session 2 *Droit héraldique contemporain II*
Président: Dr. **Nicolas Vernot** A.I.H.
- **Marc Baronnet-Steinbrecher**: Quel est l'état du droit héraldique en France ? Forces et faiblesses, 230 ans après la suppression révolutionnaire des armoiries
- Dr. **Samy Khalid** a.i.h.: Creation and maintenance of a Canadian heraldic system
- **Cedric Pauwels** a.i.h.: Heraldic law in French-speaking Belgium

17h30 Fin de la 1ère journée

17h45 Réunion du *Bureau de l'Académie Internationale d'Héraldique,* Salle Pufendorf

Jeudi 17 août 2023

Lieu: ***Salle Pufendorf et Rättegångssalen, Tryckeriet, Faculté de droit, Lilla Gråbrödersgatan 3 C***

09h00 Session 3A, Pufendorf *Héraldique française et portugaise à partir de 1400*
Président: Dr. **Simon Rousselot** a.i.h.
- **Antoine Robin**: Signifier et contester en image les droits de justice. Les conflits de bornage héraldique aux frontières de la principauté bourbonnaise, 1400–1531
- Dr. **Pedro Sameiro** A.I.H.: Caractèristiques principales du Droit Héraldique Portugais selon le Corpus du Droit Héraldique Portugais (XV – XXI siècles)

09h00 Session 3B, Rättegångssalen *Héraldique municipale 20e–21e siècles*
Président: Dr. **Michael Göbl** A.I.H.
- **Lyder Marstrander**: Recent changes in the Norwegian legislation regarding civic arms and flags

– **Karl-Heinz Steinbruch** a.i.h.: Zur Situation der regionalen und kommunalen Heraldik in den fünf ostdeutschen Ländern der Bundesrepublik Deutschland

10h00 *Café et thé*

10h30 Session 4A, Pufendorf *Le droit, les usages et leurs effets*
Président: Dr. **Paul Fox** A.I.H.
– Dr. **Agnė Railaitė-Bardė** A.I.H.: Signs of Themis in Lithuanian heraldry
– **Ronny Skov Andersen** A.I.H.: The Heraldic Consequences of the passing of a Law – a Case Study

10h30 Session 4B, Rättegångssalen *Symboles de la loi dans l'héraldique*
Président: **Marc Baronnet-Steinbrecher**
– **Klaas Padberg Evenboer** a.i.h.: Symbols of law in heraldry
– **Bruce Patterson** a.i.h.: The Law as a theme in Canadian grants of arms
– **Magnus Bäckmark** a.i.h.: Symbols of Law in Historical Personal Arms in Sweden

12h00 *Déjeuner,* La Galerie, Faculté de droit
Réunion du *Bureau permanent des congrès internationaux des sciences généalogique et héraldique,* Röda tornrummet, à côté de La Galerie

13h30 Session 5, Pufendorf *Droit et autres types de normes*
Président: Dr. **Agnė Railaitė-Bardė** A.I.H.
– Professor Dr. **Fernando Herrera**: The heraldry of Spanish America in the 16th Century: legal process and implications
– **Joseph McMillan** a.i.h.: Heraldic Episodes in American Legal History: Stray Voltage or Saving Remnant?
– Dr. **Henric Åsklund** a.i.h.: In the Absence of Heraldic Law: Scandinavian Examples of how Registration of Burgher Arms has been Organized by Private Initiatives or Associations

15h00 *Café et thé*

15h30 Session 6A, Pufendorf *Saint-Empire romain germanique et Allemagne*
Président: Dr. **Nils G. Bartholdy** A.I.H.
– Dr. **Michael Göbl** A.I.H.: Die Reichskanzlei des Heiligen Römischen Reiches und die Österreichische Hofkanzlei als Wappenbehörden
– **Clemens Herzog** a.i.h.: Inspecting the Coat of Arms Censors in Württemberg 1806–1918

15h30 Session 6B, Rättegångssalen *Droit et pratique en Écosse*
Président: **Bruce Patterson** a.i.h.
– **Huw Sherrard**: Sir Thomas Innes of Learney (Lord Lyon King of Arms, 1945–1969): a 'Ventilation'
– Dr. **Bruce Durie**: Scottish Heraldry 1971 – 2017: Changes to Practice and Law

16h30 Fin de la 2ème journée

16h45 *Assemblée générale de l'Académie Internationale d'Héraldique, Salle Pufendorf* (pour les membres et membres associés de l'Académie)

18h30 *Réception organisée par l'Université de Lund* (pour tous les participants), bâtiment principal de l'université, Paradisgatan 2

Vendredi 18 août 2023

Lieu: ***Salle Pufendorf et Rättegångssalen, Tryckeriet, Faculté de droit, Lilla Gråbrödersgatan 3 C***

09h00 Session 7A, Pufendorf *Comment procéder – litiges et législation*
Président: Professor Dr. **Gillian Black**
- **Mark Watson-Gandy**: The Court of Chivalry: A simple how to do it guide
- **Davor Zovko**: Heraldry and the Law: often – but not always – in harmony

08h30 Session 7B, Rättegångssalen *Atelier pratique I*
- **Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider**: Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing upf or different time slots will be available on Wednesday and Thursday)

10h00 *Café et thé*

10h30 Session 8A, Pufendorf *Héraldique et autorité*
Président: **Ronny Skov Andersen** A.I.H.
- Professor Dr. **Gerard Marí Brull**: Law against Arms: Obliteration of Seals, Emblems and Coats of Arms by Fernando VII, King of Spain (1808–1833)
- Dr. **Justina Sipavičiūtė**: The Statutes of Lithuania – Seals – Heraldry
- **Drăgan-George Basarabă**: The Legal History of the Coat of Arms of Romania

10h30 Session 8B, Rättegångssalen *Atelier pratique II*
Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider: Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing up for different time slots will be available on Wednesday and Thursday)

12h00 *Déjeuner,* La Galerie, Faculté de droit
Réunion pour des discussions informelles concernant les organisations *CIGH/ICOC,* Röda tornrummet, à côté de La Galerie

13h30 Session 9A, Pufendorf *Héraldique et héritage*
Président: Professor Dr. **Martin Sunnqvist** A.I.H.
- Dr. **Andriy Grechylo** a.i.h. (online): Municipal and territorial symbols of Ukraine: problems of legal regulation
- Dr. **Nicolas Vernot** A.I.H.: Heraldry as "Intangible, Cultural Heritage" (UNESCO): a relevant institutional recognition?
- Dr. **Simon Rousselot** a.i.h.: The right to bear arms in a fantasy universe: The example of Andrzej Sapkowski's The Witcher

13h30 Session 9B, Rättegångssalen *Atelier pratique III*
- **Torsten Hiltmann, Sophie Eckenstaler, Philipp Schneider**: Hands on Workshop. A new tool to find, identify and contextualise coats of arms (a list for signing up for different time slots will be available on Wednesday and Thursday)

15h00 *Café et thé*
16h30 Fin de la 3ème journée
18h00 *Dîner de conférence.* Lilla salen, Akademiska Föreningen, Sandgatan 2, Lund. Code vestimentaire : Tenue de soirée avec décorations (miniatures recommandées). Conformément à la longue tradition de l'université de Lund, les messieurs sont invités à porter une cravate blanche. La cravate noire, la tenue de mess, costume sombre et le costume national peuvent également être portés.

Samedi 19 août 2023
Lieu: ***Salle Pufendorf, Tryckeriet, Faculté de droit, Lilla Gråbrödersgatan 3 C***
09h30 Session 11 *Changements contemporains*
Président: Dr. **Henrik Klackenberg** A.I.H.
- Professor Dr. **Gillian Black**: Succession to Arms in the 21st Century
- **Ross M. McEwen**: Heraldry in Chief: … a critical analysis of the Succession of Chiefs of Clan and Families in the 21st century

10h30 *Café et thé*
11h00 Session 12 *Normes juridiques ou non ?*
Président: **Robert D. Watt** A.I.H.
- **Jos van den Borne**: No regulation, regulation and deregulation. Republican tradition and government interference in Dutch heraldry
- Professor Dr. **Eric Bylander**: Heraldic norms as (non-)legal norms from a Swedish perspective

12h00 Fin du colloque
13h15 *Temps de déjeuner*
14h30 Visite des sites d'intérêt héraldique de Lund. Programme séparé, voir pp. 19–20.

List of participants (including accompanying persons) (Liste des participants [y compris les accompagnants])

Redmer Alma, the Netherlands
Ronny Skov Andersen, Denmark
Lydia Skov Andersen, Denmark
Daniel Andersson, Sweden
Steven Ashley, United Kingdom
Marc Baronnet-Steinbrecher, France
Nils Georg Bartholdy, Denmark
Drăgan-George Basarabă, Romania
Bettina-Evelin Basarabă-Varga, Romania
Robert Beaken, United Kingdom
Claus Berntsen, Sweden
Remigijus Bimba, Lithuania
Gillian Black, United Kingdom
Sylvaine Boussuard-Le Cren, France
Wilhelm Brummer, Finland
Eric Bylander, Sweden
Maria Byqvist, Sweden
Magnus Bäckmark, Sweden
David Chkheidze, Georgia
Carl-Thomas von Christierson, Denmark
Christoffer Dannstedt, Sweden
Richard d'Apice, Australia
Pier Felice degli Uberti, Italy
Mark Dennis, United Kingdom
Kim Dohm-Hansen, Sweden
Bruce Durie, United Kingdom
Sophie Eckenstaler, Germany
Paul Fox, United Kingdom
Björn Fridén, Sweden
Michael Goebl, Austria
Helga Goebl, Austria
Mamuka Gongadze, Georgia
Merethe Guldborg, Denmark
Robert Harrison, United Kingdom
Luis Fernando Herrera, Mexico
Clemens L. Herzog, Germany
Ana Carolina Herzog, Germany
Kasper Asbjørn Tare Jespersen, Denmark
Alexander Karl Mauritz Karlman, Finland
Edward Kelly, Ireland
Samy Khalid, Canada
Henrik Klackenberg, Sweden
Peter Kurrild-Klitgaard, Denmark
Stefan Lægaard, Denmark
Gerard Marí Brull, Spain
Lyder Marstrander, Norway
Alex Maxwell Findlater, United Kingdom
Hattie Maxwell Findlater, United Kingdom
Ross McEwen, United Kingdom
Ernest Oliver Joseph McMillan, United States
Andrea Montiel, Mexico
F. M. J. Müllender, Belgium
Sami Nahas, Sweden
Dình Thi Nguyên, Belgium
Per Nilsén, Sweden
Klaas Padberg Evenboer, the Netherlands
Bruce Patterson, Canada
Cédric Pauwels, Belgium
Maria Loredana Pinotti, San Marino
Agnė Railaitė-Bardė, Lithuania
Gaute R. Risholt, Norway
Christopher Roads, United Kingdom
Elizabeth Roads, United Kingdom
Antoine Robin, France
Simon Rousselot, France
Ana Sameiro, Portugal
António-Pedro Sameiro, Portugal
João Caetano Sameiro, Portugal
Georg Scheibelreiter, Austria
Ulrike Scheibelreiter, Austria
Philipp Schneider, Germany
Huw Sherrard, United Kingdom
Kaare Seeberg Sidselrud, Norway
Justina Sipavičiūtė, Lithuania
Malin Sjöstrand, Sweden
Charlotta Sokulski Bateld, Sweden
Elias Sonnek, Sweden
Tal Steinbrecher-Baronnet, France
Karl-Heinz Steinbruch, Germany
Brigitta Steinbruch, Germany
John Strömberg, Finland
Martin Sunnqvist, Sweden
Rolf Sutter, Germany
Hans Trebbien, Denmark
Elsa Trolle Önnerfors, Sweden
Lars Trägen, Sweden
Martin Trägen, Sweden
Jos van den Borne, the Netherlands
Evrard van Zuylen van Nyevelt, Belgium
Olivier Vera, France
Bas Verkerk, the Netherlands
Nicolas Vernot, France
Kalmi Vanky, Sweden
Mark Watson-Gandy, United Kingdom
Alison Watt, Canada
Robert Watt, Canada
Roger W. Whitworth, United Kingdom
Jennifer M. Whitworth, United Kingdom
Michael Zander, Germany
Davor Zovko, Sweden
Henric Åsklund, Sweden

Participants per country:

Australia	1
Austria	4
Belgium	4
Canada	4
Denmark	9
Finland	3
France	7
Georgia	2
Germany	8
Italy	1
Ireland	1
Lithuania	3
Mexico	2
The Netherlands	4
Norway	3
Portugal	3
Romania	2
San Marino	1
Spain	1
Sweden	21
United Kingdom	16
United States	1
In total:	**101**

Lund University, the Main University Building. Photo: Martin Sunnqvist.

List of colloquia of the Académie Internationale d'Héraldique (Liste des colloques de l'Académie Internationale d'Héraldique)

I 1978 Muttenz CH
II 1981 Bressanone IT
III 1983 Montmorency FR
IV 1985 Bruxelles BE
V 1987 Spoleto IT
VI 1989 la Petite-Pierre FR
VII 1991 Caceres ES
VIII 1993 Canterbury UK
IX 1995 Krakow PO
X 1997 Rothenburg ob der Tauber DE
XI 1999 St. Pölten AT
XII 2001 Groningen NL
XIII 2003 Troyes FR *
XIV 2005 St. Petersburg RU
XV 2007 Xanten DE
XVI 2009 Verviers BE *
XVII 2011 Fribourg CH
XVIII 2013 Stirling UK *
XIX 2015 St. Jean du Gard FR *
XX 2017 København DK *
XXI 2019 Antwerpen / Anvers BE
XXII 2023 Lund SE

Next colloquium / Prochain colloque:
XXIII Iaşi RO

* indicates that the proceedings are not yet published
* *indique que les actes ne sont pas encore publiés*

Colloquium Lund 2023
Pp. 33–69

Considering Heraldry as Intangible Cultural Heritage According to UNESCO Criteria: A Relevant Approach?[1]

By Dr. Nicolas Vernot, A.I.H.[2]

Abstract: In 2003, UNESCO adopted the *Convention for the Safeguarding of the Intangible Cultural Heritage,* which aims to inventory, safeguard, and promote this peculiar heritage in a spirit of international cooperation and assistance. "Intangible cultural heritage" is defined as the set of "practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity" (art 2.1).

UNESCO includes intangible cultural heritage on its *Representative List of the Intangible Cultural Heritage.* There are also national lists in the States that are parties to the Convention. The aim of this paper is to examine the relevance of endorsing heraldry as intangible cultural heritage and the potential benefits of such legal recognition, whether at the national or international (UNESCO) level.

Considering heraldry from the angle of intangible cultural heritage rather than as an "auxiliary science" offers real opportunities, particularly in countries where legislation is deficient: better identification and networking of those involved in contemporary heraldry, both public and private; a better understanding of the socio-cultural interest of heraldry by institutions, and therefore potentially a wider range of resources; and the possibility of improving heraldic culture, through better visibility and the labelling of craftsmen or training courses aimed at apprentices, teachers and the general public. The approach also enables heraldists to gain a better understanding of the representations and expectations of society, elected representatives and institutions with regard to coats of arms, and thus to dispel a number of misunderstandings.

Résumé : En 2003, l'UNESCO a adopté la *Convention pour la sauvegarde du patrimoine culturel immatériel,* en vue de l'inventorier, le sauvegarder et le promouvoir dans un esprit de coopération et d'assistance internationale. Le « patrimoine culturel immatériel » est défini comme l'ensemble des « pratiques, représentations, expressions, connaissances et savoir-faire –ainsi que les instruments, objets, artefacts et espaces culturels qui leur sont associés– que les communautés, les groupes et, le cas échéant, les individus reconnaissent comme faisant partie de leur patrimoine culturel. Ce patrimoine culturel immatériel, transmis de génération en gé-

nération, est recréé en permanence par les communautés et groupes en fonction de leur milieu, de leur interaction avec la nature et de leur histoire, et leur procure un sentiment d'identité et de continuité, contribuant ainsi à promouvoir le respect de la diversité culturelle et la créativité humaine » (art 2–1).

L'UNESCO inscrit le patrimoine culturel immatériel sur sa *Liste représentative du patrimoine culturel immatériel.* Il existe également des listes nationales dans les États parties à la Convention. Le but de cette communication est de se demander dans quelle mesure il est pertinent de considérer l'héraldique comme Patrimoine culturel immatériel et quel peut être l'intérêt d'une telle reconnaissance, que ce soit à l'échelon national ou international (UNESCO).

Considérer l'héraldique sous l'angle du patrimoine culturel immatériel plutôt que comme une "science auxiliaire" offre de réelles opportunités, notamment dans les États où la législation est déficiente: une meilleure identification et mise en réseau des acteurs de l'héraldique contemporaine, publics et privés; une meilleure compréhension de l'intérêt socio-culturel de l'héraldique par les institutions, et donc potentiellement un éventail de moyens élargi; la possibilité d'améliorer la culture héraldique par une meilleure visibilité ainsi que la labellisation d'artisans ou de formations destinés aux apprentis, aux enseignants ainsi qu'au grand public. La démarche permet également aux héraldistes de mieux connaître et prendre en compte les représentations et les attentes de la société, des élus et des institutions en matière d'armoiries, et donc de lever un certain nombre de malentendus.

1. Introduction

It does not require much effort to consider heraldry as a heritage: the mere mention of the idea reminds us of the heraldic objects that have elicited our curiosity and, sometimes, our enjoyment from coats of arms: a picture frame in a living room, a bas-relief on a facade, a piece of jewellery or a bookplate … devotedly preserved in the privacy of our homes, proudly displayed in public spaces or carefully exhibited in museums, heraldic artefacts are part of our tangible heritage, from home to nation. But to consider heraldry as *intangible cultural heritage* (ICH) is far less expected. The notion invites us to go beyond the "regime of objects" to focus on the cultural substrata that makes its implementation possible. While acknowledging that cultural and intangible heritage are interdependent, the emphasis is put on the practices and their holders: what matters is not so much the eventual result as the process and the specific know-how it requires.[3]

Prepared by ethnographic studies in the 19th century, the concept of "intangible cultural heritage" took shape in the second half of the 20th century. Japan was a forerunner, defining "intangible cultural property" in its *Law for the Protection of Cultural Property* as early as 1950; an amendment in 1954 introduced the notion of "intangible heritage", with its bearers designated as "living national treasures", a formula that was to prove highly successful internationally.[4] In 1964, South Korea adopted similar legislation, distinguishing intangible cultural treasures from ethnographic material.[5] Other countries started taking similar steps to protect "folklore", "popular culture" or "living heritage".

UNESCO has played a leading role in the process of synthesising and clarifying the concept of intangible cultural heritage. To fully understand what is at stake in the texts it has promulgated on the subject, it should be remembered that the *United Nations Educational, Scientific and Cultural Organization* (UNESCO), was set up in 1945 to "contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations" (Article I of the Constitution of Unesco).

Promulgated in 1972, the *Convention Concerning the Protection of the World Cultural and Natural Heritage*[6] marked a milestone in terms of both its achievements and the stimulating criticism it provoked. African, Asian, and South American countries with few or no artefacts covered by the Convention, or whose built heritage was significantly marked by colonisation, criticised the text for being too European-centric and "bourgeois", with its conception of heritage focused on the monumental, the beautiful and the rare. In response, they argued in favour of broadening the scope of heritage to include other objects such as customs and know-how.[7]

Intended to respond to these objections, the UNESCO *Recommendation on the Safeguarding of Traditional Culture and Folklore* (1989)[8] was in turn criticised. The terms "folklore" and "popular culture" were considered problematic because they risked excluding entire areas of intangible cultural heritage, in particular certain skills, on the grounds that they were insufficiently popular or even elitist.[9] Although these terms, along with "living heritage", are still used today in the legislation of some States, the notion of "intangible cultural good – or heritage", began to spread outside Asia in the 1980s, in the legislation of States such as Algeria, Mexico and Brazil, before the 2003 UNESCO Convention gave it international recognition.[10]

The Convention establishes a definition of ICH that has become a benchmark: "'intangible cultural heritage' means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts, and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development" (art. 2.1).[11]

This definition represents a paradigm shift in the concept of heritage: while the excep-

tionality of goods was at the heart of the 1972 Convention, the 2003 Convention sets a definition which, as Chiara Bortolotto has pointed out, gives a central place to the bond of belonging, emphasising "the role of social actors ('communities, groups and, where appropriate, individuals') in heritage recognition, on the dimension of this heritage as not only historical ('transmitted from generation to generation') but also evolving and processual ('constantly recreated'), on its identity function for the social actors to whom this heritage provide a 'sense of identity', while limiting itself to non-discriminatory practices that comply with the emerging global ethic".[12]

The purpose of the present article is to question whether heraldry meets the UNESCO criteria for ICH, and the relevance of an application for recognition of the discipline as intangible cultural heritage. It aims at laying the foundations for a common platform for reflection between heraldists and ICH specialists, on the assumption that what is obvious to one will not necessarily be so to the other.[13] Of course, this article does not claim to cover every aspect of the approach: the present reflection is influenced in particular by the French national framework within which the author operates, even if his various experiences abroad, notably in the service of the International Academy of Heraldry, have enabled him to broaden his views through exchanges with colleagues and friends from all horizons. Whether a heraldist or a heritage specialist, the reader will not fail to notice shortcomings. Far from resenting this, the author looks forward to further discussion: the avowed aim of this article is indeed to initiate a wider dynamic, which everyone is invited to enrich with their own experience.[14]

2. Can heraldry be considered as intangible cultural heritage according to UNESCO criteria?

By giving precedence to transmission over study and research,[15] UNESCO's approach invites us to release heraldry from its status as an "auxiliary science of history", which, while not without relevance, nevertheless results in the making of heraldry a discipline frozen in the past, thereby obscuring its dynamic, living, and constantly renewing character.

2.1 From auxiliary science to "heraldic practice"

In the context of recognition as ICH, it is not heraldry as a whole, or even heraldic heritage, that can be retained, but its living dimension, in other words "heraldic practice". By this we mean essentially:

- the process of designing coats of arms, i.e. to create a specific type of visual emblem that obeys rules known as "heraldry", which first appeared in Western Europe during the 12th century.[16] It must be possible to describe these emblems in the language of *blazon*, which includes a vocabulary and a syntax;
- the materialisation of coats of arms using a variety of media and techniques, whether handmade (painting, sculpture, engraving, etc.) or industrial (printing, moulding, etc.);
- the bearing, use and transmission of

coats of arms, whether public or private, on everyday or for special events (ceremonies, commemorations, etc.);
- the knowledge of the laws and customs used to determine the right of individuals or entities to specific coats of arms or heraldic attributes;
- the expertise in identifying and/or providing information about specific coats of arms (dating, country of origin, status of the owner, etc.).

This focus on practice enables us to identify what, within heraldry, comes under the scope of intangible cultural heritage. Thus, tangible heritage (heraldic artefacts inherited from the past, in their material form) is not directly implicated, except when it is to be restored or used as a source of knowledge and inspiration. In addition, as discussed further below, the emphasis on the living and contemporary aspect excludes ancient productions that would contravene the major principles espoused by UNESCO and democratic States, namely "mutual respect between communities, groups and individuals", as well as human rights as defined by national or international reference texts.

2.2 Which domains?

The text of the Convention (Article 2.2) offers an indicative list of five "ethnological" domains to which expressions of the ICH may belong:
- "oral traditions and expressions, including language as a vehicle of the intangible cultural heritage";
- "performing arts";
- "social practices, rituals and festive events";
- "knowledge and practices concerning nature and the universe";
- "traditional craftsmanship";

Though not exhaustive, the list has been enriched by some countries. France, for example, has added physical practices (sailing, horse riding, etc.) and games. On the other hand, other countries refuse to consider applications that do not fall within at least one of the five areas explicitly set out in the Convention. Reflecting on the way in which heraldry fits into these domains provides us with a clearer picture of the cultural and social value of a practice that indeed straddles more than one field: "traditional craftsmanship", "social practices, rituals and festive events", not to mention "language as a vehicle of intangible cultural heritage".

Insofar as coats of arms are used to designate civil and religious institutions, families and even individuals, they clearly fall within the scope of "social practices" that highlight a sense of belonging. They enable individuals and entities to identify themselves on different levels and in a variety of ways, from family to nation, via the municipality, region, school, profession, sports club, military unit, religious or philosophical affiliation, etc. Being displayed at family celebrations (weddings, funerals, etc.) or public events (inaugurations, commemorations, etc.), coats of arms can also be linked to "rituals and festive events": celebrations inscribed on UNESCO's *Representative List of the Intangible Cultural Heritage of Humanity*, such as the *Ommegang* of Brussels (Belgium, 2019),[17] or processions such as the

Limousin septennial ostensions (France, 2013),[18] make extensive use of coats of arms.

In addition, the practice of heraldry falls under the heading of "traditional craftsmanship", as long as interpretation includes both the design and production of coats of arms. Designing a coat of arms requires precise knowledge not only of the rules and practices of heraldry, but also of its language, since it is the "blazonability" of an emblem that determines its acceptability as a coat of arms, to the exclusion of any other type of visual identifier (logo, trade mark, etc.). The materialisation of the concept requires specific know-how, some highly skilled: illuminators, painters, designers, engravers, wood, or stone sculptors, etc. must possess not only the technical skills required to master their art, but also a specifically heraldic aesthetic sensibility. One can be a highly skilled craftsman, such as a sculptor, and yet have poor heraldic talent.

Doesn't heraldic practice also fall into the first category, i.e. "oral traditions and expressions, including language as a vehicle of the intangible cultural heritage"? In principle, only languages related to oral expressions or traditions (stories, theatre, rituals, etc.) fall within the scope of the Convention.[19] However, case law arising from the wide variety of applications has led to a relaxation of this principle, allowing us now to take into consideration "the specific terminology peculiar to a group of people practising a traditional craft" insofar as the specific language does indeed appear to be the "vehicle of the intangible cultural tradition".[20] For example, the file on falconry, inscribed by the UNESCO in 2021, includes the field of "oral traditions and expressions" because of the specific vocabulary required for the practice,[21] while the recognition in 2016 of the "living culture of the three writing systems of the Georgian alphabet"[22] opens the way to files that do not exclude the written word.

In heraldry, the language plays a central role that should be emphasised, for its knowledge defines the contours of a community of practitioners: whatever the definition of an heraldist might be, it necessarily implies mastery of the blazon. This language constitutes indeed a "vector of intangible cultural heritage" because the composition of a coat of arms, as a graphic concept, is accompanied, as it is developed, by verification of its "blazonability", whether mental, oral or written, by the designer or his peers. This language is transmitted both orally and in writing. While illustrated manuals play a central role in the learning process, heraldry is also often taught by older people to younger ones, either informally (within the family, in associations, etc.) or more institutionally (heraldic workshops for children, training courses in art schools or, less frequently, in universities).

However, falling into one or more of these "ethnographic" domains alone is not sufficient to be recognised as ICH. The Convention (article 2.1) also sets out five imperative conditions, which we will now examine.

2.3 Criterion 1: the elements are those "that communities, groups and, in some cases, individuals recognise as part of their cultural heritage"

The Convention does not define precisely what is meant by "communities", nor does

it explain what distinguishes them from "groups". This vagueness has paved the way for a variety of interpretations that have been updated over the years. The approach usually associates two groups: the *bearers*, who possess the know-how specific to the exercise and transmission of the practice, and the *community concerned*, or *extended community*, which assigns it its heritage value. This dual approach is reflected in the application form, which requires the applicant to identify firstly "the bearers and practitioners of the element" and then the "social functions and cultural meaning [that] the element [has] nowadays for the communities concerned".[23]

Depending on the case, these broad communities can be termed as "national", "ethnic" or "cultural". Multinational cases enable to go beyond the ethnic or national community. The community may then correspond to a group of contiguous States that are culturally linked, as in the case of the "Baltic song and dance celebrations"[24] or Arabic calligraphy.[25] However, the application for recognition of falconry includes 24 non-contiguous European, African and Asian States belonging to distinct cultural areas.[26] The flexible and dynamic definition of community proposed by Christian Hottin is therefore fully relevant: "the term […] refers much less to a fixed and closed group (whatever the criteria for its delimitation) than to a collective under construction, which is mobilised within the framework of the project with a view to safeguarding an asset which, not being the property of an individual or a legal entity by virtue of the law, is by its very nature open to the inclusion of new partners. It is true that the project is often initiated by a group of people who possess the knowledge and know-how enabling to perform the intangible heritage, but in the process of project building, it very often brings together, in a variety of configurations, spectators, supporters, other trades, and local authorities of various scales".[27]

The baguette bread application (France, 2022) illustrates the plasticity of the definition of community in its relation to practitioners. It defines two circles: the holders of the know-how and the consumers. At the centre, "the artisanal know-how connected with the baguette is principally borne by the community of bakers and professionals associated with the world of small bakeries: artisanal bakers, employees of small bakery businesses, baker's apprentices […], teachers and trainers, millers, yeast producers, equipment manufacturers and small farmers-bakers"; around this extends a community of consumers united by the same "baguette culture", practised "within the national community and among individuals who enjoy baguettes throughout the world".[28] In the dossier on "Craftsmanship of mechanical watchmaking and art mechanics" (France and Switzerland, 2020), the community is defined by three concentric circles: the first includes two types of practitioners: a core of craftsmen who possess specialised know-how (watchmakers, automaton and music box makers, etc.), around which gravitates a "vast network of subcontractors and specialists in the shaping and finishing of components"; the second circle brings together "independent or employed craftspeople, professional associations, businesses, public and private training and research institutions, public and

private museum and heritage institutions, specialized media and publishers and foundations"; finally, the third, known as the "peripheral", includes "enthusiasts, connoisseurs, collectors and buyers of mechanical craft creations, and more broadly the inhabitants of the region concerned who identify with the element. The element is highly valued and recognized by a large part of the population of the region concerned as part of its cultural heritage".[29]

These examples suggest that the "heraldic community" could be defined by three circles: the core of practitioners, the group of heraldic users taking care of the coats of arms they own or are responsible for (families, institutions, etc.), and finally all those who, more generally, assign heraldry a heritage value justifying the maintenance and transmission of its practice.

2.3.1 Locating heraldry

The application must also locate the practice. Is heraldry specific to a particular geographical or cultural area? It is unquestionably linked to European culture: it first appeared in Western Europe in the 12th century, before spreading to the rest of the continent and then the world, to varying degrees of influence, as a result of European expansion. Wherever it is alive, heraldry acclimatises to local cultures and develops its own particularities. An experienced heraldist can recognise Spanish, Italian, Polish, Scottish… coats of arms at a glance. Where they exist, the heraldic authorities (Scotland, Canada, Flanders, Lithuania, Georgia, etc.) endeavour to express their national emblematic particularisms in the compositions they approve.

Although heraldry is an offshoot of Western culture, the way in which it is viewed by formerly colonised nations is far from systematically hostile. Most of the world's States, as well as their capitals, currently use coats of arms composed in accordance with the rules of heraldry. Countries that have become independent have often retained the civic coats of arms created during the colonial era, usually with modifications reflecting the new values promoted by independence. In Africa, Kenya, Zambia, and Zimbabwe have official heraldic institutions responsible for registering coats of arms. In the Philippines, family heraldry has seen an unprecedented surge in popularity in recent years: blending indigenous and colonial heritages, the newly created coats of arms are proudly displayed as a rallying sign at major family gatherings bringing together members scattered all over the world.[30]

Consequently, an application concerning heraldry is virtually open to nations from all continents, provided that they maintain a living practice that they are willing to promote, and that they are among the 182 States Parties that have ratified the Convention. Non-signatories include States with active heraldic institutions (United Kingdom, Canada, New Zealand, South Africa, Russia, etc.) or proven heraldic practice (Australia, United States, etc.).[31] However, being outside the Convention system does not prevent them from taking part in the work and benefiting from its conclusions, insofar as all of them have set up measures to protect their intangible cultural heritage from which heraldry is likely to benefit.

2.3.2 Identifying the holders: the community of heraldists

Generally speaking, an application has little chance of success if it is limited to a bilateral dialogue between a single institution (heraldic authority, national association, etc.) and the ICH referent in the country concerned. The instructions issued by UNESCO encourage States "to prepare nominations with the participation of a wide variety of other parties concerned, including, where appropriate, local and regional governments, communities, NGOs, research institutes, centres of expertise and others […]. The Committee will welcome a broad range of demonstrations or attestations of community consent in preference to standard or uniform declarations".[32] In other words, the approach must be:

- bottom-up: it is not the States or national institutions that steer the application, but rather the holders who, in the diversity of their statutes, must structure themselves to collectively manage the project;
- extensive: "Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management" (art. 15 of the Convention). The extent of this involvement will be demonstrated by the number and diversity of the written consents to be attached to the file;[33]
- inclusive: the approach must not be discriminatory; particular attention is paid to gender representation.

The project therefore involves networking among the holders, who may find useful to gather within an umbrella structure (steering committee, association, etc.). Depending on the country, the parties to be included are:

- official national or sub-national (regional…) bodies responsible for officially regulating territorial and/or individual coats of arms or for providing qualified advice;
- national and, where appropriate, local associations whose objective is heraldic knowledge or practice;
- bodies or individuals who, within certain institutions (army, churches, freemasonry, etc.), are responsible for heraldic matters;
- heraldists, i.e. private professionals or civil servants whose job is to compose, blazon and depict coats of arms in accordance with heraldic rules and customs;
- specialist craftsmen capable of correctly depicting coats of arms using the techniques and media they are trained in (engravers, sculptors, painters…);
- specialised documentation centres such as libraries, museums, and the like (in France, the *Centre de sigillographie et d'héraldique* of the *Archives nationales* or the *Musée des blasons* at Saint-Jean-de-Valériscle);
- researchers and trainers, such as professional teachers (sculpture, engraving, etc.) and academics with historical, legal, or artistic expertise, who update the knowledge through research, etc.

In addition to written consent, letters of support may be attached to an application, enabling representatives of the wider community to express why they consider the practice as an intangible cultural heritage worth being safeguarded. As far as heraldry is concerned, the following stakeholders could be approached:

- private individuals and officials (elected representatives, etc.) committed to passing on the coats of arms they have inherited or for which they are responsible in the exercise of their duties, as part of a tradition kept alive through conservation, restoration, commission, or distribution;
- patrons of new coats of arms (private individuals, local authorities, etc.). The testimonies of elected representatives from different political backgrounds will reflect the inclusive nature of the practice, as will the diversity in gender, origin, socio-professional category, allegiance, etc. of private clients;
- heritage professionals involved in restoring armorial devices;
- artists (writers, designers, fashion creators, visual artists, etc.) who draw inspiration from heraldry in their creative work;
- institutions which, while not making heraldry their main activity, play a role in mediating and popularising it (archives services providing advice, mounting exhibitions, or designing educational materials; public places and educational institutions offering workshops for children; genealogy societies, etc.);
- companies that distribute armorial bearings on a large scale (printers of communication materials for local authorities, manufacturers of banners, stickers, and tourist souvenirs, etc.).

The file promoting the French baguette includes letters of support "from individual baguette lovers" as well as "testimonials from children and their families, young people and children's drawings",[34] obtained from an invitation published on the website of the *Confédération Nationale de la Boulangerie et Boulangerie-Pâtisserie Française*. As far as heraldry is concerned, a wider invitation may be considered, via specialist groups on social networks for example.

A large number of letters of support would underline the importance of heraldry, beyond its practitioners, to its users and the vast audience of people who enjoy it. This abundance would also demonstrate that heraldry is more inclusive than expected. Other elements that might at first sight appear to be elitist have successfully challenged this prejudice by highlighting the social diversity of the practitioners and communities involved: this is the case, for example, with falconry, the musical art of trumpet-players, the skills associated with perfume in Grasse (France),[35] traditional French horse-riding,[36] etc. The variety of everday and popular uses of heraldry belies the prejudice of elitism attached to the discipline: in public spaces (street signs, litter bins, etc.), on vehicles (driver's cabs, number plates and adhesive badges as holiday souvenirs, etc.), in public ceremonies, in sports, etc. This inclusive character also extends to the way coats of arms are designed (the public or schoolchildren

are frequently invited to have their say as part of the process of designing territorial coats of arms). The success of heraldry workshops with children from all backgrounds and origins is well worth noting.

2.3.3 Avoiding undesirables

When it comes to heraldry, defining the community raises issues of quality and ethics.

Qualitative issues

The qualitative aspect is the trickiest to deal with and the most likely to generate misunderstanding and frustration. Excellence can never be a criterion for a UNESCO application.[37] Yet those involved in living heraldry are keen to promote the design of quality coats of arms, as a reaction against a certain amateurism that leads to mediocre creations. But how can we define a heraldic practice that avoids the pitfall of excellence without endorsing a mediocrity that, while difficult to objectify, undermines the viability of the art of blazon?

The answer requires careful thought. Potentially fraught with consequences, it may lead to the exclusion of people who consider themselves to be holders even though their skills in guaranteeing the integrity of the practice are insufficient; it may also lead UNESCO to reject an application seen as too subjective or elitist. The few thoughts that follow do not claim to provide a definitive answer to a question that will require in-depth and collegial work on an international scale. They merely suggest a few avenues for defining the elements of the practice which: 1) make it specific; 2) guarantee its integrity through their transmission; 3) ascribe it value in the eyes of the holders and the wider community.

The task assigned to heraldists by the institutions and individuals who call on their expertise is not limited to producing or validating designs that simply comply with heraldic rules. It seems possible to identify three other structuring principles that are more difficult to objectify, but which, because they are specific to heraldic practice, enable to define the know-how to be valued and passed on. A competent heraldist is able to:

- transcribe the elements reflecting the identity and tastes of the patron into appropriate symbols, whether figurative or abstract;
- compose with an emphasis on synthesis and conciseness; he selects, arranges, and prioritises elements with a view to simplifying the final result. But this is a guiding principle rather than an absolute rule: some complex coats of arms derive their legitimacy from specific traditions (cultural, genealogical, etc.) or result from a compromise with the patron;
- apply graphic conventions treating the components of the coat of arms in a way specific to the art of heraldry: ideally, the figures (animals, plants, etc.) are depicted in a stylised rather than naturalistic way, so that they can be identified from a distance; colours and proportions are also given specific attention. But here again, to what extent can these criteria be objectified? Coats of arms

> that have been designed naturalistically in the past are just as authentic as the others.

Even if these principles relating to symbolisation, composition and graphics are more difficult to objectify than compliance with heraldic rules, they provide a decisive contribution in defining the specificity of the art of heraldry.[38] Failure to master them threatens the integrity of the practice by distancing new productions from what makes the blazon unique in relation to other types of graphic production. Some of the craftsmen who market heraldic items, though able to comply with the rules, have a very poor command of the know-how associated with symbolism, composition, and graphics.

Reflection on the objectivisation of the qualitative criteria specific to the practice to be safeguarded could be enriched by drawing inspiration from the files validated by UNESCO concerning the visual arts: miniature (Azerbaijan, Iran, Turkey, and Uzbekistan, 2020),[39] *ornek* of the Crimean Tatars (Ukraine, 2021),[40] Arabic calligraphy,[41] Georgian and Armenian scripts,[42] textile ornaments, etc. The transmission of the integrity of these elements is not simply based on technical know-how, but also on specificities linked to the composition of the motifs and their graphic execution, in a specific cultural context that very often includes a symbolic dimension.

Because the viability of the gastronomic heritage included within ICH depends upon a respect for a recipe combining the choosing of ingredients and know-how, it may inspire an approach aimed at guaranteeing the quality of heraldic practice. For example, the file on the art of the Neapolitan pizzaiolo (Italy, 2017)[43] explicitly aims to protect a Neapolitan tradition "nowadays threatened by globalization, distorted and often counterfeited all over the world".[44] The case was brought mainly by two associations, including the AVPN (*Associazione Verace Pizza Napoletana*), created by former Neapolitan pizzaiolo masters and "based on an ethics code in order to protect and increase the value of the element according to the old Neapolitan traditions and customs".[45] Even if it is possible to eat cheap frozen industrial pizzas in Naples, the policy of identifying and enhancing the value of the element, crowned by UNESCO recognition, allows consumers to make an informed choice.

Ethics

The attention paid to ethics by the AVPN deserves to be emphasised. In the field of heraldry, too, there are mercantile abuses that undermine the integrity of the element. Some unscrupulous shops and websites offer to provide "your family name" coat of arms, improperly suggesting that bearing the same name as a family entitles you to its arms. However, as a general rule, coats of arms are passed on hereditarily alongside the family name, so the pre-existing coat of arms that someone can claim has to come from a proven ancestor who has passed on his name. Many other abusive practices exist (genealogical falsifications, coats of arms sell with "cadency marks" while no family relation is established or even plausible, "registrations" with no legal value, etc.). Those who engage

in such abuses cannot be admitted as members of the community.

When it comes to design, some heraldists sell compositions without specifying that the elements they use are not their own but cliparts found online, often distributed by Anglo-Saxon companies. This practice is dishonest towards the uninformed customer and results in the impoverishment and standardising of heraldic design. Moreover, its low cost penalises artists and craftsmen, including digital ones, who make the effort to offer their own style and wish to be fairly compensated for their work.

Finally, it should be pointed out that heraldry is sometimes exploited by individuals or organisations with dubious ulterior motives, ranging from self-promotion based on falsified genealogical foundations to the pursuit of ideological agendas that run counter to the values of respect for the rights of individuals and communities. We can cite a whole constellation of false orders of chivalry driven, at best, by ridiculous vanity or, at worst, by political ideas incompatible with the humanist values promoted by UNESCO. Consequently, the strictly apolitical nature of the ICH approach must be absolutely established, guaranteed, and preserved, and project holders must be extremely vigilant against any risk of infiltration by individuals and organisations accustomed to this type of practice. This threat is not unique to heraldry. As Frédéric Maguet has pointed out, "in the case of intangible cultural heritage, it is not only the pathology of the market that is to be feared, but also folkloristic uses by totalitarian States or a hardening of identity within communities".[46]

2.4 Criterion 2: ICH "transmitted from generation to generation… provides a sense of identity and continuity"

Heritage is inseparable from transmission. As part of an ICH application, the tradition may be recent: in Germany, modern dance has been included even though it concerns no more than four generations.[47] In France, two generations are enough.[48] Many countries with living heraldry can boast a multigenerational heritage dating back to the Middle Ages; however, countries with more recent heraldic traditions can also apply, depending on the number of generations required in the national inclusion files.

As far as heraldry is concerned, there are three types of transmission: of the bearing of coats of arms, of the heraldic knowledge and of the specific crafts required to produce heraldic items.

2.4.1 Transmission of coats of arms

As a rule, coats of arms are inherited by families, along with the name. Among the European nobility, this practice is almost systematic, and some coats of arms have been passed down unchanged since their creation in the 12th century. However, to a greater or lesser extent depending on the country, many non-noble families also perpetuate this tradition, which is particularly strong in Central and Northern Europe (Flanders, the Germanic world and, since the fall of communism, Slovakia, Latvia, etc.). As mentioned above, although this practice originated in Europe, where it has remained the most flourishing, it has spread throughout the world with

migratory movements. A number of exiled families brought their coats of arms with them where they settled (in North and South America, South Africa, Australia, etc.), thus maintaining the link with their culture of origin and sometimes with relatives who had remained in Europe. Transmission is often materialised by objects (signet rings, paintings, etc.) acquired on special occasions (weddings, etc.), but the ability to correctly describe the content of the arms (blazoning) suffices to ensure their transmission and the creation of new artefacts that enrich the material heritage of the adopted countries.

Transmission of coats of arms also concerns institutions. Many entities with historical coats of arms are keen to maintain their use in their day-to-day communications and on ceremonial occasions. In Europe in particular, new coats of arms are frequently created for entities that do not have one. Widespread among local authorities, the practice also concerns educational establishments (universities, schools, etc.), which explains why in Zambia[49] and Zimbabwe,[50] coats of arms are regulated by a law that also deals with school uniforms. Many religious institutions are also concerned: this is particularly true for the Catholic Church throughout the world (bishoprics, religious orders and establishments, confraternities, etc.), but also in the Protestant constellation. In many countries, military units sport insignia composed according to heraldic rules, which reinforce esprit de corps by making soldiers heirs to the values of those who preceded them on the battlefield. Professional organisations, companies, institutions such as the Dutch and Flemish *Waterschappen* (water boards), hospitals, charities, associations… the list of entities that use coats of arms reflects the diversity of human institutions across the globe.

Wherever they exist, coats of arms contribute to the inclusion of individuals, regardless of their origin, gender…[51] in the wider communities, making them their true heirs, thus reinforcing their sense of belonging, whether familial, territorial (from the village to the nation), academic, religious, or philosophical… The symbolic content of coats of arms, especially the mottos, is a reminder that this heritage is also made up of values to be maintained and passed on.[52] The inclusion of coats of arms in registers or their display in dedicated community spaces, sometimes set up years or even centuries ago, demonstrates the inclusion of the new member in the group. Coats of arms are frequently reproduced on official documents (certificates, diplomas, etc.) or decorative objects (clothing accessories, crockery, etc.), thus reinforcing the sense of belonging and the pride that may be associated with it.

The attachment of communities to their coats of arms is expressed in various and sometimes unexpected ways: in France, companies sell stickers with the coats of arms of historical provinces that individuals can apply to their their number plates to cover the official regional logo. Although illegal, the practice is widespread. In 2022, when the mayor of Argentan (Normandy) announced his intention to remove the heraldic eagle from the façade of the town hall, two petitions with a total of 3,200 signatories (for a town of 26,000 inhabitants) forced him to back down.[53] In Lerum (Sweden), the coat of

arms was reintroduced instead of a logo in January 2024, after a popular initiative – referring to the cultural heritage of heraldry – from 761 inhabitants.[54] Many similar examples can be found in Europe and beyond.

2.4.2 Transmission of the heraldic knowledge

The knowledge associated with the practice of heraldry has been passed down continuously since its creation in the 12th century: not only the ability to compose and describe coats of arms according to heraldic rules, but also the laws, practices and customs governing their composition and transmission, as well as the expertise needed to identify and, where possible, interpret them. This knowledge is passed on either within State institutions (in some European monarchies, since the Middle Ages) or specialist associations. Although illustrated manuals, which have existed since medieval times, play a central role in learning, heraldry is rarely taught in academic institutions: many experts have been trained informally, by family members, friends, or associations, with older people training younger ones. Today, online resources and social networks spread heraldic knowledge to a larger audience: on Facebook, the "*Héraldique française*" group currently has over 17,000 members.

2.4.3 Transmission of the specialised crafts

Craftsmen must be able to work from a model, a sketch, or a blazon, which they will interpret according to not only the material and technique they have mastered, but also their style and sensibility. These techniques are specific: it is not enough to be a good painter, engraver, or sculptor to be a good heraldic craftsman. Unfortunately, heraldic skills are rarely included in the curriculum of vocational training establishments. Whether formal or informal, the transmission of crafts from master to apprentice is often highly relational. Behind many craftsmen specialising in heraldry is a master, whether a relative or not, who inspired a vocation… It is undoubtedly in the field of engraving that family transmission is strongest: the know-how, as well as the workshop and the tools, is sometimes passed down over several generations, from parent to child, from uncle to nephew…

2.5 Criterion 3: ICH elements are "constantly recreated by communities and groups in response to their environment, their interaction with nature and their history"

Although coats of arms often refer to the past, heraldic practice is constantly being recreated, both in terms of form and content.

2.5.1 A steady increase in the number of coats of arms

The demand for new coats of arms from individuals and institutions continues unabated: the worldwide stock of coats of arms created according to heraldic rules dating from the 12th century continues to grow. As the number of nobles is no longer increasing (in Europe, the few families that have been

ennobled do not compensate for the extinction of the old lineages), it is the non-noble coats of arms that are increasing most rapidly. The rate of increase accelerated from the last third of the twentieth century onwards. The phenomenon can be quantified wherever registers of new coats of arms exist, whether they are State-owned (Scotland, England, Latvia, Flanders,[55] Slovakia…[56]) or run by associations (Scandinavia).[57]

Coats of arms never die. When they fall into oblivion and then get rediscovered by descendants of the bearer, they are said to have been "rediscovered", which, from an anthropological point of view, deserves to be noted: we do not say that about logos, for example.

2.5.2 A constantly expanding repertoire

The repertoire of figures and motifs is also constantly expanding, due to four main factors:

- the increase in the number of designs, mentioned above, makes it necessary to diversify the compositions, as the only way to guarantee the uniqueness of each new coat of arms in relation to those that precede it;
- the continuous geographical expansion of heraldry from its origins to the present day has been accompanied by the integration, to varying degrees, of the emblematic and cultural heritage of the populations newly involved in the art of blazonry;[58]
- developments, particularly technological ones, specific to each era give rise to new emblematic aspirations (atoms, astronaut's helmets, submarine propellers, etc.);
- the inventiveness of the heraldic designers is an important factor of enrichment. It can be due to the individual artistic approach, or reflect a broader desire to use heraldry to express the specific characteristics of a given natural and cultural heritage. In Finland, for example, new lines derived from local flora were created in the 1950s and 1960s, and these in turn inspired new forms in South Africa[59] and Canada.[60]

Whenever necessary, this creativity is accompanied by an expansion of the vocabulary of the blazon.

2.5.3 An openness to political and social developments

Heraldry accompanied several of the major democratic advances of the 1990s. In South Africa, the end of apartheid in 1991 led to an overhaul of the State's coat of arms to mark an ideological break with the past. The nine provinces that emerged from the ensuing administrative reform were granted coats of arms, most often composed with the involvement of the local population, and incorporating emblematic elements from both European and African traditions.[61] Similarly, in the Central and Eastern European States liberated from Communist dictatorship, the re-establishment of historical territorial coats of arms, or the creation of new ones, was a strong signal of the return to freedom. In Lithuania, newly created coats of arms connect people with their local cultural heritage. For instance, the arms of the municipalities of Kriukai (2005) and Surviliškis (2011) both

feature a handmade cross, made of metal and wood respectively. These figures are an evocation of the "cross-crafting and its symbolism", included on the UNESCO ICH list in 2008, and whose symbolic dimension is all the stronger given that their manufacture was banned during the USSR era.[62]

This example shows the role of heraldry in promoting cultural diversity. What is true for nations also applies for the communities within them. For example, the specific heraldic traditions of the Hungarians of Romania, revitalised after the fall of the Communist regime, contribute to their visibility in Romania.[63] In the Russian Federation, the revival of territorial heraldry in the 1990s led to the inclusion of many emblems reflecting the country's ethnic diversity.[64] Similarly, since its creation in 1988, the Canadian Heraldic Authority has been actively promoting the emblematic heritage of native peoples, thereby re-establishing their contribution to national culture. Elsewhere, mottoes in local dialects link linguistic, cultural, and emblematic heritage. Hybrid forms enable to associate local particularities and national belonging.

Nations are not static; societies evolve. In coats of arms adopted by families of immigrant background, references to the emblematic and cultural heritage of the country of origin are frequently combined with evocations of the host country: integration into the national heraldic system thus highlights the contribution of people of foreign origin to the common good. Coats of arms are also capable of reflecting the social and legal developments of our time: gender equality, respect for sexual orientation, new laws on the transmission of parents' surnames, etc. In terms of content, there is no obstacle to the expression of orientations, values and convictions other than those of the general legal framework of the countries concerned.

2.5.4 A continuous technical adaptation

For centuries, coats of arms have been created by artists, craftsmen, and private individuals, producing unique artefacts. From the end of the Middle Ages onwards, engraving and printing techniques enabled heraldic devices to be reproduced on a large scale. From the 19th century onwards, industrialisation accelerated the proliferation of mass-produced coats of arms. More recently, new industrial reprographic processes have facilitated the multiplication of possible supports (adhesives, T-shirts, etc.) while lowering production costs. Today, many artists use computer design softwares to create coats of arms in a wide variety of styles. Thanks to artificial intelligence, *Webaldic* software can now identify over 3 million coats of arms.

2.5.5 A constant renewal of styles and graphics

Every era has its own style: this constant in heraldic practice continues into the 21st century. Heraldic graphism is continually being updated in line with the media, techniques (including computer technology), training and sensibilities of the bearers. The Internet facilitates the circulation of old and new sources of inspiration, as well as exchanges between artists and private individuals wishing to create their own coats of arms.

This graphic renewal is diversified through the prism of local cultural specificities, which it contributes to enhance. In this respect, the coats of arms granted to municipalities by the National Council of Heraldry at the Parliament of Georgia are exemplary: inspired by the history and heritage of each locality, they have been designed in an extremely contemporary style that scrupulously respects heraldic rules, while drawing inspiration from Georgian iconographic traditions, visible in particular in architecture and traditional dress.[65] Moroccan territorial heraldry also offers interesting examples of an emblematic synthesis of European, Arab, and Berber traditions.[66]

2.6 Criterion 4: the elements are "compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals"

In principle, heraldic practice is perfectly compatible with respect for the rights of individuals and communities. However, insofar as it is part of a tradition that was born and developed long before human rights were defined, it is not free from a few issues that need to be addressed.

2.6.1 An open and accessible practice

Where coats of arms are officially registered, the competent authorities ensure that newly created compositions do not contravene human rights. However, in some monarchies, emblematic practices that have never been abolished now contravene certain egalitarian principles, as societies and the rights protecting individuals evolve more rapidly than the heraldic tradition, whose roots, it should be remembered, date back to the 12th century.[67] In States with official registration, acquiring a coat of arms can be expensive, but there is hardly a cultural practice that does not cost money (horse riding or falconry, for example). What is more, the countries granting the most expensive achievements are not party to the Convention (United Kingdom, Canada); elsewhere, registration fees are generally set in such a way as to motivate rather than discourage applications. In countries where there is no registration procedure, individuals can call on the services of professionals and may also get free advice provided by associations or groups active on the Internet.

In States with no heraldic authority, there are no restrictions on the bearing of coats of arms.[68] Although historically, heraldry owes its appearance and development to the nobility, non-noble family arms, which appeared as early as the Middle Ages, are now the majority in most countries, and quite legally so. In France, where nobility was definitively abolished in 1848, the problem no longer arises: considered an accessory to the family name, coats of arms are available to all citizens, without distinction. Although custom prescribes certain distinctive attributes for men or women, they are not compulsory: their use, left to the free choice of individuals, is little different from the wearing of gendered clothing. There are distinctive attributes for clerics: these are not discriminatory elements, but insignia designed to indi-

cate the status and rank of the holder within the Church, similar to military uniforms. The content of coats of arms is subject to the general laws in force: new compositions that express racist ideas, for example, would fall foul of the law and be punished as such. This general observation applies to all European countries, whether monarchies or republics.

Similarly, there are no restrictions on the acquisition of know-how. Practitioners come from a wide range of backgrounds, nationalities, genders, ages and obediences. The International Academy of Heraldry is currently headed by a woman, Elizabeth Roads, as is the Lithuanian National Commission of Heraldry, by Agnė Railaitė-Bardė. Throughout France, educational heraldry workshops are a great success with pupils from all backgrounds. There are no restrictions on access to training and skills. With so many available ways of reproducing coats of arms, anyone can create and display their own personal coat of arms at a fraction of the cost.

2.6.2 A sometimes controversial legacy

Coats of arms are the offspring of their time, and as such they may reflect values and prejudices accepted at the time of their conception but now incompatible with human rights as defined in the second half of the 20th century. It should be remembered that items included on UNESCO's list of intangible cultural heritage that prove to be contrary to these principles may be removed from the list, as in the case of the *Ducasse* parade in Ath (Belgium), which was included in 2008 and withdrawn in 2022, because of the maintaining in the parade of a "Savage" depicted by a white man in blackface, wearing a nose ring and chains.

Some heraldic devices are clearly problematic too. Since the Middle Ages, the arms of the Austrian town of Judenburg have featured the head of a Jew in accordance with anti-Semitic stereotypes: it shows the profile of an old man with a goatee and a hooked nose, wearing the pointed hat that was used to discriminate against this community in the past.[69] Similarly, the depiction of Africans is also sometimes caricatured, whether in reference to slavery or not. But we should not generalise: these cases, which rightly shock our conscience, have always been rare in heraldic production, and several heads of black men actually honour Saint Maurice, who, according to Catholic tradition, was African.

Coats of arms designed to commemorate military victories can also be problematic when they depict the vanquished in humiliating poses. In Spain and Hungary, for example, some coats of arms commemorating victories against the Muslim occupiers depicts the killing of the enemy in a questionable manner. Such compositions are no longer produced today, but may still be in use, which can provoke understandable reactions of rejection. In Cuzco, Peru, the coat of arms granted in 1540 by Charles V featured eight condors to remind that during the Spanish conquest of the city, these birds of prey ate the corpses of the natives who had fallen in battle.[70] In 1986, the indigenist mayor of Cuzco abolished the coat of arms, explicitly condemning it as "Spanish", in favour of an emblem taken from Inca archaeological heritage.[71] This example shows that in some cases,

heraldry can be associated with colonial oppression, especially when the coat of arms explicitly expresses the massacre of local populations. But here again, it is important not to generalise. Very often, in Latin America as elsewhere, civic coats of arms have survived independence, intact or revamped to reflect new values. For example, although municipal heraldry was introduced in Algeria by the colonialists, Algerian localities did not abandon their coats of arms after the country gained independence from France: preserved, transformed, or recreated, they continue to be used in the communications of most towns.

Be that as it may, it is important to be aware that for some populations, specific coats of arms, or even the whole heraldic system, may be perceived as a symbol of oppression. To avoid any disputes that might arise in the context of a UNESCO application, it is therefore important to emphasise that what is being proposed for inclusion here is not heraldry as a whole, but the practice of heraldry as a language, an art, and a knowledge. Just as Arabic calligraphy and the traditional writing systems inscribed on the ICH can extol love or call for murder, so heraldry can express the highest values or the most sordid prejudices.[72] It is therefore important to stress that *the language is not responsible for the message*. This is the whole point of defending a project aimed at recognising not heraldry as a whole, but heraldic *practice* as part of the ICH.

In fact, heraldists have demonstrated their ability to remedy problematic situations and to establish themselves as a force for progress and reconciliation: in Canada, the Heraldic Authority now bans references to Indigenous peoples made without their consent, while encouraging their emblematic presence, as a means of reconciliation and visibilsation. The example of South Africa, mentioned above, goes in the same direction: as early as the 1980s, the Bureau of Heraldry, the State authority headed then by Frederick Brownell, acted as a precursor by multiplying allusions to indigenous populations in the coats of arms established under its authority.[73] It is also worth noting that it was Brownell who designed South Africa's new flag in 1994, marking the end of apartheid by combining the colours of the European colonists with those of the African National Congress.

2.7 Criterion 5: The element is "consistent with existing international instruments, as well as with the requirement […] of sustainable development"

Sustainable development as defined by UNESCO in a broad sense encompasses three dimensions: economic, social, and environmental.[74] We will only limit ourselves here to a few thoughts linking heraldic practice and environmental conservation.

2.7.1 Nature as a major source of inspiration

Natural elements (fauna, flora, stars, etc.) have always been a major source of inspiration for heraldic art.

In territorial heraldry, local flora and fauna are often used for their emblematic value, being considered representative either for their abundance (fish, game, etc.) or for

their scarcity (protected species like orchids, etc.).[75] These emblematic choices help to raise awareness of the natural and cultural importance of the species in question.

The art of heraldry recommends stylising the elements selected so that they can be recognised from a distance without risk of error: bear, lion and wolf must not be confused. This graphic work requires careful observation of the elements selected. It results in a specific heraldic style whose aesthetic character helps to reinforce the attachment of the people and communities to their natural heritage.[76]

2.7.2 A practice with low environmental impact

The coats of arms are designed using traditional drawing tools (pencils, paper, etc.) or computer technology. The low impact on the environment can be further minimised by exchanging and adopting good IT practices (energy frugality, recycling, etc.) and by giving priority to natural, renewable, and bio-sourced materials, whether for supports or inks.

As coats of arms are intended to be passed on, the heraldic artefacts that embody them are often designed with durability in mind. Coats of arms, particularly family ones, are generally realised by craftsmen using materials carefully chosen for their intrinsic qualities, particularly their durability. Natural materials are favoured (paper or parchment, wood, stone, precious metals, etc.) to create prestigious objects for the home (frames, bas-reliefs, jewellery, etc.).

As far as territorial entities (States, regions, municipalities…) are concerned, coats of arms are used both as prestigious one-offs or in small numbers for public buildings (sculptures, stained glass windows, etc.) or official ceremonies (banners, etc.) and as large-scale reproductions, generally using inexpensive processes, as part of official communication (administrative documents, urban signage, common flags, etc.). Insofar as territorial entities cannot do without visual communication, the use of coats of arms does not represent any additional environmental cost. On the contrary, they are designed to be long-lasting, unlike logos, which are regularly replaced according to fashion or municipal teams.

3. Should heraldry be considered as intangible cultural heritage according to UNESCO criteria?

Safeguarding is the first objective of the Convention and the only one defined in its text: "'Safeguarding' means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage" (art 2.3). In other words, an element does not have to be threatened with disappearance to be included. If the term "safeguarding" has been preferred to "protection", it is because the latter applies more to tangible heritage, the integrity of which must be preserved, whereas "safeguarding" allows the dynamic nature of intangible cultural expressions to

be taken into account, and managed by the holders of the practice rather than by heritage or ethnology professionals.[77] This dynamic aspect, adequately expressed by the notion of "viability" mentioned in the Convention, explains why the application file requires answers to the following questions:

– "How are the knowledge and skills related to the element transmitted today?"
– "What safeguarding measures are put in place to protect and promote the element? Include in your answer the communities' role in the planning and implementation of measures described."

As Frédéric Maguet pointed out, "it is indeed the holders of intangible cultural heritage traits who will be invited to participate in the identification of elements likely to be the subject of an application for recognition. In return, they will be able to claim State aid to organise educational programmes and specific training, or any other form of safeguarding action".[78] This policy can be decided and implemented only if the authorities have clearly organised and effective holders as their interlocutors. Here lies one of the main interests of the ICH approach: whatever the outcome in terms of institutional recognition, it implies efforts at structuring and introspection that can only be beneficial to the practice.

3.1 A performative process: towards a better identification of the community

The ICH project improves the community's knowledge of itself as well as its identification by partners.

3.1.1 A community getting to know itself better from the inside

The structuring effort requires a survey to identify all the holders and practitioners. Experience shows that there is a significant gap between what one thinks at the starting point of the process and what happens actually: there are many surprises – including good ones! The different types of practitioners are usually far from having a clear vision of what their colleagues are doing, and sometimes they do not even know their names or existence. For example, when a meeting of the French institutional heraldic stakeholders was held for the first time in Paris on 19 October 2023, it brought together people who, in many cases, had never met before: members of the *Commission nationale d'héraldique*, most of whom are civil servants, a specialist lawyer, an *archiviste départementale*, the officer in charge of the *Division Symbolique* of the French Ministry of Armed Forces, a priest and administrator of the *Association des archivistes de l'Église de France*, the director of the *Bibliothèque et Musée national de la Franc-maçonnerie*, representatives of the *Association d'entraide de la Noblesse française* and of the *Société française d'héraldique et de sigillographie*, all in the presence of the project manager for intangible cultural heritage and ethnology at the French Ministry of Culture and the author of these lines, as the instigator of the meeting. The undeniably convivial atmosphere of the day helped to forge links that reinforced the

desire to work together. Institutional heraldic practice in France appeared to be far more extensive and diverse than anyone had imagined. In all likelihood, regular meetings of this type, extended to artists, craftsmen and other holders, will have a positive effect on the practice, improving communication and fostering synergies that were previously weak or non-existent.

These meetings also provide an opportunity to take stock of the state of the art: achievements and good practice, difficulties and threats, needs and measures to be taken, etc. In France, for example, heraldic engraving is suffering from an ageing workforce and competition from semi-industrialised computer-aided production, which can be carried out at lower cost. The introduction of dedicated career paths and quality labels could help to improve the situation, as part of a structured network bringing together all the craftsmen concerned.

Many countries possess a national heraldry association active in promoting knowledge and disseminating the discipline through publications, conferences, exhibitions, etc. However, the links between scholarship and practice are not always sufficiently developed: some practitioners refer to obsolete historical knowledge, while some scholars are completely unaware of the current state of the practice whose history they are studying…

As part of a broader vision of the community and of the safeguarding actions to be adopted, the mediators for the general public also need to be identified. They are incredibly diverse: vocational schools and universities offering training courses, teachers disseminating content online, archive services designing educational kits, heritage places offering creative workshops for children, social networks hosting discussion groups, etc. The project invites us to draw up a complete survey of existing educational provision, and to assess its strengths and weaknesses. It will then be possible to involve trainers in some aspects of the safeguarding plan, while inviting them to complete their training if necessary.

The heritage value of the practice should also be assessed by a survey of the representations raised by heraldry in the wider community. How are coats of arms perceived by the general public and the media? Under what circumstances does interest in heraldry arise? In what contexts do coats of arms provoke commitment, discussion and controversy? What are people looking for when they sign up to specialist social networks? What are the motivations of the individuals or companies who embark on the process of creating a coat of arms? To carry out this work, it is advisable to enlist the services of an ethnologist or anthropologist: some institutions (States, local authorities, universities, etc.) make them available to project managers as part of their policy to promote the ICH.

3.1.2 The constructive outside view of ICH professionals

Article 13 of the Convention encourages each State Party to set up "one or more competent bodies for the safeguarding of the intangible cultural heritage present in its territory". Heraldic experts, whatever their status, have

everything to gain from cooperating with the ICH officials appointed by their States. These professionals come from scientific background usually not familiar to heraldists (ethnology, anthropology, law, heritage sciences, sociology, etc.). Similarly, ICH professionals are generally unfamiliar with the heraldic world, which leads them to ask stimulating questions that prompt heraldists to reconsider how they conceive their practice: in the heritage context, heraldry is no longer to be seen as a "hobby" or an "auxiliary science", but as a significant cultural phenomenon that enriches the whole society and is invaluable to humanity. The criteria required by UNESCO encourage applicants to think outside the box: for example, as part of an inclusive approach respecting the rights of individuals and communities, it is necessary to ensure that the practice does not create discrimination. The answer is not necessarily easy to decide: is a lozenge-shaped shield an identifying or discriminating element? Heraldry experts disagree.[79] Addressing this kind of issue leads to a better understanding of the social and cultural role of heraldry, and, where necessary, to an incentive for reforms. Practitioners of heraldry are encouraged to develop collective responses to questions that are rarely made explicit, even though they are fundamental: Why heraldry still matters? What does it bring to our societies? In what way is it a cultural treasure to safeguard? What is its legitimacy in today's world? Objectivising the value of the practice enhances community pride while providing arguments in favour of its preservation to the general public and decision-makers.

The approach is also very practical. The people responsible for assisting with ICH dossiers have a solid knowledge of the local, national, and international institutions and mechanisms into which safeguarding practices can fit, whether these structures be dedicated to the ICH or cross-functional (cultural, professional, educational, etc.). This mastery of the institutional landscape, nurtured by the monitoring of previous projects, leads ICH managers to formulate relevant advice for developing a safeguarding policy that makes the most of the existing legal, institutional and financial mechanisms. As well as considering the relevance of creating a specific umbrella body, it is worth examining how heraldry can fit into pre-existing organisational structures, for it can encourage stakeholders initially uninvolved in heraldry to incorporate the practice into their internal or public programming (training catalogue, series of exhibitions, etc.). This kind of decompartmentalisation can prove beneficial to all partners.

This mutual enrichment is explicitly promoted by UNESCO: each application must simultaneously enable the safeguarding of the element and enrich scientific reflection on the object, methods, and issues of ICH. It should also be noted that heraldry already contributes to the promotion of tangible and intangible cultural heritage, insofar as several coats of arms refer to objects and traditional practices recognised for their heritage value at national or UNESCO level. These heritage synergies deserve to be studied: they can also be observed in certain traditional craft or industrial productions, such as the production of heraldic street signs in ceramic in Portugal, in enamelled sheet metal in France…).

3.2 Conceiving safeguarding

While heraldry is not threatened with extinction, its practice is facing challenges jeopardizing its integrity. The approach therefore encourages the identification of what threatens the viability and integrity of the practice.

3.2.1 The State as a guarantor

Article 11 of the Convention stipulates that "each State Party shall […] take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory". In 2021, a report on the ICH by the French Senate recalled that "an application for registration is relevant only if it is part of a genuine safeguarding project".[80] In addition to inclusion in an inventory (art. 12), the Convention outlines the measures to be pursued "to ensure the safeguarding, development and promotion of the intangible cultural heritage". Setting a general policy and appropriate institutions should enable to "foster scientific, technical and artistic studies, as well as research methodologies, with a view to effective safeguarding"; each State is also invited to "adopt appropriate legal, technical, administrative and financial measures" aimed at "fostering the creation or strengthening of institutions for training […] and the transmission of such heritage" and to establish "documentation institutions for the intangible cultural heritage and facilitating access to them" (art. 13).

Article 14 calls for the development of "Education, awareness-raising and capacity-building" by the following means:

- "educational, awareness-raising and information programmes aimed at the general public, in particular young people";
- "specific educational and training programmes within the communities and groups concerned";
- "capacity-building activities for the safeguarding of intangible cultural heritage, in particular management and scientific research", i.e. a reflection on how to maintain and deploy the practical and scientific aspects of the element through close collaboration between the different types of holders. UNESCO pays particular attention to this collective dimension.

Each State is also encouraged to "keep the public informed of the dangers threatening such heritage". Awareness of the threats jeopardizing the viability of the practice incite those involved in heraldry to devise more appropriate safeguards.

Rather than toughening legislation, these measures are more akin to what is known as "soft law", in other words a range of measures designed to encourage, facilitate and disseminate good practice.[81] In the field of heraldry, such a soft approach is particularly appropriate for keeping at bay endless divisive debates such as, for example, the relevance of establishing a legal registration for private coats of arms. Without overturning the existing legal framework, the range of actions proposed establishes a constructive collaboration between holders and institutions.

Even if these articles provide an incentive for States Parties, inclusion is a binding deci-

sion. Article 29 states that States Parties must report regularly on their safeguarding policy: they "shall submit to the Committee, observing the forms and periodicity to be defined by the Committee, reports on the legislative, regulatory and other measures taken for the implementation of this Convention". If the measures taken are deemed insufficient, recognition may be withdrawn.

3.2.2 Safeguarding heraldry: a dynamic process, before and after inclusion

Without claiming to be exhaustive, and bearing in mind that the situation greatly differs from one country to another, the following ideas may inspire a plan to safeguard heraldic practice.

Ensuring the long-term future of existing structures

During the winter of 2019–2020, the *Commission nationale d'héraldique*, which advises local authorities in France, was almost abolished by its supervisory ministry. Significantly, it was ultimately saved by highlighting its role in preserving intangible cultural heritage. Existing heraldic institutions can be threatened by budgetary austerity or political misunderstanding. Recognition of heraldry as an ICH has a protective effect, as it is difficult for a State to formally commit to safeguarding an element while at the same time abolishing the body responsible for its viability. In addition, raising the profile of heraldic institutions as part of the completion of the safeguarding plan leads to better identification of the missions assigned to them: the more useful they are perceived to be and the more they are called upon as such, the more difficult it is to justify abolishing them.

Very pragmatically, public bodies or associations recognised for their involvement in the field of heraldry can expect to see their continued existence strengthened by material support measures: subsidies, provision of infrastructure, hosting on Internet portals, etc.

Organising the network

"Heraldist" as a profession is poorly identified and hardly visible.[82] Although in some jurisdictions, such as England, Scotland, Romania and Flanders, artists may be accredited by official heraldic bodies, elsewhere there is generally no legal recognition or national professional structure, so potential patrons may find it difficult to identify competent and honest craftsmen.

The solution could be to set up a structure bringing together heraldists bound by a code of ethics defining their relationship with their colleagues, their clients, and their contacts, and by a common frame of reference certifying their mastery of the rules and art of heraldry, thereby guaranteeing the integrity and durability of the practice.

Improving training for craftsmen

In France, querying the *Annuaire officiel des métiers d'art de France* with the keyword "*héraldique*" leads to craftsmen who, although they claim to be competent in heraldry, are in fact very unevenly trained.[83] It

is currently very difficult to identify craftsmen capable of correctly depicting coats of arms on media such as illumination, wood, metal, stone, glass, fabric, etc. The supply is fragmented, uneven and poorly identified.

The setting of a certification standard guaranteeing mastery of the principles of heraldic art, together with a directory of the different types of proven professionals, would help to ensure the viability of the practice. This could be asserted by a label awarded by a college of professionals with expertise in heraldry, or by a training certificate delivered by vocational or art schools, universities, the Ministry of Culture or Education, etc. Properly signposted training would improve guidance for young people interested in the art of heraldry: the population of heraldists and specialist craftsmen is ageing, while there is renewed interest among younger generations.

Boosting graphic innovation

In France, creativity in design is lacking: while the handful of independent heraldists have successfully developed their own style, the output of specialist craftsmen and manufacturers usually hardly departs from the graphic models available in books or online. All too often, for example, lions are clones of those designed by heraldist Robert Louis (1902–1965). Yet a lively heraldic practice presupposes a renewal of graphic design: each practitioner must be capable of developing his or her own style, a blend of tradition and personal contributions.

By reflecting the diversity of techniques and styles, exhibitions and fairs can also prove to be powerful ways to generate emulation.

Improving supervision of candidates for coats of arms

States where it is possible to register family coats of arms are rare. In most cases, individuals or institutions wishing to create their own coat of arms may find it difficult to obtain appropriate advice. To improve information about existing reliable structures seems essential. In addition, double training sessions could be offered: on the first day, candidates would receive general explanations on the rules and principles of heraldry; six months later, the projects drawn up in the light of the teaching and advice received would be the subject of a constructive assessment.

In the Netherlands and Sweden, where non-noble coats of arms cannot be officially registered, active associations help individuals create their own in a very efficient way. Newly established coats of arms are published attractively to highlight good practice.[84] In Belgium, similar activism has led to the extension of legal registration of coats of arms to private individuals by the *Vlaamse Heraldische Raad* since 2000, followed by the *Conseil d'héraldique et de vexillologie de la communauté française de Belgique* since 2004.[85]

3.3 The "inclusion effect": depoliticisation, media coverage, legitimisation

Inclusion on the *Representative List of the Intangible Cultural Heritage of Humanity* is the most visible part – and the one with most media coverage – of the recognition process, even though it constitutes only one stage in a process involving much more effort up-

stream and downstream. A little-known fact is that the Convention actually provides for the establishment of three lists:

- the *Representative List of the Intangible Cultural Heritage of Humanity* is the one under consideration here, "composed of those expressions which demonstrate the diversity of the intangible heritage and raise awareness of its importance";
- the *List of Intangible Cultural Heritage in Need of Urgent Safeguarding*;
- the *Register of Good Safeguarding Practices.*[86]

For the time being, only the first of these is relevant. To be selected by UNESCO, a candidacy must be registered at national level, either before or in parallel. When considering the promotion of heraldic practice, the "inclusion effect" is to be acknowledged as it has a positive effect on the wider community.

3.3.1 Putting an end to prejudice: heritage to enshrine depoliticisation

The practice of heraldry suffers from a number of prejudices that are detrimental to its viability.

In France and other republics, many people associate heraldry with the monarchy: since we are now in a republic, heraldry is deemed to be a thing of the past. Many people, including among educated groups, ignore that heraldry is alive and well, that it is possible to create your own coat of arms, that this practice falls within a legal framework, that there are specialised institutions and professionals, etc. Others believe that heraldic practice is specific to a particular social group (the nobility) or reflects adherence to specific political values, generally on the (far) right of the political spectrum.

The facts, however, contradict these prejudices. In republican regimes such as Switzerland and Finland, the proportion of municipalities with coats of arms is close to 100%. In republics such as Ireland, Latvia, Moldova, Slovakia and, more recently, Malta, citizens' coats of arms can be registered by the State.

In the French Republic, heraldry has long been part of the official landscape: each territorial unit of the *gendarmerie* display the coat of arms of its constituency as uniform insignia. Following the territorial reform of 2016, the new regions that insisted on adopting a coat of arms were led by political majorities on both the right and the left, such as Nouvelle Aquitaine and Bourgogne-Franche-Comté. The same is true of the municipalities that have adopted coats of arms, with representatives coming from all political persuasions. A survey among heraldists shows that those who commission personal or family coats of arms belong to a wide variety of political, religious, and philosophical obediences, as reflected in the range of symbols and mottos adopted. While the Church is undoubtedly the institution best identified as the promoter of a living heraldry, it is less well known that it is in fact Freemasonry that provides the largest annual contingent of new bearers of coats of arms. By making coats of arms an accessory to the family name, current French law guarantees the absolute equality of all citizens, with regard to heraldic capacity, without distinction of any kind.

These few examples suffice to prove that the practice of heraldry is depoliticised and perfectly compatible with a republican regime. Yet this fact remains ignored by a significant proportion of elected representatives and civil servants, who are consequently reluctant to support the art of heraldry, even though they see it every day. The inclusion of the discipline in the register of intangible cultural heritage would have the effect of enshrining its depoliticisation and therefore of making easier to maintain, develop and fund heraldic projects, whether in the legislative, institutional, scientific, cultural, or educational fields…

3.3.2 A strong impact on society: the expertise legitimised

Whether at national or international level, the inclusion of the practice makes its value clear to wider communities.

Inclusion on the register of intangible cultural heritage is an event that attracts media attention. In addition to the prestige it confers, this media coverage provides for the holders a wide audience that would be difficult to reach under normal circumstances. It represents a major opportunity to highlight the splendours and inventiveness of heraldry, to promote good practice, to point people in the direction of reliable institutions, to put an end to prejudice and raise awareness of possible abuses…

By way of example, the holding of the aforementioned meeting on French institutional heraldic practice attracted the attention of several national media when the prospect of applying to UNESCO was mentioned. The project was covered by *Le Figaro*, a daily newspaper with a circulation of over 350,000, while two television channels with national coverage, TF1 and BFMTV, also expressed a wish to devote reports to the subject.

Establishing the heritage value of heraldry also sends out the message that the know-how cannot be acquired by surfing the Internet for two hours. People wishing to acquire a coat of arms understand that the process must be carefully curated and supervised by competent specialists. In parallel, unserious commercial offers, usually based on mere homonymy (the famous "bucket shops"), are *de facto* discredited.

4. Perspectives

Independently of any official recognition, the concept of intangible cultural heritage has an extraordinarily powerful heuristic value, capable of revealing the richness of heraldry in an innovative way, closely reconciling knowledge and practice. As such, it deserves the full attention of the researcher. But because it is invested with an important performative dimension, the concept should also attract the attention of anyone concerned with promoting living heraldry.

This article, we hope, will convince the reader of the relevance of working towards the recognition of heraldry as intangible cultural heritage, both nationally and internationally. In fact, many indications suggest that the time has come to launch a concerted collective effort. Even though no State has yet included the art of heraldry in its official ICH register, many initiatives have already been taken in this direction.

In Slovakia, since 1997, patents of arms issued by the Ministry of the Interior have been introduced by a preamble which implicitly but truly establishes the value of heraldry as a national and European intangible cultural heritage: "Considering that the creation of coats of arms is an integral part of European cultural heritage and that there are ancient traditions in Slovakia that still deserve to be cultivated today, and that the tradition of the coats of arms of our towns and villages is an example and proof that the creation of coats of arms does not only belong to the past, but that it is still part of the quality of life and identity of towns, municipalities and their inhabitants".[87]

In 2008, in a collection devoted to intangible heritage in Spain, Ernesto Fernández-Xesta y Vázquez published an article in which coats of arms were considered as *Bienes de Interés Cultural* ("goods of cultural interest") and heraldry as "a historical heritage; not only as a tangible good but also as an intangible good".[88] In 1997, Jaime de Salazar y Acha described the change to the Basque Autonomous Community's coat of arms as "an attack on our cultural heritage".[89] In Italy, at least since 2009, the government has ruled that "coats of arms constitute an intangible asset of the [public] entity and are protected by national law in the same way as a person's surname and other intangible rights".[90] In France, "heraldic engraving" has been included in the inventory of intangible cultural heritage since 2008.[91] Although this recognition does not extend to all heraldic practice, in 2015 the Ministry of Culture – temporarily – extended the competence of the *Commission nationale d'héraldique* to individuals "in order to preserve the intangible heritage constituted by the art of blazoning and heraldry".[92]

In Malta, the Office of the Chief Herald of Arms, which issues and registers public and private coats of arms, was officially established in 2019. The Maltese government has designated heraldry as an "intangible cultural asset" falling within the remit of *Heritage Malta*, the national heritage institution created by the *Cultural Heritage Act 2002*.[93] The Office is a subsidiary of *Heritage Malta*, though the practice is not included in the Maltese national register of intangible cultural heritage.[94] This overview, far from being systematic, deserves to be extended to every country where living heraldry exists. Indeed, the independent nature of all these initiatives converging to recognise heraldry as an ICH illustrates the validity of the approach.

The present survey has had an accelerating effect. On 26 October 2022, the author of this article met with Lily Martinet, project manager for intangible cultural heritage at the French Ministry of Culture, to discuss the relevance of recognising heraldry as an ICH. The conclusive nature of this first meeting encouraged us to pursue and develop our thoughts: several other meetings followed, as well as a survey of our foreign heraldic colleagues, some of whom took up the project in 2023. In Lithuania, the project was initiated by Agnė Railaitė-Bardė, president of the Lithuanian National Heraldry Commission and chief specialist in Lithuanian heraldry at the Office of the President of the Republic of Lithuania. The application was approved in March 2024, making Lit-

huania the first country in the world to officially include the heraldic tradition in its national inventory of intangible cultural heritage. In the Netherlands, the driving force was the *Nederlands Genootschap voor Heraldiek* (NGH), thanks in particular to the commitment of Klaas Padberg Evenboer and Bas Verkerk, Chief Herald and Vice-Chairman of this organisation respectively. Heraldry was officially admitted to the Dutch Intangible Heritage Network (*Netwerk Immaterieel Erfgoed*) on 13 July 2023. Registration in this network is a very encouraging official prerequisite for inclusion in the national inventory, a restricted list with more demanding criteria.[95] The very rapidity of this recognition was facilitated by the fact that the NGH, founded in 2014, had defined its two main aims as "1. to increase knowledge of heraldry as a historical-cultural phenomenon and 2. to promote 'living heraldry' in the everyday world".[96]

The reception given to the presentation developed in this article at the colloquim of the International Academy of Heraldry held in Lund in August 2023 suggests that other countries will join the project. Pooling our experiences will not only enable us to consolidate our submissions files at national level, but will also give greater credibility to a multi-national application to UNESCO. The more of us there are, the greater our chances of success. Founded in 1949, four years after UNESCO, the International Academy of Heraldry is celebrating its 75th anniversary this year 2024: isn't this a fine opportunity to realise in this way the ideal of collaboration between peoples and cultures that inspires our two institutions?

Notes

1 This work has benefited from State funding managed by the Agence Nationale de la Recherche (France) under the *Programme d'investissements d'avenir plan "France 2030"*, with the reference ANR-17-EURE-0021. I would like to thank the board of the *École universitaire de recherche Humanités, Création et Patrimoine* (CY Cergy Paris Université) for their decisive support. I would also like to thank Simon Rousselot, Dounia Boumaza, Gillian Black and Martin Sunnqvist for their valuable contribution to the English text of this presentation.

2 Guest researcher, University Research School PSGS HCH: Humanities, Creation and Heritage (CY Cergy Paris Université); Temporary researcher, UMR 9022 *Héritages: Culture/s, Patrimoine/s, Création/s* (CY Cergy Paris Université – CNRS – Ministry of Culture).

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12 C. Bortolotto, "Introduction", *op. cit.*, § 13.

13 I make no claim to perfect symmetry between these two poles. For the sake of clarity, I think useful to explain my position as an author: I may be considered a heraldist, insofar as I have been designing, composing and studying coats of arms for over thirty years, I have devoted numerous scientific publications to heraldry, in France and abroad, and I have for many years exercised associative responsibilities in this field at national and international level. My interest in intangible cultural heritage took shape in 2022, when I was recruited as a researcher at the EUR *Humanités, Création et Patrimoine,* an institution that places practice at the heart of the building of knowledge, thereby differentiating itself from the traditional academic approach.

14 I would like to extend my warmest thanks to my EUR colleague and friend Christian Hottin, for his insight, encouragement and constructive comments. I have greatly benefited from his expertise: as head of the Ethnology Mission at the Architecture and Heritage Directorate of the French Ministry of Culture from 2006 to 2010, then deputy head of the Research Steering Department from 2010 to 2016, he was responsible for coordinating the implementation of the 2003 Convention in France. I would also like to extend my warmest thanks to Lily Martinet, project manager for intangible cultural heritage at the Ministry of Culture, whose expertise and sound advice have greatly enriched my thoughts. Finally, this article would have been considerably impoverished without the help of all my heraldist colleagues and friends. It is impossible for me to mention all the names of those who, in one way or another, have contributed to this work and strengthened its international dimension: to all of them, a huge thank you.

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The flags of Societas Heraldica Scandinavica, Societas Heraldica Lundensis and the Swedish Heraldry Society. Photo: Selma Rosenfeld.

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Les principales caractéristiques du Droit héraldique portugais d'après le Corpus du Droit héraldique portugais (XIII^{e} – XXI^{e} siècles)

Par Dr. Pedro Sameiro, A.I.H.

Résumé : En cours de réalisation par l'auteur, le Corpus du Droit héraldique portugais comprend déjà 258 textes juridiques émis du XIII^{e} au XXI^{e} siècle. Ce recueil n'inclut ni la doctrine juridique ni la jurisprudence. L'auteur tentera d'établir une théorie sur les grands principes qui ont inspiré leur création, notamment dans le domaine de la capacité héraldique. Un cadre introductif sera donné, ainsi qu'une présentation de l'ensemble des sujets couverts par cette législation. Seront abordés ensuite la notion juridique de symboles héraldiques ainsi que le droit de les porter, de les modifier et de les transmettre. Il ne s'agit pas de se limiter à l'héraldique personnelle ou familiale, mais de couvrir l'héraldique en général.

Abstract: Currently being compiled by the author, the Corpus du Droit héraldique portugais already includes 258 legal texts issued between the thirteenth and twenty-first centuries. This collection does not include legal doctrine or court decisions. The author will attempt to establish a theory of the major principles that inspired their creation, particularly in the field of heraldic capacity. An introductory framework will be given, as well as a presentation of all the subjects covered by this legislation. We will then address the legal concept of heraldic symbols, the right to bear, modify and transmit them. The aim is not just to cover personal or family heraldry, but heraldry in general.

1. Introduction

Le *Corpus du Droit héraldique Portugais* (dorénavant : *Corpus*) est une compilation de la législation héraldique portugaise promulguée depuis le règne d'Alphonse III (1247–1279) jusqu'à nos jours. Si parmi les 258 actes recueillis, beaucoup ne sont naturellement plus en vigueur, tous permettent de retracer l'évolution de la pensée juridique portugaise au sujet de notre science.

Le *Corpus* s'inscrit dans un projet collectif plus vaste mené par l'*Instituto Português de Heráldica*, à savoir un *Traité d'héraldique portugaise,* formé de trois volets : une histoire de l'héraldique au Portugal, une étude heuristique traitant des sources écrites et patrimoniales, et enfin une description des symboles héraldiques et de leurs composantes. Les sources écrites prises en compte incluent les armoriaux, les traités de doctrine héraldique, le droit et la littérature.

Dans le cadre de ce projet monumental, j'ai été chargé de m'occuper du Droit Héraldique. J'ai rassemblé et classé chronologiquement les textes légaux, en mentionnant le cas échéant leur révocation. Le recueil est précédé d'une analyse expliquant la logique de son organisation. S'y ajoutent une réflexion sur la nature du Droit Héraldique et la raison de son autonomie dans le contexte juridique, les matières dont il traite, la classification de la nature spécifique des diverses normes de ce droit en attention à leur objet, la nature du droit à la jouissance des symboles héraldiques, son objet immédiat et médiat, ainsi que la protection juridique des armoiries. L'analyse étudie ensuite les différents types de titularité des symboles héraldiques des personnes physiques, des personnes morales de droit privé, des personnes royales et de l'État (y compris les représentations symboliques de ses services et organismes non personnalisés), des personnes morales de droit public (régions autonomes, communautés locales, institutions publiques) ainsi que des représentations nationales d'entités internationales (Croix Rouge, Comité Olympique). L'ensemble se clôt par un état des lieux actuel du Droit héraldique au Portugal.

Comme il est impossible de présenter toutes ces matières dans le cadre de ce colloque, et pour vous épargner des sujets trop juridiques, je me limiterai à aborder deux questions : le droit à l'usage des emblèmes héraldiques, puis la capacité héraldique des personnes individuelles, des personnes royales et de l'État. Dans l'étude introductive, les commentaires des textes publiés se réfèreront aussi bien à la doctrine qu'à la jurisprudence des tribunaux et des autorités administratives.

2. Le nature du droit à la jouissance de symboles héraldiques

Cette question n'est pas totalement abstraite ni théorique. Si le droit aux armoiries est considéré comme un droit patrimonial, alors son titulaire a toute la légitimité pour les transmettre ou y renoncer, renonciation qui ne transformera pas les symboles héraldiques nécessairement en *res nullius.*

S'agit-il d'un droit réservé aux personnes individuelles appartenant à la noblesse, comme l'a prétendu Pierre J. Nisot[1] ou, au contraire, d'un droit dont peuvent jouir toutes les personnes physiques, quelle que soit leur condition sociale, ainsi que les personnes morales, comme le démontrent aussi bien la législation portugaise qu'une pratique généralisée ?

Nous sommes dans le domaine de ce que les auteurs classiques nomment la « capacité héraldique », dont Rémi Mathieu – un maître consacré – affirme qu'elle « se rattache à l'étude du droit public, alors que le droit à des armoiries déterminées est de nature privée ».[2] Comme cet auteur n'apporte pas d'arguments en faveur de ses affirmations, nous pouvons supposer qu'il se réfère d'abord à un droit général à la possibilité de représentation héraldique concernant virtuellement tout le monde, selon l'enseignement classique de Bartolo, puis à un droit subjectif individuel à un symbole déterminé. Or une telle dualité n'existe pas. En réalité, il est inutile de recourir à la fiction d'un droit d'ordre public, dont la parenté avec les droits fondamentaux est douteuse, car la doctrine du droit civil fournit une solution tout à fait acceptable.

Bartolo l'affirme : « Sicut enim nomina inventa sunt ad cognoscendum homines, ita etiam ista insignia ad hoc inventa sunt ».[3] Les insignes héraldiques sont bien des éléments destinés à l'identification de leurs usagers, ce que confirme la législation portugaise réunie dans le *Corpus,* qu'il s'agisse des lois d'Alphonse III (1248–1279)[4] et Denis (1279–1325)[5] sur l'emploi des sceaux nécessaires à l'identification des communes, de la Loi de 1476 d'Alphonse V (1438–1481)[6] visant à préserver et identifier les armes de la noblesse par l'enregistrement des lettres d'armes et l'inscription dans un registre des armes des anciens nobles, de la législation héraldique du roi Manuel Ier (1495–1521), de la Loi du 13 mai 1816 sur les armoiries du Royaume Uni du Portugal et du Brésil et Algarves,[7] du Décret nº 1.509 du 30 juin 1911 déterminant l'emblématique nationale du régime républicain,[8] de la Loi nº 53/91 du 7 août 1999 sur les armoiries des municipalités et communes locales[9] et enfin de l'article 11 de l'actuelle Constitution de la République Portugaise,[10] qui stipule que le drapeau national est celui adopté par la première République, pour ne citer que quelques exemples… Et même dans les cas où les armoiries expriment une qualité – la noblesse de son titulaire – l'intention, loin d'être perdue, se trouve au contraire, renforcée.

Quand nous passons les droits héraldiques au domaine de l'identification, nous refusons la nature et la valeur patrimoniale de ces droits pour questionner leur nature de *res in commercio*, c'est-à-dire leur transmissibilité. Ainsi, nous nous rapprochons de ce que les vieux jusnaturalistes qualifiaient de « droits absolus », considérés comme un « résultat naturel de la nature humaine »[11] : n'ayant pas besoin d'être prouvés, ils constituaient le fondement de tous les autres et étaient, de ce fait, réputés inaliénables. Ces droits absolus sont aujourd'hui compris de façons diverses. En droit civil, il s'agit des droits de la personnalité, inhérents à l'existence même de la personne juridique dans la mesure où il n'existe pas de personne sans droits et que ces droits existent pour garantir la protection de chacun. En droit constitutionnel, les droits fondamentaux garantissent une autre forme de protection de la personne, spècialement dans les relations entre le citoyen et l'État, sauf quand ils ne représentent que des « permissions génériques ou des libertés ».[12]

Contrairement à d'autres notions juridiques parfaitement claires, celle des droits de la personnalité fait encore l'objet de discussions. La personnalité dont il est question ici n'est pas la personnalité classique – la possibilité d'être titulaire de droits et obligations – mais, comme le dit Goubeaux, « plutôt celle qu'envisagent les philosophes et les sociologues lorsqu'ils examinent ce qui fait la singularité de chacun, ce qui donne à chaque individu ses caractéristiques propres ».[13] On peut conclure qu'un des objectifs principaux de la protection des droits de la personnalité est l'identité, car on ne peut concevoir qu'une personne – un sujet de droit – puisse être non identifiable en soi-même de quelque façon que ce soit, sinon elle serait socialement inexistante. Lorsqu'ils traitent du droit de la personnalité à l'identification, la Loi et les auteurs, à l'instar d'Adriano de Cupis, s'occupent principalement du droit au nom. Mais de plus en plus, la doctrine juridique

admet que si le nom est l'élément essentiel de l'identification, cette dernière peut également être obtenue par des « figures semblables au nom » ou par « d'autres signes distinctifs des personnes ».[14]

Nous ne soutenons pas que le droit à la titularité ou simple usage des symboles héraldiques, soit, en soi et isolément, un droit de la personnalité, car il est loin d'être universellement nécessaire à la protection de l'individu : il existe et a existé une multitude de personnes parfaitement identifiées sans recours à la symbologie héraldique. Mais quand il existe, il agit en tant que droit instrumental du droit à l'identification, à l'instar du droit au pseudonyme qui en tant que tel n'est ni nécessaire, ni universel, mais qui, s'il existe, possède une vraie valeur identificatrice.

En résumé, le droit à la titularité ou à l'utilisation d'emblèmes héraldiques apparaît comme un droit instrumental du droit de la personnalité à l'identification, ayant pour objet immédiat le lien juridique entre le sujet et l'objet et pour objet médiat la réalité conceptuelle du symbole lui-même.

3. La capacité juridique des personnes individuelles

À l'exception de l'article 35 des *Normas de heráldica do Exército* (« Normes d'Héraldique de l'Armée »)[15] en vigueur du 8 juin 1969 au 25 mars 1987, l'héraldique des personnes individuelles au Portugal est régie par la Loi de 1476 d'Alphonse V[16] ainsi que les lois de Manuel I^er^, confirmées par les *Ordenações Filipinas* (« Ordonnances Philippines »)[17] de Philippe I^er^, étant donné que la Loi du 29 septembre 1769[18] n'est plus en vigueur en raison de la disparition des majorats au XIX^e^ siècle. Le texte qui demeure le plus controversé est celui de la Loi de 1476, parfois citée à tort comme Loi de 1466.

Alphonse V en 1476 définit la compétence du roi d'armes Portugal en lui attribuant le pouvoir exclusif de régler les armes octroyées ou confirmées par le souverain et de les enregistrer dans des recueils où devraient également être consignées les armes de tous les nobles anciens. Il déclara qu'aucune charte ne serait valable, auprès de quelque autorité que ce soit, sans l'intervention du roi d'armes Portugal. Par conséquent, les armes de la noblesse avaient pour source de légitimité soit une concession ou une confirmation du roi, en tant que *fons honorum*, soit, pour les nobles anciens qui avaient librement et volontairement pris des armoiries, l'inscription dans un armorial tenu par le roi d'armes.

Beaucoup moins consensuelle est la partie finale du texte, dans laquelle le roi défend aux roturiers et à toute autre personne de porter des armoiries comportant du métal, sauf s'il est « fidalgo de cota de armas [noble ayant droit à des armes]». En toute rigueur, l'interprétation du texte amène à conclure que les roturiers pouvaient prendre des armoiries à la condition qu'elles ne contiennent aucun métal.

Il n'est fait aucune référence à des concessions d'armes pour des roturiers, ce qui n'est pas surprenant. De même, le Roi n'octroyait pas d'armes aux municipalités qui, librement, plaçaient des pierres armoriées sur leurs édifices, utilisaient des drapeaux et des sceaux, ni aux confréries munies de bannières, etc. Le Roi, en tant que *fons honorum*, ne s'occu-

pait pas des manifestations héraldiques uniquement identificatrices.

Manuel I[er], dit le Fortuné, roi célèbre pour avoir amassé les richesses venues d'Orient, a été un grand administrateur de l'État. Sa législation héraldique, composée du Règlement des Rois d'Armes de 1512,[19] de l'Ordonnance du 18 juin de 1512, du Titre XXXVII du Livre II des *Ordenações Manuelinas*[20] (« Ordonnances Manuélines » – compilation de l'ensemble du droit en vigueur), en partie reprise par les Ordonnances Philippines, demeure la matrice du droit héraldique de la noblesse portugaise. En la matière, il faut souligner que Manuel I[er] a légiféré exclusivement sur des questions liées aux armoiries de la Maison Royale et de la Noblesse.

L'Ordonnance de 1512 stipule que « les armes des nobles doivent rester tel quel parce qu'elles sont des signes de la noblesse et de la lignée de chacun, et par lesquelles les mérites et services des nobles sont temporellement récompensés ». Ce cadre établi, le Roi détermine trois dispositions à caractère pénal :

1. Il interdit à quiconque, quelle que soit sa condition, de prendre des armes qui ne lui appartiendraient pas de droit, sous peine de deux ans de bannissement en outremer, d'amende et autres pénalités, ainsi que d'une incapacité héraldique totale ;
2. Il interdit à celui qui possède des armes de les abandonner au profit d'autres auxquelles il n'aurait pas droit, sous les mêmes peines et, de plus, la perte du droit à ses propres armes ;
3. Il interdit à tout détenteur d'armoiries de les modifier, sous les mêmes peines, mais en conservant le droit à ses armes dans leur version correcte.

Ces dispositions ont été reproduites, avec quelques modifications mineures, dans les Ordonnances Manuélines puis dans les Ordonnances Philippines. La règle systématique d'interprétation permet d'établir que ces dispositions pénales s'appliquant majoritairement aux armes de la noblesse, pouvaient être extensibles a d'autres réalités (le cas d'usurpation)

La première interdiction punit l'usurpation d'armes – prise d'armes par quelqu'un à qui elles n'appartiennent pas de droit. Elle ne s'oppose pas à la libre adoption d'armes, permise à la condition qu'elles n'appartiennent pas à autrui, en accord avec la doctrine classique. Il n'est pas dit que le port d'armoiries est un droit exclusif des nobles.

La deuxième interdiction ne peut se comprendre que dans le contexte d'une héraldique familiale que le Roi souhaite imposer à tous les membres de la famille. Il s'agit d'un droit auquel on ne peut pas renoncer et qui se trouve, par conséquent, intransmissible.

Quant à la dernière interdiction, elle protège l'intégrité des armes, parce qu'elles doivent rester telles quelles en tant que signes de noblesse que seul le Roi peut modifier.

Ces dispositions ont été mal interprétées par Carlos da Silva Lopes, un grand héraldiste qui estimait que l'Ordonnance restreignait l'usage des armes aux nobles, en se basant sur une interprétation littérale dénuée d'arguments juridiques. Il manifeste sa surprise en constatant que le roi d'armes Portu-

gal António Rodrigues, dans son *Traité Général de la Noblesse* dédié au roi Manuel Ier, défend la libre adoption des armes en citant Bartolo.[21] En réalité, il n'y a aucune contradiction entre la position d'António Rodrigues et l'Ordonnance de 1512 correctement interprétée.

Pour étayer son opinion, Silva Lopes s'est appuyé sur la préface de l'armorial commandé par Manuel Ier à António Godinho. Mais Godinho écrit que le registre exact des armoiries qu'il avait réalisé empêcherait que les armoiries soient dépréciées par ignorance de ses titulaires, valorisées par vanité, ou encore abandonnées par « pauvreté et lassitude, ou cruauté du sort ».[22] Tout ceci est en miroir des dispositions de l'Ordonnance de 1512, sans les contredire. Godinho ajoute que son livre fera barrage à l'activité frauduleuse de ceux qui prennent des noms de familles nobles pour en demander les armoiries, abus qui représentent une véritable usurpation et non une adoption licite d'armoiries, cette dernière n'étant pas condamnée par Godinho.

Malheureusement, la position de Silva Lopes a été suivie par Edgar Hans Brunner, qui ne s'est pas livré à une analyse juridique de la Loi de 1476 ni de l'Ordonnance de 1512. Se prononçant en faveur de la thèse de l'inexistence d'armes roturières, il affirme : « on ne trouve pas d'actes juridiques concédant des armoiries à des roturiers ou confirmant le droit à de telles armoiries. Si une héraldique roturière a existé au Portugal, il s'est toujours agi d'armes librement adoptées. Le fait incontestable est qu'on n'en connait pas d'exemples. De telles armes n'ont pas laissé de traces. Ont-elles vraiment existé ? Selon l'interprétation du marquis de São Payo, la première constitution de la République Portugaise, de 1911, aurait stipulé l'abolition du droit exclusif des nobles au port d'armoiries ».[23] Ces propos imposent plusieurs remarques.

Il est vrai qu'on ne connait pas d'actes royaux octroyant ou confirmant des armoiries de roturiers. Mais le contraire serait vraiment étonnant car le Roi se réservait l'héraldique des personnes royales et nobles et ne s'occupait que très exceptionnellement de l'héraldique des personnes morales. Il ne concédait d'armoiries ni aux municipalités, ni aux corporations religieuses ou professionnelles, ni aux ecclésiastiques, ni aux membres du tiers état. Dans ce contexte, il est évident que les armoiries des roturiers ne pouvaient provenir que de l'adoption par leurs titulaires. Contrairement à ce qu'affirme Brunner, il existe plusieurs exemples d'armoiries adoptées par des personnes non nobles.

C'est le cas de deux seings de notaires :[24] l'un, clairement héraldique, de 1288, appartenant à Joane Estevens, montre un écu *de sable aux trois burelles d'argent, timbré d'une croix pattée naissante de sable* ; l'autre, de 1283, appartenant à Giral Soares, plutôt parahéraldique, en forme de sceau carré quadrilobé, ayant au centre un portique formé par deux arcs géminés et outrepassés, avec les écussons anciens de Portugal sur les lobes, et entre les coins extérieurs quatre croisettes pattées, disposées en sautoir.

Brunner affirme également qu'il n'a pas trouvé de sceaux de lignées roturières dans l'inventaire sigillographique du marquis d'Abrantes.[25] Toutefois, sans prétendre être exhaustifs, nous avons repéré trois sceaux qui, bien que désignés comme héraldiques

par l'auteur, n'appartenaient pas à des nobles : en 1346, Martin Roiz Balestra portait sur un champ circulaire *une arbalète accostée d'une étoile et d'une fleur de lys* ; en 1491, Pero Gonçalves, chanoine et juge apostolique, un écu à l'encrier d'où sortent trois plumes, allusion claire aux fonctions de son propriétaire ; datable des années 1275–1350, la matrice sigillaire de Aires Martins arbore un écu à la bande chargée de trois fleurs de lys et accompagnée de deux haches *d'artisans*, par conséquent non nobles. Toute cette emblématique n'appartient pas à des nobles. Nous pouvons encore citer le sceau et la clé de voûte de l'église Saint-François à Porto, aux armes de la riche famille bourgeoise Carneiro, réalisés entre 1443 et 1528.[26]

L'héraldique funéraire livre également plusieurs exemples d'armoiries portées par des personnes non issues de la noblesse.

En 1566, sur l'île de São Tomé, dans le Golfe de Guinée, meurt Ana de Chaves qui, selon des opinions divergentes, était peut-être noire ou descendante de juifs déportés. Très riche, elle avait épousé un certain Gonçalo Gomes, fils de Diogo Álvares et Catarina Gomes. Le tombeau du couple montrait deux écus, l'un à deux clés (en portugais : *chaves*) *en sautoir* et l'autre à trois fleurs de lys.[27] Les armoriaux de la noblesse portugaise enregistrent pour les armes de Chaves *de gueules à cinq clés d'or* ou, pour les Chaves issus d'Álvaro Lopes de Chaves, *de gueules à cinq clés d'azur, au chef parti de gueules au châtelet d'or et d'argent au lion de pourpre couronné d'or*. Il n'existe aucun lien familial entre Ana de Chaves et les homonymes aux écus enregistrés dans les armoriaux de la noblesse.

L´église de la Miséricorde de la petite ville d'Arraiolos abrite un sépulcre couvert d'une pierre de marbre dont l'épitaphe désigne Tomé Rodrigues, son fils Manuel Rodrigues de Santiago et leurs héritiers, inscription surmontée d'armoiries *au chevalier contourné brandissant une épée* ; l'écu, à courroie, est timbré d'un heaume à bourrelet, lambrequins et cimier à trois plumes. Comme pour Ana de Chaves, il s'agit d'armes parlantes, Santiago correspondant à Saint Jacques. Tomé Rodrigues, également connu sous le nom de Tomé Rodrigues Galego de Santiago, était un riche propriétaire des fermes d'Alcanede et Santiago, propriété d'où la famille a tiré son nom. Également propriétaire, son fils, né en 1576, exerçait d'importantes charges municipales à Arraiolos ; il était considéré localement comme un « homme noble », mais pas comme un véritable « fidalgo ». Tomé Rodrigues était le fils de Bras Eanes Galego, fermier et probablement petit-fils de Rodrigo Eanes Gallego, arbalétrier du roi Manuel I[er]. Les armoiries des Santiago établis à Arraiolos ne sont pas enregistrées dans les armoriaux de la noblesse car elles ont été librement adoptées, mais leur usage public dans une église a été toléré par les autorités.[28] Dans l'église Saint-François de la même petite ville, la sépulture d'Inès Rodrigues Lasa (« l'aile »), décédée en 1638, comporte un écu avec *une aile*, des armes elles aussi clairement parlantes absentes des armoriaux nobles.

La poursuite de l'inventaire héraldique portugais pourrait révéler bien d'autres armoiries adoptées par des non nobles. En tout cas, nous constatons que la pratique de l'adoption d'armoiries persiste bien après la promulgation de la Loi de 1476, contrairement à ce qu'affirme António de Sousa Lara.[29]

Enfin, un argument d'autorité doit être cité. Dans son *Livro em que se trata da origem dos Reis*..., (« Livre qui traite de l'origine des Rois… »)[30] daté de 1645, le roi d'armes António Coelho distingue, au sujet des diverses sortes d'armoiries (chapitre 42), trois dont les « hommes font usage publiquement ». Parmi elles, « la première est basse et roturière » : il n'accorde aux armoiries en question aucune valeur parce qu'elles ne proviennent pas de l'autorité d'un prince, que leur raison d'être n'est pas un acte militaire et qu'elles ne marquent pas la reconnaissance d'un mérite ; elles sont conçues selon le goût de son utilisateur sans sujétion aux règles héraldiques. Mais après d'autres raisonnements, il conclut qu' « on ne peut pas défendre à celui qui les porte d'en faire usage et cela se voit dans une Disposition du roi Alphonse V dans laquelle il défend aux roturiers seulement de porter des métaux dans leurs écus en raison de leur signification ».

L'existence effective d'armoiries non nobles, permise par les lois du Royaume, ne signifie pas que l'usage en ait été répandu : il s'est limité au groupe de personnes ayant besoin d'une forme solennelle de certification juridique, le sceau, en raison d'une charge, ou qui voulaient consolider leur position sociale.

La législation postérieure du roi Manuel I[er] et les Ordonnances Philippines n'ont pas introduit de modifications dans le domaine de la capacité héraldique. Après la production législative de Manuel I[er] sur l'héraldique des personnes individuelles, suivent la Loi du 16 septembre 1597 sur les couronnes de titres,[31] les Ordonnances Philippines, Titre XCII du Livre V,[32] le Décret du Roi Pierre II du 10 avril 1703 sur les insignes de fonctions et faits militaires,[33] les §§ 23 et 24 de la Loi du 29 septembre de 1769[34] sur les armoiries des titulaires de majorats, l'article 18 de l'Arrêté du 28 juillet 1832 sur la représentation héraldique des décorations de l'Ordre de la Tour et de l'Épée[35] et les dispositions des Codes Pénaux de 1852[36] et 1886[37] sur l'usurpation d'armes.

La République est instaurée le 5 octobre 1910. Le gouvernement provisoire, inspiré par la loi française du 23 juin 1790, décréta le 15 octobre 1910 l'abolition « des titres nobiliaires, des distinctions honorifiques, ou des droits de la noblesse », mais n'a pas défendu l'usage des armoiries. Conservant leur valeur identificatrice, elles n'expriment plus un privilège de classe. Le droit aux armoiries est aujourd'hui protégé dans le cadre des dispositions générales du Droit civil. En 1969, les Normes de l'Héraldique de l'Armée (article 35) ont introduit la possibilité de concéder des armoiries à des personnes individuelles, disposition qui est restée sans application et a disparu avec la réforme de cette législation en 1987.

4. L'héraldique du Souverain et de l'État

Laissant ici de côté la législation de Manuel I[er] sur l'héraldique des personnes de la famille royale, les formes d'écu, les brisures, etc., abordons à présent la relation entre les armoiries du souverain et l'emblématique de l'État.

Les armoiries du « Roi du Portugal » en tant que souverain, et non l'État ou le territoire où il régnait, apparaissent dans des ar-

moriaux médiévaux tels que le *Walford's Roll* (1275–1280), le *Wijnbergen* (v. 1280), celui du héraut Navarre, Martin Carbonnel (1367–1370), ceux d'Urfé (vers 1380–1400), de Gilles de Rebecque (1463),[38] du héraut Charolais (fin du XV[e] siècle),[39] le *Grand Armorial équestre de la Toison d'Or* (1435–1438) ou, pour le Portugal du début du XVI[e] siècle, *O Livro do Armeiro-Mor* (« Livre du Grand Armurier du roi », 1509) et *O Livro da Nobreza e Perfeição das Armas* (« Livre de la Noblesse et de la Perfection des Armes », 1516–1528) .

Les Ordonnances Manuélines, dans une des hypothèses de crime de lèse-majesté, indiquent que ce dernier est commis « lorsque quelqu'un méprisant le Roi ne respecte pas ou détruit une image ou les armoiries royales érigées en représentation du Roi ou en son honneur et révérence » ;[40] par « armoiries royales » il faut comprendre celles dont la personne du roi est titulaire. Parfois les expressions de la Loi sont ambiguës : le « Règlement et Ordonnance des Armoiries », un autre texte dû à Manuel I[er] et traitant des brisures de la lignée royale, dispose dans l'article 1 que « seul le possesseur de la couronne royale, qui est le Roi, portera les armes des États, que le Royaume possède, et les portera pleines et sans aucune brisure », et ajoute dans le nº 2 que « la Reine portera seulement lesdites armoiries du Royaume, et celles des États dont elle descend, pleines, et dans un écu parti …». Mais lesdites armoiries du royaume que personne ne pouvait porter pleines étaient celles appartenant au Roi lui-même, l'intention étant de défendre à quiconque toute appropriation de la représentation symbolique du souverain. Quand le Règlement des Armoiries mentionne « les armes des États que le Roi possède », il s'agit bien, dans le cas spécifique portugais, des armoiries du Roi, qui ont toujours identifié le Royaume dans la complexité de tous ses domaines, sachant que sous le règne de Jean II déjà, on avait déjà jugé inopportun de composer des armes spécifiques pour les domaines d'outremer.[41]

Ce qui est parfois nommé « armoiries du Royaume » désigne en réalité celles du roi. Sans prendre part à la polémique sur l'origine et signification des armes royales portugaises, je suis convaincu que le premier roi Alphonse, a pris des armes , ou autre modalité de représentation emblématique, avec les écussons en croix, qu'on retrouve sur les armes de ses enfants et transmises à sa descendance, plus tard modifiées par le roi Alphonse III pour les briser en rapport à celles de son frère, Sancho II, le roi détrôné, ajoutées des pointes de la Croix d'Avis par le Roi Jean Ier et finalement rendues en 1481 à leur forme actuelle par le roi Jean II.

Les armes du Portugal en tant que territoire n'ont jamais existé, hormis l'écu fantaisiste *d'azur au portail d'argent, ouvert de gueules et sommé d'un besant d'or*, désigné comme armes du «Portegalien [Portugal] » dans le *Wappenrolle von Zürich*,[42] uniquement explicable par une inspiration étymologique étrange de la désignation « Portus Cale », version totalement imaginaire peut être rapprochée de l'image plus tardive des « Armes anciennes du Portugal » apparaissant dans les *Tropheos Lusitanos* sous l'aspect d'une ville munie de murailles et d'un port maritime.[43]

Il peut paraître surprenant que la législation manuéline désigne la même réalité

tantôt par « armes du roi », tantôt par « armes de ses États». Il n'est pas concevable que deux réalités ontologiquement différentes soient confondues symboliquement. Pour nous, il est clair que les armes appartenaient au Roi et à sa famille et non au Royaume. La distinction entre la personne du Roi comme souverain et la réalité abstraite de l'État qu'il gouvernait, ne s'est précisée et consolidée que lentement. Réfléchissons à ce que dit un auteur classique, Bluntschli : « Au pricipe des formations, le prince joue seul le premier rôle ; lui seul est une personne, et l'État n'est que le domaine de sa puissance ».[44] Dans la mesure où l'État – le Royaume – n'était qu'un bien patrimonial du monarque, il ne se différenciait pas de ce dernier.

Ce n'est que lentement que s'est mise en place l'institutionnalisation du pouvoir, si l'on interprète celle-ci comme « la dissociation entre le commandement, l'autorité politique, le pouvoir et la personne qui à chaque moment l'exerce : un fondement du pouvoir, non sur les qualités personnelles du gouvernant, mais sur le Droit qui l'investit comme tel ; la permanence du pouvoir au-delà du changement de ses titulaires ; et sa subordination à la satisfaction de fins non égoïstes, à la réalisation du bien commun. La permanence dans le temps est, simultanément, l'expression d'une permanence de la communauté politique et sa garantie ».[45]

Cette évolution a été facilitée par l'influence progressive du Droit romain, qui a permis de distinguer nettement le souverain de l'État grâce à l'autonomisation du concept de « couronne », comme l'exposent Rui de Albuquerque et Martin de Albuquerque :

« Il s'agit de la réalité institutionnelle qui apparait désignée dans les textes de l'époque par *royaume*, *couronne* (plus tard par *république*), d'ailleurs en accord avec une conception politique commune aux grands pays européens de l'époque, *verbi gratia,* l'Angleterre et la France. L'usage du vocable « royaume » (*regnum*) pour mentionner une entité politique, juridiquement construite et distincte de la personne du roi, a été constatée, comme l'observe Walter Ullman, depuis très longtemps. Et l'idée qu'elle porte en elle recevra, plus tard, son expression symbolique avec le vocable « couronne » (*corona*). L'usage du mot *royaume*, avec l'acception signalée et non seulement dans un sens purement géographique-territorial – fondé, par conséquent, sur une signification politique, métaphysique, que le mot couronne soulignera et mettra davantage en évidence – représente, comme on l'a dit et il s'impose de le noter, un phénomène à l'échelle européenne. Dans un acte du roi Louis X de France daté du 13 mai 1315, il est déclaré, par exemple, que le roi a toujours respecté les anciennes libertés de ses vassaux, « mais sans dommage pour nous ni pour notre royaume », éclaircissant de cette façon qu' « un groupe subordonné » ne peut jouir des libertés, même très anciennes, si de là naît un préjudice pour le roi ou pour la communauté politique qu'il dirige. Au Portugal, la distinction entre roi et royaume apparaît déjà dans des documents du XIII^{e} siècle ».[46]

Cette distinction aura des répercussions emblématiques plus tard.

Il semble toutefois que dans le centre et l'ouest de la péninsule ibérique, la conscience d'une réalité institutionnelle – le royaume, autonome de la personne du roi – se soit formée avec une certaine précocité. Selon la

thèse de Porras Arboledas, la monarchie de Léon, matrice des royaumes de l'occident péninsulaire, aurait été l'héritière assumée du royaume wisigoth, dont elle conserva toute la tradition du droit romain, basé sur une structure administrative bien caractérisée et indépendante du souverain, ce qui explique que les tentatives de patrimonialisation du pouvoir par le roi ont été très rares.[47]

Magistralement exposé par Faustino Menéndez Pidal, l'exemple de l'Espagne révèle la diversité des procédés ayant conduit à l'organisation des armes des Rois et des Royaumes. Alphonse VII, roi de Léon et Castille, dont l'emblème héraldique était le lion, a réparti ses royaumes entre ses deux enfants ainsi : l'aîné, qui a hérité du royaume de Castille, a pris comme emblème un châtelet, tandis que le puiné, héritier du Léon, a maintenu l'emblème paternel ; dans un cas comme dans l'autre, l'emblème est investi d'une double dimension, territoriale et personnelle/familiale. En Aragon, les rois se sont servis du palé, un emblème héraldique de nature familiale, et ce n'est qu'avec le roi Pedro III qu'ont été créées les armes territoriales d'Aragon, un écu à la croix de saint Georges cantonnée de quatre têtes de maures, composition que le temps oubliera en faveur du palé.[48]

Compte tenu de toutes ces influences, nous verrons que dans la distinction nécessaire des concepts et des réalités, le cheminement législatif suivi au Portugal a débuté par la définition claire de l'existence d'armoiries royales, avant d'ouvrir subtilement la voie à la définition des armoiries du Royaume.

Aux exemples portugais qui précèdent, nous pouvons ajouter les suivants : l'acte qui institue la Compagnie Générale de l'État du Brésil (1649) dit très clairement « Que les flottes de ladite Compagnie porteront les Armoiries Royales de Votre Majesté sur les drapeaux de Capitaine et Amiral » (§ XXI).[49] Lorsque le roi Jean V détermine en 1722 l'aspect de ses pièces de monnaie, il ordonne que « toutes ces pièces de la nouvelle production auront d'une part mon portrait et mon nom, comme il a été pratiqué par quelques anciens rois de ce Royaume et le pratiquent à présent presque tous les Princes d'Europe et de l'autre, les Armoiries Royales avec la légende IN HOC SIGNO VINCES ».[50] De même, les navires de guerre des Compagnies de Grão Pará et de Pernambuco et Paraíba devaient porter « les Armoiries de Votre Majesté sur les drapeaux de Capitaine et d'Amiral ».[51] Nous n'avons trouvé qu'un seul acte antérieur à 1816, le Décret du 19 mai 1806[52] déterminant que sur les drapeaux des régiments soient brodées les «les Armes du Royaume».

En 1816 est promulgué un acte législatif dont les conséquences ont perduré bien au-delà de sa courte vie : la Lettre de la Loi 13 mai 1816, par laquelle le roi Jean VI a créé les armoiries du Royaume Uni du Portugal et du Brésil et des Algarves.[53] Dans le préambule, le Roi annonce : « ayant été conduit à unifier mes Royaumes du Portugal, Brésil et Algarves, pour que tous ensemble puissent constituer, comme effectivement ils constituent, un seul et même Royaume ; il est régulier et conséquent d'incorporer dans un seul Écu Royal les armes de tous les trois Royaumes, ainsi et de la même forme que le Seigneur Roi Alphonse III, de Glorieuse Mémoire, faisant autrefois l'union du Royaume des Algarves à celui de Portugal, a uni aussi ses armes respectives ». Et puisque que le

Royaume du Brésil n'avait pas d'armes, il est déterminé :

1 « Que le Royaume du Brésil ait pour armes une sphère armillaire d'or sur champ d'azur.
2 Que l'Écu Royal Portugais, inscrit dans ladite sphère armillaire d'or sur champ d'azur, avec une Couronne posée par-dessus, soit dorénavant les Armoiries du Royaume Uni du Portugal et du Brésil et Algarves, et des autres Parties intégrantes de ma Monarchie ».

Cette loi prévoit que les armes des trois royaumes seront incorporées dans un écu royal unique associant les armes du Brésil, créées *ex novo* par une décision royale en vertu du pouvoir absolu du Roi, et les armes royales – car ces dernières appartenaient au Roi et non à l'État. Ces dernières ont été l'objet d'une cession par un acte volontaire de ce souverain en vue de constituer les armes territoriales du Portugal et des Algarves, représentant également tous les autres domaines de la Monarchie.

Bien qu'il ne se soit pas attardé sur les fondements juridiques, Metelo de Seixas a pressenti l'importance de la modification introduite, quand il affirme qu'« Il faut retenir que le document promulgué en 1816 correspond à une mesure par laquelle l'État légiférait sur la composition de sa représentation, qui était de cette façon dotée d'un caractère légal. Par l'emblématique instituée, l'État s'assumait comme étant composé par la jonction d'entités politiques diversifiées, chacune ayant son propre territoire, unies par un passé historique partagé sous l'égide de la dynastie commune. Chacune de ces entités politico-territoriales avait ses propres emblèmes, symboliquement expressifs de la communion historique et dynastique qui les concernaient, lesquels se fondaient sur les armoiries du Royaume Uni. Ainsi, l'avènement du Royaume Uni du Portugal, Brésil et Algarves surgit en rapport direct avec la manifestation d'une conscience symbolique du territoire dans l'héraldique officielle ».[54]

Au vu du contexte juridico-politique de l'époque, nous pensons que les entités abstraites « État » ou « Couronne » n'étaient pas en capacité de légiférer sur cette matière. Seul le Roi, en tant que *fons honorum,* pouvait élever un territoire à la catégorie honorifique de Royaume, car c'était bien de cela qu'il s'agissait. En effet, le roi Jean VI a très clairement affirmé qu'il rassemblait « les Royaumes du Portugal, Brésil et Algarves, pour qu'ils constituent effectivement un seul et même Royaume », un royaume qui rassemblait également tous les domaines d'outremer de la Couronne du Portugal, comme il découle sans équivoque du point II, *in fine*, de la loi. De portée symbolique, la réforme n'a pas fait émerger une situation juridique qui puisse être assimilée à ce que le Droit International public désigne comme « union réelle ».[55]

Les répercussions de l'acte législatif du roi Jean VI n'ont pas été immédiates.

Le Décret du 18 octobre 1830 créa le drapeau bleu et blanc, qui représenta le pays pendant le régime Monarchique Libéral. L'acte le décrit comme « parti verticalement, le bleu placé près de la hampe, et les Armes Royales au centre du drapeau, la moitié sur chacune des couleurs ».[56] Ce décret ayant été

issu pendant la guerre civile, on en a conclu que ses auteurs étaient insuffisamment informés du contenu doctrinal de la Loi du roi Jean VI, et la même explication est admissible pour l'Alvará du 9 avril 1833[57] qu'à propos de pièces de monnaie de D. Maria II parle « d'Armes Royales ». Pourtant, il faut préciser que par la suite, la seule référence aux Armes Royales se trouve dans un acte législatif de 1889 octroyant un écusson en abîme aux armes royales à la ville de Lourenço Marques, capitale du Mozambique, une distraction qui peut s'expliquer par le fait que le rédacteur présumé de ce document a été le Clerc de la Noblesse.[58]

Par la suite, les actes concernant les émissions monétaires ne mentionnent pas les « Armes Royales », mais les « Armes Nationales » (Loi du 24 avril 1835[59] et Loi du 24 juillet 1854),[60] ou les « Armes du Portugal » (Décret du 5 septembre 1846).[61] Concernant les drapeaux militaires, le Décret du 20 avril 1853[62] et le Décret du 8 novembre 1892[63] ne parlent, à propos de leur composition, que des « armes portugaises ». En ce qui concerne l'héraldique municipale, un quartier avec les cinq écussons du Portugal a été concédé à la ville de Praia et à la municipalité de Santa Catarina, toutes deux au Cap Vert, en 1864[64], ainsi qu'à la ville de Horta aux Açores en 1865,[65] tandis que la municipalité de Moçamedes en Angola recevra en 1891 un premier quartier « aux armes du Portugal ».[66]

À la fin du régime monarchique, il était généralement admis qu'un écu *d'argent aux cinq écussons d'azur en croix chacun chargé de cinq besants d'argent, et une bordure de gueules chargée de sept châtelets* (à l'époque des tours) *d'or*, constituait les « armes nationales », ou « du « Portugal», armes également partagées par la Maison Royale. Le seul symbole vraiment représentatif de la Monarchie Constitutionnelle était le drapeau bleu et blanc, dont les couleurs avaient été héritées de la cocarde nationale créée par Décret des « Cortès Générales » Extraordinaires et Constituantes en 1821, révoqué quelques années plus tard.[67]

La Révolution Républicaine portugaise de 1910 a admis pacifiquement que l'écu décrit correspondait véritablement à la représentation symbolique de la nation et que le seul vestige subsistant de l'Ancien régime était la couronne royale. Les exactions révolutionnaires qui ont suivi le 5 octobre 1910, fréquemment perpétrées par les convertis de la dernière heure, ont visé les couronnes timbrant les armes sur les édifices et lieux publics, tandis que les anciennes armes des Rois du Portugal, partagées par acte souverain du roi Jean VI avec la Nation, ont été épargnées.

Le Portugal n'a pas subi le mépris progressiste de l'emblématique ancienne observable sous la Révolution française et si bien décrit par le baron Pinoteau,[68] manifesté également lors de la Révolution russe ou lors du passage du régime monarchique à la république en Italie. En Espagne, la situation fut différente parce que les armes possédaient une dimension territoriale manifeste, comme l'a très bien signalé Faustino Menéndez-Pidal.

L'Assemblée Constituante de 1911, sur la conviction juridiquement fondée qu'elle se trouvait face à un écu aux armes nationales, après avoir pris en considération l'avis de la Commission spécialement chargée de proposer un modèle de drapeau national, délibéra par Décret du 19 juin 1911 que « le dra-

peau National est biparti verticalement de deux couleurs fondamentales, le vert foncé et l'écarlate, le vert se situant du côté de la hampe. Au centre, et sur l'union des deux couleurs figurera l'écu des Armes Nationales profilé en blanc et posé sur la sphère armillaire manuéline en jaune et rehaussée de noir. Les dimensions et autres détails du dessin, les détails et la décoration du drapeau sont les mêmes que ceux de l'avis de la Commission nommée par décret du 15 octobre 1910, que seront immédiatement publiés au *Diário do Governo* ».[69]

Malgré le renvoi fait par l'Assemblé Constituante à l'avis de la Commission, publié au *Diário do Governo* du 30 juin 1911, le Gouvernement a jugé bon de reproduire l'avis par le Décret nº 150 du 30 juin 1911. Le drapeau y est décrit dans les termes exacts de la délibération de l'Assemblée Constituante ; est aussi précisée la configuration des drapeaux des forces militaires, brodés sur soie, ainsi que le pavillon de beaupré et les éléments extérieurs des armoiries nationales.[70]

Notre attention est immédiatement attirée par la mention de la « sphère armillaire manuéline », absente de la version officielle usuelle des armes nationales au temps de la Monarchie. En tant que corps de la devise du roi Manuel I^er^, la sphère armillaire a été constamment présente dans l'héraldique portugaise. En 1649, le roi Jean IV en fait les armes de la Compagnie Générale de l'État du Brésil. On la voit en tant que support des armoiries royales d'espèces monétaires frappées pour l'Angola pendant les règnes de Joseph I^er^, de Marie I^ère^, de Michel I^er^, de Marie II et de Pierre V, ainsi que pendant la régence du prince Jean, après le règne de Jean VI. Comme on l'a vu, cette sphère a été choisie comme meuble unique des armes du Royaume du Brésil, intégrée dans les armoiries du Royaume Uni du Portugal et du Brésil et des Algarves, et elle est aussi abondamment représentée sur les monnaies du Brésil sous souveraineté portugaise. Il s'agit d'une allusion à l'outremer et à la mémoire d'un Empire que la République voulait récupérer et développer.

Les branches de laurier placés autour de l'écu apparaissaient déjà sur des drapeaux et étendards militaires en usage sous la Monarchie. Il s'agit d'une mode venue de l'étranger, figurant dans les armoiries de l'Empire du Brésil et reprise dans les armes de quelques municipalités.

Le régime appelé « État Nouveau », en vigueur de 1926 à 1974, n'a introduit aucune modification dans l'emblématique nationale. La Constitution Politique de la République Portugaise, approuvée le 2 avril 1976, dit dans son article 11 nº 1 (version actuelle) : « Le drapeau national, symbole de la souveraineté de la République, de l'indépendance, unité et intégrité de Portugal, est adopté par la République instaurée par la Révolution du 5 octobre 1910 ». Suivant la voie ouverte par le Roi Jean VI, cette mention du drapeau inclut tous ses éléments, y compris les Armoiries Nationales, désormais consacrées par la République.

5. Conclusion

1 – Le droit héraldique, dont l'autonomie repose sur son caractère institutionnel car il ne comporte pas de normes de nature original, est composé, *lato sensu,* de règles de

structure différentes, mais dont le noyau se réduit à la définition du droit d'une personne juridique à un symbole héraldique, ce qu'on appelle traditionnellement la « capacité héraldique », en vue de lui offrir une identification, ce qui permet de la considérer comme un droit instrumental du droit de la personnalité à l'identification.

2 – Le droit aux symboles héraldiques, en accord avec la législation portugaise contenue dans le *Corpus de Droit Héraldique*, est concédé aux personnes juridiques de droit privé individuelles (tant nobles comme non nobles) et aux personnes morales de droit privé. Dans le domaine des personnes de droit public, le même droit est accordé à l'État (directement ou, indirectement, à ses organismes et services non dotés de la personnalité morale) ainsi qu'aux régions autonomes, municipalités, communes et instituts publics dotés de la personnalité morale.

3 – Les armes de l'État portugais sont le résultat d'un acte royal de cession des armes royales à la Nation, qui a été pacifiquement accepté par tous les régimes politiques successifs.

Notes

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The Law and Scots Heraldry

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Abstract: The uses and customs of heraldry in Scotland are now firmly rooted in the legal system. The paper will look at the Acts of Parliament during the 16th century which endeavoured to put heraldry into a legal context. These Acts failed for a variety of reasons and the paper will discuss the reasons for those failures and also look at the personalities involved heraldically from the mid-16th century to the third quarter of the 17th century when finally Parliament passed successful legislation to regulate the use of arms in Scotland. Following the political upheaval of the first half of the 17th century and the restoration of the monarchy in 1660 many institutions in Scotland and England were established or re-assessed. A new mood was taking hold of the country and the need for clarity in various areas, including heraldry, came to the fore. This new enthusiasm for regulation in the heraldic field culminated in the establishment of the Public Register of All Arms and Bearings in Scotland in 1672 and the effect of that Act is still key today. The early years of the Register were principally concerned with recording existing arms and establishing the rights of junior members of armorial families. From the mid-18th century, however, many wished to establish new heraldic rights, significantly amongst Scots living overseas. The paper will follow this development and then discuss how more recent legal decisions involving coats of arms have shaped the way in which rights to arms have been determined and how the role of the Lord Lyon has changed in character. Successive Lords Lyon have been faced with increasingly complex decisions and whilst none is bound by the decisions of their predecessors, the principal heraldic cases have influenced the way in which heraldry and the law has become closely intertwined. Many of these cases relate to succession matters but others concern heraldic rights or the mis-use of arms. Some important decisions have been made by the Lord Lyon sitting as a judge in his own court but others have progressed through the courts, some as far as the House of Lords for a final decision. Whilst the paper will concentrate on matters purely armorial it will be pointed out that the Lord Lyon has other functions which have legal consequences, such as the recording of genealogies and recognising change of name.

Résumé : Les usages et coutumes de l'héraldique en Écosse sont désormais fermement ancrés dans le système juridique. L'article se penchera sur les lois du Parlement au cours du XVIe siècle qui ont tenté de placer l'héraldique dans un contexte juridique. Ces lois ont échoué pour diverses raisons et l'article discutera des raisons de ces échecs et examinera également les personnalités impliquées dans l'héraldique du milieu du XVIe siècle au troisième quart du XVIIe siècle, lorsque le Parlement a finalement adopté une législation réussie pour régle-

menter l'utilisation des armes en Écosse. Suite aux bouleversements politiques de la première moitié du XVII^e siècle et à la restauration de la monarchie en 1660, de nombreuses institutions en Écosse et en Angleterre ont été créées ou réévaluées. Un nouvel état d'esprit s'empare du pays et le besoin de clarté dans divers domaines, dont l'héraldique, se fait sentir. Ce nouvel enthousiasme pour la réglementation dans le domaine héraldique a abouti à la création du Registre public de toutes les armes et de tous les supports en Écosse en 1672, dont l'effet est encore déterminant aujourd'hui. Les premières années du registre ont été principalement consacrées à l'enregistrement des armoiries existantes et à l'établissement des droits des membres subalternes des familles d'armoiries. Cependant, à partir du milieu du XVIII^e siècle, de nombreuses personnes ont souhaité établir de nouveaux droits héraldiques, notamment parmi les Écossais vivant à l'étranger. L'article suivra cette évolution et examinera ensuite comment les décisions juridiques plus récentes concernant les armoiries ont façonné la manière dont les droits aux armoiries ont été déterminés et comment le rôle de Lord Lyon a changé de nature. Les Lords Lyon successifs ont été confrontés à des décisions de plus en plus complexes et, bien qu'aucun ne soit lié par les décisions de ses prédécesseurs, les principales affaires héraldiques ont influencé la manière dont l'héraldique et le droit sont devenus étroitement imbriqués. Nombre de ces affaires concernent des questions de succession, mais d'autres portent sur les droits héraldiques ou l'utilisation abusive des armes. Certaines décisions importantes ont été prises par Lord Lyon siégeant en tant que juge dans son propre tribunal, mais d'autres ont progressé à travers les tribunaux, certains jusqu'à la Chambre des Lords pour une décision finale. Bien que l'article se concentre sur les questions purement armoriales, il convient de souligner que le Lord Lyon a d'autres fonctions qui ont des conséquences juridiques, telles que l'enregistrement des généalogies et la reconnaissance des changements de nom.

1. Introduction

The connection between the operation of the law and the practice of heraldry in Scotland is a long one. Scotland is unique in having such a long-established heraldic law which operates across all aspects of the use of armorial bearings. The law is practised on a daily basis. The Court of the Lord Lyon is one of the minor courts in Scotland from which there is a direct right of appeal to the Court of Session, the highest civil court in Scotland, and ultimately the House of Lords, whose functions are now administered by the Supreme Court, as the final arbiter. This means that appeal from a judgement of the Lord Lyon does not pass through the Sheriff Court, which is the court immediately senior to the Court of the Lord Lyon.

It should be made clear at the outset that the Lord Lyon has distinct functions, not all of which are judicial or therefore immediately appealable. When new arms are granted, they are done so on an administrative or ministerial basis. It was only relatively recently through the process of judicial review that those administrative decisions by the Lord Lyon can be challenged but then only on the usual grounds for judicial review in the United Kingdom, which are illegality, irrationality or procedural impropriety.

This paper will concentrate on those matters which involve the development of heraldic law in Scotland since the 16th century, a

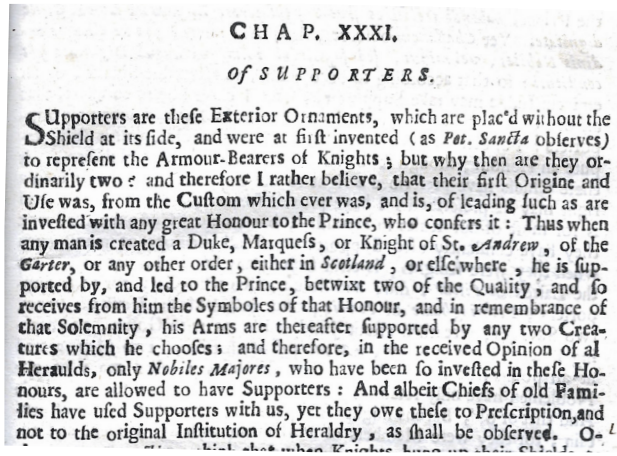
period for which we have a relatively continuous record of armorial practice.

2. Acts of Parliament and the Lyon Kings of Arms

The first Act of Parliament which defined the powers of Lyon but also the legal standing of a Coat of arms was that of 1592 which laid down that Lyon and his brother heralds had to examine all existing arms and register them in "thair buikis and Registeris".[1] Lyon did not necessarily act alone at this period and the body of heralds was more of a collegiate body until the reforming Act of 1867 which stated that Lyon was to act personally and not by deputy and thus any ability to grant or record Arms officially was removed from the Officers of Arms.[2] There were four Lord Lyons from the Lindsay family between 1538 and 1630, the most famous being the first Sir David Lindsay of the Mount. The great armorial Register created in the 1540s by this Lyon Lindsay of the Mount was, at the behest of Lord Lyon Sir James Balfour of Denmylne, approved by the Privy Council in 1630. The Lindsay heraldic dynasty was, therefore, central to the initial attempts at statutory control of Scottish heraldic practice. It may have become clear to the authorities that with the production of the great armorial Register of Lindsay of the Mount this was an area of Scottish life which required careful oversight so that the visual identity of one person was clearly assigned to that person and none other. Be that as it may this Register was the first comprehensive record of Scottish armorial life gathered together in one volume. It was, however, the personal record of one Lyon but its influence on Lindsay's immediate successors clearly laid the foundation for considering the great benefit, indeed necessity, for a public register of arms.

In the 1592 Act it was stated that no-one was to assume Arms at their own hand or place them on household goods and if they did so they were to pay £100 Scots to Lyon and the heralds. This is a fine which has not changed other than to be converted from pounds Scots into pounds Sterling. If an offender failed to pay, they were to be imprisoned. That latter penalty is no longer regarded as something which would be imposed. It may well be that attention will now be given to an amendment of the nature and penalties of contravening the statutory laws of heraldry. The Act also placed the control of Messengers of Arms, of whom more later, into the hands of the Lord Lyon. The Act was never implemented as intended and we are not even sure if the Register mentioned in it still exists, although one held in The Hague is thought a very likely contender as it is alphabetical in order.[3] The other contender, held in Lyon Office and also alphabetical in order, was for a time thought to be the 1592 Register but more recent research has suggested that as at least one entry in it could not have been included before 1628 it was compiled later.[4]

Sir James Balfour of Denmylne, who held the office of Lyon from 1630 until 1654 was, by the standards of any time, one of the most outstanding holders of the office. Well trained, including at the College of Arms in London, and widely travelled he wrote extensively on heraldry and his collection of manuscripts was purchased by the Faculty of



CHAP. XXXI.

of SUPPORTERS.

SUpporters are theſe Exterior Ornaments, which are plac'd without the Shield at its ſide, and were at firſt invented (as *Pet. Sancta* obſerves) to repreſent the Armour-Bearers of Knights; but why then are they ordinarily two? and therefore I rather believe, that their firſt Origine and Uſe was, from the Cuſtom which ever was, and is, of leading ſuch as are inveſted with any great Honour to the Prince, who confers it: Thus when any man is created a Duke, Marqueſs, or Knight of St. *Andrew*, of the *Garter*, or any other order, either in *Scotland*, or elſe where, he is ſupported by, and led to the Prince, betwixt two of the Quality, and ſo receives from him the Symboles of that Honour, and in remembrance of that Solemnity, his Arms are thereafter ſupported by any two Creatures which he chooſes; and therefore, in the received Opinion of al Heraulds, only *Nobiles Majores*, who have been ſo inveſted in theſe Honours, are allowed to have Supporters: And albeit Chiefs of old Families have uſed Supporters with us, yet they owe theſe to Preſcription, and not to the original Inſtitution of Heraldry, as ſhall be obſerved. O-

Fig. 1. The Science of Heraldry by Sir George Mackenzie of Rosehaugh, p. 93.

Advocates in 1692 and forms a significant element of the collection of heraldic manuscripts now in the care of the National Library of Scotland.[5] He kept the administration of heraldry on an even keel at a time when the actual laws were not functioning. The next two holders of the office have left little mark but the appointment of Sir Charles Erskine of Cambo in 1663 was a watershed for the legal foundation of the application of heraldic life in Scotland. The Erskines, like the Lindsays, formed a heraldic dynasty and both families came from Fife, as did Balfour of Denmylne. There must have been considerable interaction between these families which produced an effect on how heraldry was promoted during the 16th and 17th centuries and into the first quarter of the 18th century.

The next Act had been passed in 1662[6] a year before Cambo's appointment and had a very short life, being repealed the following year. As well as reiterating the powers of Lyon and the heralds this Act imposed the payment of considerable sums by the nobility to the officers of arms for the oversight of Lyon at funerals and recording genealogies, both of which were considered mandatory before internment. The nobility objected fiercely to the imposition of sums to be paid directly to Lyon and the heralds and in 1663 the "heavy burding" was removed.[7] It must be conjectured that Erskine of Cambo, coming into office in 1663, was very aware of the failings of the 1662 Act, and his work was the foundation upon which the following Act, passed when he was Lyon and acting jointly with his son, is built.

Before, however, the principal Act is considered it is necessary to look at how Lyon functioned prior to heraldry being governed by Act of Parliament. At one time Lyon appears to have had an unfettered right to do what he wished when granting arms. Those rights have become more restricted during the intervening years. In the mid-1560s, be-

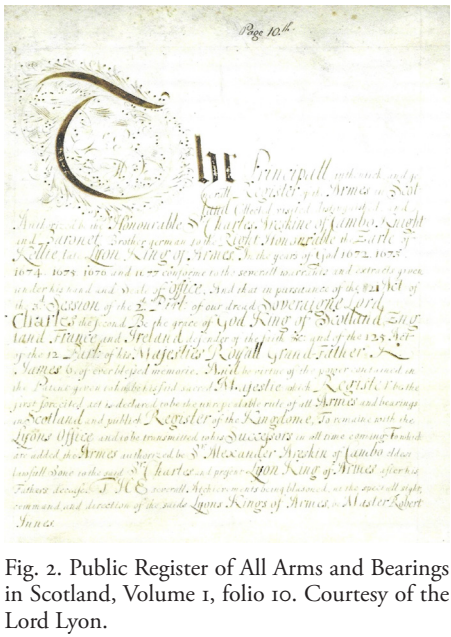


Fig. 2. Public Register of All Arms and Bearings in Scotland, Volume 1, folio 10. Courtesy of the Lord Lyon.

fore the establishment of any Public Register or any meaningful Acts of the Scottish Parliament relating to armorial functions, Lyon Sir Robert Forman of Luthrie, granted arms on 6 February 1566–67 to Sir James Balfour of Pittendreich' and later in 1567 supporters to Sir John Maxwell, later Lord Herries. Clearly at the time supporters were not regarded as that significant as no mention is made of them in the text and our knowledge relies on the depiction accompanying the text. Lyon's unfettered right to grant supporters was considered carefully following his decision not to allow certain people to record supporters in the new Public Register. He apparently relied on a Royal letter, now lost, which told him not to allow supporters to anyone under the rank of peer. That constrained power has not been entirely withdrawn but it has been tempered over the last 450 years. Various writers have considered just how much discretion Lyon has and Mackenzie of Rosehaugh, of whom more shortly, writing in the late 17th century, laid down the categories of persons who had a common law right to supporters (*fig. 1*).[8] Some Lyons have interpreted their right to grant supporters as restricted to these categories, that is to peers, clan chiefs, and Knights Grand Cross of Orders of Chivalry, whilst others have, since the time of Mackenzie, taken a wider view and granted supporters to others they deem "deserving" although most Lyons have largely adhered to the accepted Mackenzie line. The matter did, however, have a serious ramification when the new Register was established in 1672 and Lyon refused to allow those who already had supporters to record these. The feudal barons brought an action against Lyon who acquiesced, at least so far as those barons whose ancestors had borne supporters.[9] This decision to allow historical supporters was as defined by Mackenzie.[10]

By 1672 it was clear matters needed to be put on a sound footing and this major Act of Parliament relating to Lyon and his brethren and this Act is still in daily operation and provides the firm basis for the way in which heraldry is legally regulated and protected in Scotland in the 21st century.[11] It is a fine piece of legal draftsmanship which has required little amendment and it still "fit for purpose". The Register is, "the unrepealable rule of all Armes and bearings in Scotland and publick Register of the Kindome"[12] and the lack of an entry therein makes the arms illegal and use of such unauthorised arms likely to attract a fine as mentioned above (*fig. 2*).

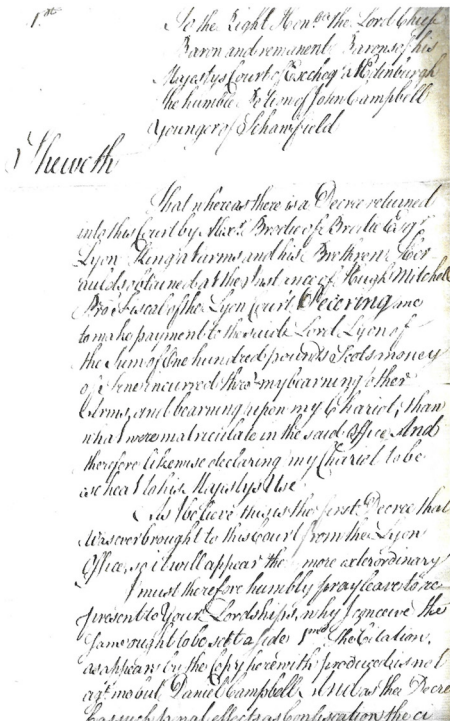


Fig. 3. Precept of Court of the Lord Lyon. Courtesy of the Lord Lyon.

It is not now a vast amount, but the penalty lies in the negative publicity which can arise and more importantly the removal or destruction of any items bearing the offending coat. It was mooted that confiscation might occur when a brewing company fell foul of the law but the decision was that the cans could be confiscated but not the contents.

In 1729 it was determined that Campbell of Shawfield, a cadet of the Campbell of Skipness family, was using the undifferenced arms borne by his kinsman Campbell of Skipness which were not his to bear and had even placed them on his carriage.[13] That could not be allowed and in a somewhat harsher manner than might be used nowadays Campbell of Shawfield was ordered to surrender the carriage with the offending coat (*fig. 3*). A formal document called a Precept was served on him laying out the offence and the potential penalty. In face of this in 1730 Shawfield submitted and recorded his arms in a suitably differenced form.[14] This case shows very clearly that in Scotland only one person can use a particular coat of arms at a time and all junior branches must difference those arms borne by the head of their line. At this date the Register contains few illustrations which adds force to the understanding that it is the written word which matters and if the painting disagrees with that written blazon it is the painting which is wrong. Sadly, so many people now think that there can be only one correct pictorial depiction of Arms and in no way must they divert from that drawing.

Fast forward 260 years and an exactly similar case arose when Mr Hastings of Crest Luxury Travel bought some buses bearing a shield showing a lion rampant.[15] Little did he know that these were the arms of Wemyss of Wemyss and not those used lawfully by the seller. A Precept in similar terms to that of 1729 was served on him but in 1992 it was explained to him what the problem was and why he should remove the offending shield. He came round in due course, as indeed do most of those who offend unwittingly although one housebuilder did not desist until he was actually fined.[16] Whilst ignorance of the law is not a valid excuse it is understood that the law of arms is somewhat rarified, and people can and do adopt arms in all innocence.

3. Procedure and Case Law

There is an individual called the Procurator-Fiscal to Lyon Court and it is he who determines if an offence may have been committed and although that person used to be appointed by the Lord Lyon some years ago it was decided that separation of powers should be seen to exist, and the Procurator-Fiscal is now appointed independently by the Scottish Ministers. The Procurator-Fiscal draws up the Precept and it is handed to Messengers of Arms, officers who deliver court summons, to serve on a potentially offending person. There are two tiers of court officers, Sheriff Officers who are junior to Messengers at Arms, and although both act for the courts the senior rank of Messenger is still, in obedience to the Act of 1592 formally appointed by and under the control of the Lord Lyon. They have a special badge bearing the Royal Arms as used in Scotland.

Sir George Mackenzie of Rosehaugh was mentioned earlier, and he is regarded as one of Scotland's authoritative writers – that is his works are regarded as authoritative on their subject (*fig. 4*). Whilst some might not now approve of his judgements – he was known as "Bluidy" Mackenzie for the harsh sentences he sought although not for heraldic misdemeanours – his works on legal matters are still highly regarded. His two works on Precedence[17] and the Laws of Arms were published in 1680 and thus contemporary with the development of thinking in heraldic matters following the establishment of the Public Register which, for the first half dozen years, concentrated generally on recording existing arms rather than focussing on heraldic development. His influence is still felt when considering what emphasis should be placed on a decision.

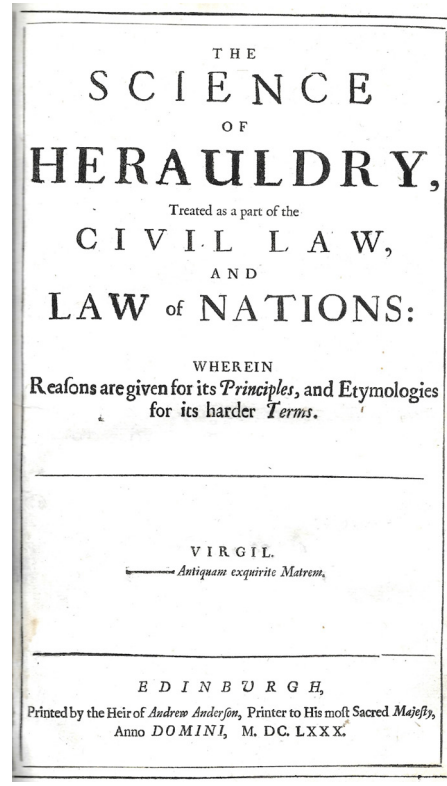

THE
SCIENCE
OF
HERAULDRY,
Treated as a part of the
CIVIL LAW,
AND
LAW of NATIONS:
WHEREIN
Reasons are given for its *Principles*, and Etymologies for its harder *Terms*.
VIRGIL.
——— *Antiquam exquirite Matrem.*
EDINBURGH,
Printed by the Heir of *Andrew Anderſon*, Printer to His moſt Sacred *Majeſty*,
Anno *DOMINI*, M. DC. LXXX.

Fig. 4. The Science of Heraldry by Sir Mackenzie of Rosehaugh, title page.

The way in which justice and decisions were handed down in Lyon Court were by way of biannual Head Courts held on 6th May and 6th November each year. It was at these Head Courts that new Officers of Arms would present their commissions for recording, cases against possible infringement heard and decisions handed down. General uncontentious business was, in general, not heard at these courts which were reserved for what

Fig. 5. Court of the Lord Lyon in session. Courtesy of the Lord Lyon.

might be deemed cases of public interest. These now largely do not happen and not on the appointed dates and most of the work of the Court of the Lord Lyon is undertaken in chambers out of the public gaze. Major or contested cases or those with significant public interest are, however, still heard in public and on such occasions the court is conducted in the same way as hearings in other courts. The court is "fenced", formal dress is worn, evidence is led, and legal arguments proposed. Lyon will conclude the hearing by indicating that his decision will be handed down in due course, what is known as "ad avizandum", an old Scottish legal term meaning after scrutiny of the submissions has taken place. It was useful for the court to be seen in action and therefore of relevance (*fig. 5*).

It was mentioned earlier that in times past it was often necessary to produce a pedigree or birthbrieve before a burial could take place and it fell to the Lord Lyon to be responsible for such pedigrees and for the preservation of them. Such genealogies came to have a legal significance as a recording in the Lyon Office official registers can be vital when seeking to prove succession to a dignity. In the United Kingdom there is a Keeper of the Roll of Peers and of the Roll of Baronets and before any peer or baronet can be officially accepted as in right of that dignity their name must be recorded in the relevant Roll. A recorded pedigree or matriculation of arms is often crucial in supplying, easily, the necessary proof. The information contained within these documents has been supported by formal records and thus once recorded the facts are taken as proved.

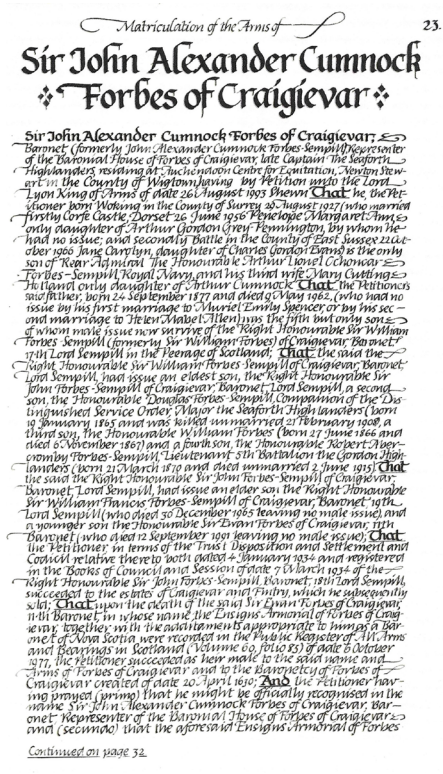
A Swedish descendant to the Lords St Clair sought to prove his right to the title by registering a pedigree in the Public Register of All Genealogies and Birthbrieves in Scotland. Count John Bonde was able to prove his descent and his position as the potential peer but could not prove he could succeed because he could now show that an earlier attainder or deprivation of the peerage had been lifted. Thus, although he proved he was heir of line he was unable to succeed.[18] Should at some date in the future it be shown that the attainder had been lifted or could be lifted then no doubt John Bonde of Charleton's heir could bring another petition to succeed to the title.

The principal legal cases or those which are opposed are reported in The Scots Law Times, a journal reporting significant legal cases. One such case was that of Lord Borthwick who had proved his pedigree with a recording in the Register of Genealogies in order to show that he was the heir to what had become a dormant peerage. There had been a tortuous case in the late 18th and early 19th centuries when the heir of two different lines of the family claimed the peerage amid

claims and counterclaims of altered documents from the 15th century, illegitimacy which had been ignored, and incorrect pedigrees. Neither heir won. When, however, the present peer's father was able to show that the pedigree was as he had recorded in Lyon Office his right to succeed was allowed because of this recording. [19]

An equally interesting case but one which will be hugely helped by a recording in the Lyon Register is that of the Forbes of Craigievar baronetcy. The baronetcy merged with a peerage, that of the Lords Sempill. However, the Sempill peerage can descend to and through females and the present peer is the son of a daughter who succeeded her father. She could not succeed to the baronetcy which went firstly to an uncle and then to a relatively close cousin. However, the male descendants of that line have now failed, and a more remote cousin is due to succeed. His claim is much helped by the recording of arms where the various lines between the then baronet and the claimant are all shown to have died without male issue.[20] An excellent example of how a recording in one of the Public Registers maintained by the Lord Lyon and the Lyon Clerk can assist in providing the proof which might otherwise now be difficult to obtain (*fig. 6*).

A famous case is that of Maclean of Ardgour which took place in the 1930s and 1940s.[21] This case established a number of aspects of Scottish inheritance laws. The dispute lay between a female heir who had succeeded to the estates and a male heir who felt he should succeed to the arms. Long debate took place, but the Lord Lyon decided that the greater dignity, i.e. the lands, attracted the lesser dignity, i.e. the arms and thus the two should not be separated. The case, which was appealed to the higher court, was significant in making it clear that the Lord Lyon does not and cannot decide who is a clan chief. What Lyon can do is show who is in right of a particular coat of arms and if that coat shows the principal arms of the name then that person is recognised as chief of the name or in this case of the specific family of Maclean of Ardgour (*fig. 7*). Another principal in Scottish nomenclature is


Matriculation of the Arms of 23.

Sir John Alexander Cumnock Forbes of Craigievar

Sir John Alexander Cumnock Forbes of Craigievar, Baronet (formerly John Alexander Cumnock Forbes-Sempill), Knight, Chief of the Baronial House of Forbes of Craigievar, late Captain The Seaforth Highlanders, residing at Auchenreoch Centre for Equitation, Newton Stewart in the County of Wigtown, having by Petition unto the Lord Lyon King of Arms of date 26th August 1993 Shewn That he, the Petitioner, born Woking in the County of Surrey 28th August 1927 (who married firstly Corfe Castle, Dorset 26th June 1956 Penelope Margaret, 3rd only daughter of Arthur Gordon Grey Pemmington, by whom he had no issue; and secondly Battle in the County of East Sussex 22nd October 1966 Jane Carolyn, daughter of Charles Gordon Evans) is the only son of Rear Admiral The Honourable Arthur Lionel Cochrane Forbes-Sempill, Royal Navy, and has lived with Mary Cuthing Hamilton, only daughter of Arthur Cumnock That the Petitioner's said father, born 24th September 1877 and died 9th May 1962, (who had no issue by his first marriage to Muriel Emily Spencer, or by his second marriage to Helen Mabel Allen) was the fifth but only son of whom male issue now survive of the Right Honourable Sir William Forbes-Sempill (formerly Sir William Forbes) of Craigievar, Baronet 17th Lord Sempill in the Peerage of Scotland; That the said The Right Honourable Sir William Forbes-Sempill of Craigievar, Baronet, Lord Sempill, had issue an eldest son, The Right Honourable Sir John Forbes-Sempill of Craigievar, Baronet, Lord Sempill, a second son, The Honourable Douglas Forbes-Sempill, Companion of the Distinguished Service Order, Major the Seaforth Highlanders (born 19th January 1865 and was killed unmarried 21st February 1908), a third son, The Honourable William Forbes (born 27th June 1866 and died 8th November 1867) and a fourth son, The Honourable Robert Arbuthnot Forbes-Sempill, Lieutenant 5th Battalion the Gordon Highlanders (born 21st March 1870 and died unmarried 2nd June 1915); That the said The Right Honourable Sir John Forbes-Sempill of Craigievar, Baronet, Lord Sempill, had issue an elder son, The Right Honourable Sir William Francis Forbes-Sempill of Craigievar, Baronet, 18th Lord Sempill (who died 30th December 1963 leaving no male issue) and a younger son The Honourable Sir Evan Forbes of Craigievar, 19th Baronet (who died 12th September 1991 leaving no male issue); That the Petitioner, in terms of the Trust Disposition and Settlement and Codicil relative thereto both dated 4th January 1934 and registered in the Books of Council and Session of date 7th March 1934 of the Right Honourable Sir John Forbes-Sempill, Baronet, 17th Lord Sempill, succeeded to the estates of Craigievar and Finzy, which he subsequently sold; That upon the death of the said Sir Evan Forbes of Craigievar, 11th Baronet, in whose name the Ensigns Armorial of Forbes of Craigievar, together with the additaments appropriate to impale a Baronet's of Nova Scotia were recorded in the Public Register of All Arms and Bearings in Scotland (Volume 60, Folio 85) of date 5th October 1977, the Petitioner succeeded as heir male to the said name and Arms of Forbes of Craigievar and to the Baronetcy of Forbes of Craigievar created of date 20th April 1630; And the Petitioner having prayed (praying) That he might be officially recognised as the above Sir John Alexander Cumnock Forbes of Craigievar, Baronet, Representer of the Baronial House of Forbes of Craigievar and (secundo) That the aforesaid Ensigns Armorial of Forbes

Continued on page 32

Fig. 6. Sir John Forbes of Craigievar, Bt. Public Register of All Arms and Bearings in Scotland. Courtesy of the Lord Lyon.

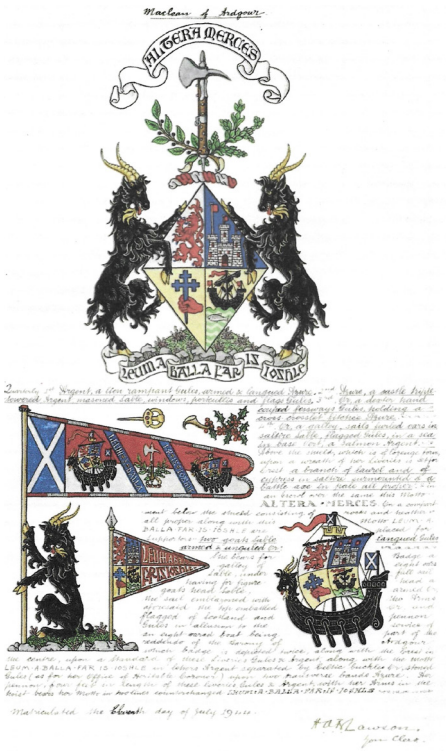


Fig. 7. Catriona Maclean of Ardgour, Public Register of All Arms and Bearings in Scotland. Courtesy of the Lord Lyon.

that if a peer is granted a peerage with the simple unadorned surname as the whole title that dignity attracts the dignity of the undifferenced arms. Thus Lord Spens, another name with Swedish connections, is deemed to own the principal arms and be chief even though he, in fact, is a junior member of the family.[22] A case when the Crown in creating a peerage failed to understand the very special significance of the surname in Scottish culture.

The law can often be relatively clear but sometimes how it is implemented is not so obvious. A person can be legitimated by the subsequent marriage of their parents and in Scotland, although not at present in England, such a person can succeed to a dignity or a Coat of Arms but when does that right open to them? This was the point which occurred in a case where a man had had two sons by different mothers but at the time of each birth he was not married to the mother of that son. It was not entirely clear what would happen if he subsequently married both women and thus both sons would be legitimate. Would it be the son of the first marriage or the elder son, if they were not the same child? In order for a clear decision, after he had married firstly the mother of the younger child, he arranged for that son to seek a matriculation of arms as his heir.[23] Whilst it was thought that the date of the marriage was the important date it was important to establish that that was the law and that if both sons became legitimate it was not the date of birth which then became important. After hearing arguments for both sons Lyon determined that the law intended that the sons could only be regarded as legitimate from the date of the relevant marriage and it did not matter which son had actually been born first. Thus Lyon has an important judicial function when determining who can succeed to arms.[24]

This very point came to an interesting conclusion in the case of Dunbar of Kilconzie.[25] This paper is not sufficiently long to go into the case in detail. The points to be decided included whether, if the marriage which brought about legitimacy occurred in England did English law prevail or because the dignity concerned was Scottish did Scot-

tish law prevail. It was also relevant that the child concerned had been born in 1893 when his father was married to someone other than the mother. The relevant marriage did not occur until 1912 and it was not until 1953 that the title became vacant. The outcome was that although legitimated in 1912 the relevant date for that legitimation to affect succession to a title was date enacted in the relevant Legitimation Act. In effect their line fell to the bottom of the pedigree so far as succession was concerned. Lyon decided that all those who were in line to succeed prior to the relevant Legitimation Act retained that right as they could not be displaced by someone who only became legitimate for succession purposes at the date of the Act.

Legitimation is, as I have said, different in Scotland and England and an interesting point arose for Lyon to decide which was who was entitled to the principal arms of the name of Macdonald. Knowing how important a clan this was meant great care had to be taken to ensure that all the clansmen would be able to understand why their chief was the person he was. The peerage Lord Macdonald is not a Scottish peerage and thus a legitimated person could not succeed to it but the baronetcy Macdonald of Sleat is a Scottish baronetcy which means a legitimated person could succeed to it. And that is what happened as the undifferenced arms and peerage went to a junior member of the family whose line had always been legitimate and the senior member, who could succeed to a Scottish dignity, could only receive a differenced coat but with the baronetical additaments.[26]

An even more complicated path was brought before Lyon in 1995 and that was who would succeed to the arms of the Earl of Selkirk.[27] The destination of this peerage is very complex, and a long and complicated document had to be considered by Lyon. The late Lord Selkirk died in 1994 without issue and the destination of the peerage was that it was to go to the next younger brother of the Duke of Hamilton – but which Duke, the one who had been the elder brother of the late Lord Selkirk or the one alive when Lord Selkirk died? For a very long time the son of the next younger brother of the Earl of Selkirk had assumed he would succeed as the heir of his father. However, the Duke of Hamilton, who was the elder brother of both Lord Selkirk and the claimant's father died in 1973. The younger brother of the current Duke, Lord James Douglas-Hamilton, was a cousin of the claimant. Lyon considered that it was the person who was the younger brother of the Duke in life when the succession opened which was relevant and thus Lord James Douglas-Hamilton was in right of the Selkirk peerage and armorial bearings. He had, however, already resigned his peerage for life for political reasons so the arms were recorded in name of his son as heir to the peerage.[28]

Another matter which can be determined in Lyon Court is how a dignity or a coat of arms can descend. In the case of Ruthven of Freeland, the original document creating the peerage in 1651 has been lost. The limitation of the peerage had been disputed with some writers saying it was to heirs male but others decided that could not be the case because when the second Lord Ruthven of Freeland died without issue there was an heir male alive who did not succeed. As the peerage

appeared on the 1707 Union Roll this indicated that the peerage still existed at that time even though the second peer had died six years earlier. This suggested a destination which might be to heirs of entail or to heirs of line. Be that as it may, the youngest sister of the second peer assumed the title Lady Ruthven. She was succeeded by her niece who was summoned as a peeress to the coronation of King George II in 1727. The following succession was to males until 1853 when another woman assumed the title. Without going into detail an examination of destinations of peerages showed that far more could descend to heirs of line than had been thought and the fact that this peerage had been openly assumed by more than one woman was sufficient to show that it did have a limitation to heirs of entail and of line and thus the claimant was in right of the arms with the additaments appropriate to her as a peeress.[29] It is of note that succession by females to titles of dignity is far from uncommon in Scotland although the same is not true of English titles where succession by women is relatively rare.

This point had arisen earlier but in a different manner as the two claimants were both men, one was the heir male and one the heir of line. The arms of both baronets, Sir John Cunyngham and Sir James Dick had been recorded respectively in 1673[30] and 1687.[31] According to the ordinary interpretation of a Scottish grant of arms, where the destination was not specified, the descent was to heirs rather than to heirs male and this had been supported by the authorities such as Mackenzie. Notwithstanding this, the then Lyon Depute decided the arms descended only to heirs male and Sir Robert succeeded to both coats of arms including supporters. Thomas Smith-Cuninghame opposed this decision. The decision of Lyon was appealed to a higher court which held that it was not for Lyon to determine whether the heraldic honours descended to the heir of line or the heir male as that was determined by Act of Parliament.[32] I cite this case to show that Lyon is not infallible and it is not uncommon for the higher court to be required to take an interest in heraldic matters.

4. Recording Coats of Arms

This paper has concentrated so far on legal cases which have involved heraldic matters, and which have come before the Court of the Lord Lyon, but before I close, mention should be made of some non-contentious matters which Scots heraldic law enforces. No individual or organisation may use a coat of arms in Scotland unless that coat of arms is recorded in the Public Register of All Arms and Bearings in Scotland. This applies not only to personal arms, but institutions also need to obtemper the law. Coats which might not immediately be thought to be heraldic fall into this category if the design is within an outline and can be blazoned in such a way that an artist can produce an accurate illumination. In Scotland such is deemed to be necessary of registration. An example is shown by an attempt by a graphic designer to portray the Data Protection Registrar but with the gravitas of apparently being heraldic. Whilst difficult to blazon it was not impossible and the organisation itself wanted the legal protection provided by a

Fig. 8. Pullman Car Company Limited, Public Register of All Arms and Bearings in Scotland. Courtesy of the Lord Lyon.

recording.[33] Once recorded if any other individual or organisation attempts to use something too similar a prosecution can take place, as mentioned at the beginning of this paper.

Organisations which use arms which too closely resemble the Royal Arms are prevented from doing so and are obliged to record something different. The Pullman Car Company were very lucky to be given what as a glance from a distance could suggest the Royal Arms of the United Kingdom (*fig. 8*).[34] Companies with a Grant of Arms from England also require to record them if they want to use them in Scotland. The Arms of the supermarket chain Tesco uses cloves suggesting food aisles and badgers, noted for hardwork, diligence and persistence.[35]

Lyon's discretion with regard to supporters has been mentioned and although this matter has not always been treated as the authoritative, writers and some heralds would like it does have the great advantage when a person inherits two different, if very similar, supporters as happened in the case of the chief of the arms of Chisholm, Andrew Francis Hamish Chisholm of Chisholm who had recorded the undifferenced Arms.[36] He approached the Lord Lyon with a request that the second set be assigned to a significant cadet, in this case his uncle, Ruari Ian Lambert Chisholm.[37] Lyon could, in this instance, use his discretion so that the supporters could be used rather than disappear behind the chiefly supporters.

5. Concluding Comments

There are, therefore, a wide range of issues which come before the Lord Lyon. Although the Court normally sits in chambers without an audience just sometimes some of the important matters referred to earlier do need to be heard in open court when the Lord Lyon can sit with one of the hereditary Assessors, who takes no part in the proceedings but is there to ensure that all is done as it should be.

This overview of the close connection between the law and the operation of heraldic practice in Scotland is seen in action daily in Scotland and without that close link the status of heraldry would, perhaps, not be held in such high regard both within Scotland but also in many other parts of the world.

Notes

1 Act of the Scottish Parliament (APS) 1592, cap.29 (Jac VI).
2 Act of Parliament 1867, cap 17 (Victoria). An Act of the Parliament of the United Kingdom.
3 Hague Roll ca 1592. Held by Koninklijke Biblioteek van Nederland, Ref MS 130B 12.

4 Gentlemen's Arms, Lyon Office MS22.
5 Denmylne Collection, National Library of Scotland.
6 APS 1662, cap. 52 (Car II).
7 APS 1663, cap. 15 (Car II).
8 Mackenzie of Rosehaugh, Sir George, "The Science of Heraldry, treated as a part of the Civil Law and Law of Nations", Edinburgh 1680, chapter XXXI.
9 Sundry Barons v. Lord Lyon June 1673. Fountainhall's Decisions No. 393. Brown's Supplement, iii. 6.
10 Mackenzie of Rosehaugh, Heraldry chapter XXXI, p. 94.
11 APS 1672, cap 47 (Car II).
12 Public Register of All Arms and Bearings in Scotland (PRABS) Volume 1, folio 10.
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14 PRABS Volume 1, folio 134.
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17 Mackenzie of Rosehaugh, Sir George, "Observations upon the Laws and Customs of Nations, as to Precedency", Edinburgh 1680.
18 Public Register of All Genealogies and Birthbrieves in Scotland, Vol IV, folio 74.
19 Scots Law Times 1987 (Lyon Ct) 2.
20 PRABS, Volume 76, folio 23, 2 February 1994.
21 Scots Law Times 1938 (Session Cases) 49, Scots Law Times 1941 (SC) 613.
22 PRABS Volume46, folio 33, 3 November 1960.
23 PRABS Volume 56, folio 66, 11 July 1973.
24 Scots Law Times 1977 (Lyon Ct) 16.
25 Scots Law Times 1985 (Lyon Ct) 6, (SC) 158. 1986 (House of Lords) 463.
26 Scots Law Times 1950 (Lyon Ct) 8.
27 Scots Law Times 1985 (Lyon Ct) 2.
28 PRABS Volume 76, folio 74, 21 April 1977.
29 Scots Law Times 1977 (Lyon Ct) 2.
30 PRABS Volume 1, folio 131, 2 August 1673.
31 PRABS Volume 1, folio 139, 1 August 1687.
32 Cuninghame v Cunyngham 13 June 1849 11 Dunlop (Court of Session Reports, 2nd series) 1139; Session Papers 1849, No 187.
33 PRABS Volume 69, folio 44, 11March 1987.
34 PRABS Volume 75, folio 62, 1 November 1991.
35 PRABS Volume 79, folio 66, 29 November 1996.
36 PRABS Volume 80, folio 44, 12 December 1998.
37 PRABS Volume 82, folio 63, 10 October 2000.

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What Is the State of Heraldic Law in France?

Strengths and Weaknesses, 230 Years after the Revolutionary Abolition of Coats of Arms

By Marc Baronnet-Steinbrecher

Abstract: Heraldry, born in the 12th century, was marked in France by a late and limited intervention of the law. Attempts by the royal power to regulate it were largely in vain, the most successful being that of 1696 which gave birth to the General Armorial of France. Wrongly assimilated to feudalism, heraldry was abolished with increasing zeal from 1790 to 1794. But it reappeared with the Empire, and has flourished since then, both among individuals and public and private legal entities, with the notable exception of the State.

The French legal regime is characterised by the absence of regulation and of a specialised authority, by a jurisprudential definition of coats of arms as an accessory to the family name (1949), and by great freedom of adoption and use, the only major limit being respect for the rights of third parties. Litigation, relatively scarce, punctuates the last three centuries. It falls under the ordinary jurisdictions of both legal orders (judicial and administrative), and its admissibility requires the demonstration of a harmed interest.

The launch of the recognition process as intangible cultural heritage (ICH) constitutes a promising avenue, in order to maintain the strengths of French heraldry, while addressing some of its weaknesses.

Résumé : L'héraldique, née au XIIe siècle, a été marquée en France par une intervention tardive et limitée du droit. Les tentatives du pouvoir royal de la réglementer ont été largement infructueuses, la plus aboutie étant celle de 1696 qui a donné naissance à l'Armorial général de France. Assimilée à tort à la féodalité, l'héraldique est supprimée avec un zèle croissant de 1790 à 1794. Mais elle renaît dès l'Empire, et prospère depuis lors, tant auprès des personnes physiques que des personnes morales publiques et privées, à l'exception notable de l'Etat.

Le régime juridique français se caractérise par l'absence de réglementation et d'autorité spécialisée, par une définition jurisprudentielle des armoiries comme accessoire du nom de famille (1949), et par une grande liberté d'adoption et d'usage, la seule véritable limite étant le respect du droit des tiers. Le contentieux, peu abondant, ponctue les trois derniers siècles. Il relève des juridictions ordinaires des deux ordres juridictionnels (judiciaire et administratif), et sa recevabilité suppose la démonstration d'un intérêt lésé.

L'engagement de la démarche de reconnaissance comme patrimoine culturel immatériel (PCI) constitue une piste prometteuse, afin de maintenir les forces de l'héraldique française, tout en remédiant à certaines de ses faiblesses.

1. Introduction

Some historical landmarks will first outline the relationship between law and heraldry under the Ancien Régime, before the revolutionary break. Then, we will endeavour to understand the death and resurrection of heraldry, abolished during the Revolution, the current state of the law governing it, and its current strengths and weaknesses.

The Ancien Régime is a continent in itself, explored by Rémi Mathieu in his work "Le système héraldique français," published in 1946 and still a reference. Regarding the law, public authority seems to have been late to take an interest in heraldry, a phenomenon that appeared in France and England as early as the 12th century.[2] Five dates are worth noting for France:

In 1407, the foundation of the chapel of the kings of arms and heralds of the kingdom of France in the church of Petit Saint-Antoine, in Paris, by King Charles VI,[3] near his residence at the Hôtel Saint-Pol, marks the first intervention of the state in the field of heraldry, recognizing a form of collegiality among the heralds. Unfortunately, nothing remains of this chapel, nor of the church, of which we have no graphical representation. Furthermore, there is a lack of in-depth historical study of the officers of arms in France, who existed until 1830 and remain poorly understood: we do not even have a complete list of them.

It was in 1560 that the first attempts at regulation by the state seem to have begun: "Those who falsely and against the truth usurp the title of nobility, take or bear crested arms, shall be mulcted by our judges with an arbitrary fine and compelled to pay them by all means", states the Ordinance of Charles IX, made at the Estates of Orléans in the year 1560.[4] Earlier texts sometimes cited should be considered doubtful until they are accompanied by references allowing verification. For example, if an ordinance of March 26, 1555 (in the Gregorian calendar: 1556) stated in its article 9 that it is forbidden to change one's arms without a letter of dispensation or permission, this ordinance only applied to Normandy, was not registered by the Parliament of Rouen, was repealed on August 17, 1556, and thus never constituted a norm in force.

In January 1615, a royal edict of King Louis XIII established the office of the King's Counselor, General Judge of the Arms of France.[5] The first heraldic judge was François de Chevriers de Saint Mauris, and from 1641 onwards, the function was continuously occupied by members of the d'Hozier family until the Revolution.

In November 1696, the famous "Edict of the King creating a Grand General and Sovereign Mastership, and establishing a General Armorial in Paris or Public Repository of the arms and blazons of the Kingdom; and creating several particular Masterships in the provinces" was issued.[6] Bearers of arms, noble or not, individuals or communities, were required to register them, under penalty of a fine of 300 livres and confiscation of any goods marked with arms. Those who wished to modify their arms later had to register them again. While it closely follows the 1672 act in Scotland which allowed the creation of the Scottish register, which celebrated its 350th anniversary and is part of a comparable

movement, Louis XIV's edict, unpopular[7] and aimed more at fiscal than heraldic goals, is undoubtedly the great missed opportunity to establish a heraldic authority in France. It allowed the creation of the General Armorial of France, which has fortunately been preserved and remains a very useful and important source for the study of modern French heraldry, but this armorial quickly fell into disuse in practice.

The last ambitious attempt to regulate the use of heraldry in France dates back to Louis XV, with the king's ordinance concerning arms, dated July 29, 1760. However, the Parliament refused to register the edict, considering it contrary to the customs of the Kingdom. Indeed, the text, which reaffirmed the prohibition for non-noble persons (with the exception of the bourgeois of Paris) to bear a crest above their arms, aimed to restrict the use of arms to the nobility and persons "vested with offices or honourable states", whereas the use of arms had always been free in France.

In the 18th century, heraldry fell out of favour. The philosophers of the Enlightenment considered it useless. Thus, the Encyclopedia (1766) has the following article on the subject:

> *HERALDIC, (Art.) It is the science of blazonry, See Blazon. There is not a single brochure on the art of making shirts, stockings, shoes, bread; the Encyclopedia is the first and only work that describes these arts useful to men, while the bookshops are flooded with books on the vain and ridiculous science of armorial bearings; I never see these books in private libraries without recalling the conversation of the shepherd, the merchant, the gentleman, and the son of a king, whom La Fontaine makes shipwreck on the shores of America; there finding themselves together, and reasoning on the means of providing for their immediate subsistence, the king's son says, that he would teach politics. The noble pursued:*
>
> *I know heraldry, I want to hold school,*
> *As if towards India, there had been in mind*
> *The foolish vanity of this frivolous jargon. (D. J.)*
>
> *However, as the time has not yet come among us, when the heraldic art will be reduced to its true value, see volume II of our Plates and their explanations, the general principles of Blazonry, with figures relating to each of the terms peculiar to it.*

On June 19, 1790, in the Constituent National Assembly, the young deputy Mathieu de Montmorency-Laval, then aged 23, zealously added coats of arms to the list of proscriptions: "I ask that, on this day of the general annihilation of antisocial distinctions [...], the Assembly does not spare one of the marks that most recall the feudal system and the chivalrous spirit; let all arms and armorial bearings, therefore, be abolished; let all Frenchmen henceforth bear the same signs, those of liberty, which shall henceforth be merged with those of France."

In 1790, the law thus intrudes into the field of heraldry, to prohibit it. The Revolution swept heraldry away, through this erroneous amalgamation with "feudalism",

adopting a series of increasingly repressive decrees. A precautionary measure was taken for churches and monuments, which only lasted two years since the decree of September 14, 1793, ordered the destruction, at the expense of the departments, of the coats of arms "in churches and all other public monuments" by the officers of the communes, under penalty of dismissal.

Here is the sad enumeration of the main acts of what could be called normative vandalism:

– Decree of the Constituent National Assembly of June 19, 1790: "No citizen may take any name other than his true family name; no one may wear or have liveries or a coat of arms [...] without, under the pretext of this decree, any citizen being allowed to attempt against the monuments placed in the temples, against the charters [...]" (at this time, it was still forbidden to deface monuments or destroy archives bearing arms).

– April 13–20, 1791: Decree concerning the abolition of several feudal rights: "abolish the *litres* and funeral friezes" (a French equivalent of hatchments, but directly painted onto the walls of churches).

– September 27, 1791, of the Legislative National Assembly: "French citizens who bear the distinctive marks that have been abolished, or who have their servants wear liveries and place coats of arms on their houses or carriages, will be punished with the same penalties and subject to the same fine".

– Decree of June 19–24, 1792, made on the proposal of Condorcet: "All genealogical titles found in any public deposit whatsoever shall be burned".

– October 6–8, 1792: Decree of the National Convention ordering the breaking of the state seals and royal ornaments, and their sending to the mint.

– The decree of September 14, 1793 (8 brumaire year II), which ordered the destruction at the taxpayer's expense of the coats of arms of churches and monuments, was made on the proposal of the deputy "Sergent-Marceau", himself a former engraver, notably of coats of arms, and involved in the September massacres committed in 1792.

– October 12, 1793 (21 vendémiaire year II): injunction to "return all chimney plaques or firebacks bearing signs of feudalism or the old coat of arms of France (...); all provisionally, until sufficient foundries have been established throughout the extent of the republic".

– October 24, 1793 (3 brumaire year II): interpretative decree: "Article 3. Owners of furniture or utensils of daily use are required to remove all proscribed signs from them, under penalty of confiscation. (...) Article 7. Paper manufacturers shall no longer use fleur-de-lis or armorial forms; printers, binders, engravers, sculptors, painters, draughtsmen, shall not use any of these same signs as ornaments".

The fall of Robespierre in 1794 put an end to this normative escalation. From this brief period of four years result, besides the destruction of an invaluable historical heritage, two false prejudices, which we still endure today in France: heraldry would belong to the Ancien Régime, whereas it remains very much alive, including under the Fifth Republic; and heraldry would be reserved for the nobility, whereas it has always been free in France.

Ten years after the fall of Robespierre, French heraldry was reborn under the Napoleonic Empire, because the new regime needed symbols (the imperial seal was adopted on July 10, 1804) and support (in 1808, creation of titles of nobility with coats of arms; then the concession of coats of arms was extended to cities, municipalities, corporations or civil, ecclesiastical or literary associations by the decree of May 17, 1809), giving birth to an original, hierarchical and highly codified system, both fleeting and striking.

In 1814, Louis XVIII issued ordinances: one of July 15–17, 1814 allowed those who had received imperial titles to request the replacement of the Napoleonic caps with the old crowns corresponding to their title, and those at the end of 1814 stated that legal persons could not take arms without the authorization of the State, an obligation abolished in 1848 (letters patent were reinstated in 1862 for cities, but in an optional manner). In 1832, the penal code was amended, and ceased to protect noble titles from usurpation.

In summary, heraldry abolished during the Revolution was reborn under the Empire, under the auspices of the State, but the latter gradually lost interest in it, until coats of arms disappeared from the State Seal in 1870.

2. What legal framework governs French heraldry, now that it has regained its existence and freedom?

According to the *Trésor de la Langue Française* dictionary, law is defined as the "set of rules with a binding character, governing the behaviour and relationships of individuals in society".

No general text regulates heraldry in France anymore. The Constitution and the law attach great importance to the flag, defined in fundamental law and protected by the penal code, but show no interest in coats of arms. Thus, it is jurisprudence that has filled this void, especially in defining heraldry.

2.1 Definition by doctrine

Scholars provided definitions, as follows.

Gilles-André de La Rocque in the 17th century provided a definition linking the name and the arms, a definition later cited in jurisprudence, as the Civil Court of the Seine did on January 28, 1897, explicitly referring to it: "One can say that the arms are silent names; and the names, speaking arms, because of the great connection between them." (Treaty of Nobility, 1678, p. 14.)

Rémi Mathieu gives a more elaborate definition: "Coloured emblems, specific to a family, a community, or more rarely, an individual, and subject, in their arrangement and form, to special rules, which are those of blazon. Often serving as distinctive signs for families, for groups of people united by blood ties, they are generally hereditary. The

colours with which they can be painted are limited in number. Finally, they are almost always represented on a shield. This last characteristic is the most typical, and it is the only one that allows coats of arms to be recognized at first sight: since the second quarter of the 12th century, any shield adorned with figures constitutes a coat of arms, with very few exceptions; on the other hand, from that time on, the fact that emblems are not represented on a shield in no way proves that they are not coats of arms." (Le système héraldique français, 1946, p. 13.)

This is summarised by Paul Adam-Even (1902–1964), president of the Académie Internationale d'Héraldique from 1952 to 1964: "a mark, in accordance with the rules of blazon, used as a distinctive sign by natural or legal persons" (Swiss Heraldic Archives, 1951, page 93).

2.2 Definition by case law (jurisprudence)

Court decisions (*jurisprudence*), meanwhile, emphasises in the 19th century the notion of property:

It emerges from a judgement of the Imperial Court of Paris, August 8, 1865, Prince de Montmorency-Luxembourg and others against Adalbert de Talleyrand-Périgord, that "the arms of a family constitute a property for it. […] The arms are not an accessory of the title. The family possessed them before the title, which is only a distinctive sign of dignity. They are the attribute of the whole family." The Court thus ruled that Napoleon III conferred the title of Duke of Montmorency on Adalbert de Talleyrand-Périgord, but did not confer the Montmorency arms, which remained the property of the Montmorency family.

Similarly, the Civil Court of Marseille ruled on June 1, 1888, that "the patronymic name and the coats of arms constitute a real property for the family that owns them, which no one has the right to usurp under penalty of damages".

Finally, in 1897, the Civil Court of the Seine refused to arbitrate a dynastic quarrel, citing the old definition of Gilles-André de La Rocque from the 17th century. It ruled that "royalty was abolished in France and that no one has the right to call himself king of France, since this qualification cannot be understood without the effective exercise of the power it denotes; it is somewhat childish to ask, under the government of the Republic, a tribunal judging in the name of the French people, to recognize anyone as entitled to bear a qualification that the nation has, by its sovereign will, abolished; the same is true for the arms of Azure with three Fleurs-de-lis Or of France, two and one, which were once attached to the quality of King of France, to which, according to Laroque's expression, they served as a silent name, and which disappeared with it." This judgement is debatable and was to be contradicted in 1988–1989, since the arms of France did not disappear, but became private emblems as early as 1830.

In the 20th century, the reference definition is given by a judgement of the Court of Appeal of Paris, 4th chamber, of December 20, 1949, in a case "de Failly vs. Société des vins de champagne de la Marquetterie": "Coats of arms differ essentially from noble

titles in that they are simply accessory recognition marks of the family name to which they are indissolubly attached, whether that family is noble or not. It follows that coats of arms are the attribute of the whole family and enjoy the same protection as the name itself, and that the judicial courts competent to examine disputes relating to patronymic names are also competent to hear disputes that may arise concerning coats of arms."

This definition was confirmed by two decisions in the legal case between the Orléans and the eldest branch of the Bourbons, by the Paris Tribunal de Grande Instance on December 21, 1988, and by the Paris Court of Appeal on November 22, 1989, which also refer to the notion of difference. It should be noted that this definition does not provide criteria for coats of arms, as if it were obvious that they are emblems subject to the rules of blazon. Henceforth, the courts consider a coat of arms as an accessory of the name, what could be called a "drawn name".

2.3 Adoption of Coats of Arms

In France, the adoption of coats of arms is free, following the principle already stated by Bartolus de Saxoferrato in the mid-14th century in his "Tractatus de insigniis et armis" (Treatise on Insignia and Arms).

This freedom applies to both private individuals and private legal entities, as well as to public legal entities. It is considered that the law of April 5, 1884, which states that "the municipal council regulates the affairs of the commune by its deliberations," confers on communes the freedom to adopt their coats of arms. It is the deliberation of the municipal council that fixes the blazon, that is, the official description of the coats of arms. It is up to the deliberative body, and not the president of the local council, to decide on the coats of arms of the community (in the case of a flag, the Administrative Court of Martinique annulled for this reason a decision of a community president, by judgement of November 15, 2021, No. 1900632).

This competence is now codified and extended by article L. 1111-2 of the General Code of Territorial Communities: "Communes, departments, and regions regulate their affairs by their deliberations […]". This autonomy also applies to other public legal entities, such as universities.

As the "vademecum for municipal heraldry" published in 2014 recalls, it is good practice for territorial communities to consult the National Heraldic Commission, attached to the interministerial service of the French Archives, as well as the director of the departmental archives, before adopting a coat of arms project. Their opinions, consultative and optional, can be very useful to avoid mediocre implementations.

Specific rules apply to the adoption of emblems by military units. Governed by different texts depending on the armies, these procedures are under review, with a view to adopting a common text, which should confirm the role played by the Defence Historical Service (SHD) in the management of military symbolism.

Still regarding the adoption of coats of arms, it should be noted that the majority of French Roman Catholic bishops adopt them when ordained, as permitted by the "Ut sive sollicite" instruction of March 31, 1969. They

are usually displayed above the cathedra. From the perspective of French law, ecclesiastical coats of arms fall under private law, as the State and churches have been legally separated in France since 1905.

The great freedom to adopt coats of arms, however, encounters several limits:

- the rules of blazon, without which the matter is no longer about heraldry but about logos, subject to other rules (trademark law);
- respect for the rights of third parties, but sufficient difference can avoid usurpation (for example, judgement of the Administrative Court of Bastia of November 23, 2017, No. 1600529, regarding municipal coats of arms);
- respect for the principle of secularism to be observed by public legal entities (Council of State, July 15, 2020, No. 423702), considered with flexibility and pragmatism;
- finally, this is not a legal limit, but heraldry also has an aesthetic aspect and is subject to evolving taste over time.

2.4 Use of Coats of Arms

Firstly, the principle of devolution of coats of arms is simple: they generally follow the surname, the devolution of which is governed by articles 311–21 et seq. of the Civil Code. This should allow for easy answers to questions raised by recent developments in civil law (marriage, devolution of name), taking into account the restrictions mentioned earlier: the rights of third parties and the rules of good taste. In the absence of regulation, only future possible court decisions will confirm with certainty the limits of the great freedom left to armigers.

It should be noted that the French use brisures (marks of cadency) sparingly, with the notable exception of the various branches of the former royal family. Unlike Scotland, brisures are not mandatory in France, with courts considering coats of arms to be the attribute of the entire family.

Regarding territorial communities, mergers can lead either to new creations or to marshalled coats of arms. Heraldry has a great capacity to imagine new combinations corresponding to territorial recompositions, as it has shown throughout its history (as notably demonstrated by the royal coats of arms of Britain or Spain).

The use of coats of arms by companies, as commercial trademarks, is a means, still insufficiently used in France, to add significant economic value. Heraldic usage can be found, especially in the hospitality, wine, and sports industries. Given the freedom of use of coats of arms, it is essential for commercial companies to register a coat of arms model as a trademark. Trademark law differs from heraldry in that it protects a given representation, whereas heraldic law protects a blazon (a codified description) regardless of its graphic interpretation. Furthermore, it is advisable to be cautious and, if necessary, to clearly differentiate commercial coats of arms from family coats of arms, lest disputes arise later in the event of the transfer of the trademark or the company...

The contemporary use of coats of arms is very diverse: letterheads for official correspondence, street signs, licence plates for regions that have adopted coats of arms instead of or in addition to logos, signet rings, paintings or drawings, wooden or stone reliefs, stained glass windows, bookplates, banners, hatchments, vectorized drawings on the internet…

Article 6 of the decree of May 5, 2014, concerning the uniforms of municipal police officers provides that "a coat of arms of the commune may be included, at the decision of the mayor", on the upper part of the right sleeve. Moreover, many town halls fly flags with the arms of the municipality (unfortunately often in the visually incorrect form of a small shield lost in the middle of a white background, whereas the contents of the shield should fill the entire surface of the flag, as can be seen among nations with a strong vexillological tradition like our Swiss neighbours).

According to constant case law, the coats of arms of the municipality may appear on the ballot paper (Council of State, 7/9 SSR, March 7, 1990, No. 109050) or on an electoral leaflet (Council of State, 4/1 SSR, September 25, 1996, No. 176901). This case law is easily explained: since coats of arms are simply the "drawn name," it is just as permissible to display coats of arms as it is to mention the name of the community where one is running as a candidate.

The coats of arms of territorial communities (whose use by third parties is free) must be distinguished from the seal (whose use by third parties is prohibited by the law of March 18, 1918, regulating the manufacture and sale of official seals and stamps).

Just as it can indicate the name of a municipality or region, a company can freely use the coats of arms of a territorial community on its products, without, of course, these coats of arms becoming its exclusive property. However, the use of a territorial community's coats of arms must not create confusion in the minds of the public (for example: fake websites, or deception about the origin of products and services).

2.5 Legal Protection

There are two court hierarchies in France, judicial courts (*juridictions judiciaires*) competent regarding natural and private legal persons, and administrative courts (*juridictions administratives*) regarding public legal persons.

Contentious defence of coats of arms before the courts requires the demonstration of a harmed interest: it is not open to just anyone. Only a person with a right to coats of arms who can demonstrate the existence of actual and certain harm has an interest giving them standing to act; otherwise, their action is inadmissible (Court of Appeal of Paris, November 22, 1989, already mentioned).

The priority of ownership of a coat of arms cannot be countered by a trademark registration with the INPI (National Institute of Industrial Property) by a usurper (Court of Appeal of Versailles, May 20, 1999, No. 1996–5723).

It can be considered that this legal control, which is tenuous, is exercised only on the shield. There has (unfortunately) been no control for a long time over external ornaments in France, which has led to an inflation of crests, helmets, crowns, and supporters since the Ancien Régime, as evi-

denced by the writings of La Bruyère (in his Characters, the chapter entitled: On some customs), Dom Pelletier, or Mirabeau.

2.6 State Heraldry

The French situation is characterised by two deficiencies: the absence of national coats of arms, and the absence of a specialised heraldic authority.

The State seal no longer bears coats of arms since the decree of September 25–27, 1870. Article 2 of the Constitution of October 4, 1958 (repeating that of 1946), states: "The national emblem is the tricolour flag, blue, white, red. […] The motto of the Republic is 'Liberty, Equality, Fraternity'.[…]", but does not provide for a coat of arms. France is today, along with Italy, the only EU member state without a true national coat of arms. Neither the emblem on passports nor its Elysée variant, which both resemble trophies, nor the tricolour governmental logo with Marianne's profile, sometimes curiously referred to as the "State mark", even though it is an emblem used only by the executive branch, suffice to overcome this deficiency.

It is true that the use of diplomatic heraldry has declined: in France, only a few laws are sealed nowadays (most recently, the constitutional revision law of 2024, with the grand seal of the Republic, devoid of a coat of arms). And the use of seals bearing the arms of the signatories to seal treaties has declined since World War II, perhaps as the United States and the USSR rose in power, both of which lack the heraldic tradition of old Europe, and due to changes in the sociology of diplomats and politicians. The last known example of diplomatic sealing is the Treaty of Amsterdam in 1997, signed and sealed (and curiously sealed not with the arms of the signatories, but with those of the contracting states).

While local authorities use coats of arms without any problem, and while heraldry is perfectly compatible with the republican regime, as evidenced by the national coats of arms of nineteen EU republics, there remains in France a discomfort regarding heraldry when it comes to the State, probably more due to a difficulty in agreeing on common symbols than due to a conceptual impediment. Note that four of the eight presidents of the Fifth Republic have used coats of arms upon their admission to foreign chivalric orders. The case of Emmanuel Macron, admitted to the Danish Order of the Elephant and the Swedish Order of the Seraphim, remains pending.

Finally, France lacks a specialised heraldic authority, comparable to the London College of Arms or the Scottish Lord Lyon, the Heraldic Authority of Canada, the Office of the Chief Herald of Ireland, or the Heraldic Commission of the State in Lithuania. There has been no visible trace of heraldic activity from the former Council of the Seal, now attached to the Bureau of Persons and Family Law of the Ministry of Justice, after the Third Republic (by decree of January 21, 1927, published in the Official Journal of March 14–15, 1927, the President of the Republic then still regulated the coats of arms of the city of Le Havre by decree).

The National Heraldic Commission attached to the interministerial service of the French Archives, formalised by a circular of

March 4, 1985, has an advisory role only with regard to local authorities. The temporary extension of its powers to all natural and legal persons who requested it, which had been decided in 2015, has been abandoned in 2020. There is therefore no possibility of registering coats of arms with a public authority, despite strong public demand for such validation of armorial creations, and no quality check of coats of arms created by both private and public entities. This situation leads to divergent and respectable assessments: for some, this absence of state regulation is fortunate, as it allows for great freedom of expression; for others, it is regrettable when comparing the quantitative and qualitative state of heraldry in France with that of other European countries, and observing the disinterest of public authorities in it, despite the great value of this cultural heritage, its aesthetic, social, and economic role, and its status as a sign of authority, which deserves to be pondered at a time when the weakening of authority is being lamented.

3. Conclusion

There is indeed heraldic law in France. The intersection between the two sets, "law" and "heraldry," is not empty.

The French situation suffers from weaknesses: the persistence of misconceptions (heraldry does not belong to the past and is not reserved for the nobility), poor quality creations without any control, and a fragmentation of the underlying economic sector made up of remarkable crafts.

Correspondingly, French heraldry's strengths include: the freedom it embodies, its perceptible vigour especially in municipal heraldry, its adaptation to an era dominated by images, and the added value it provides in sectors that are assets of the French economy (tourism, luxury, winemaking...).

To preserve these strengths while addressing the weaknesses, two avenues deserve to be explored, in the absence of any reasonable prospect of creation of an official heraldic authority. The first is the recognition of heraldry as intangible cultural heritage (ICH).[8] The second is the Scandinavian solution to the registration problem, if a sufficient critical mass is reached for such a collection to "have authority".

Notes

1 Administrative judge, founder of the group 'French Heraldry' (*Héraldique française*, over 17,000 members on Facebook).

2 Nieus, Jean-François. L'invention des armoiries en contexte. Haute aristocratie, identités familiales et culture chevaleresque entre France et Angleterre. 1100–1160. In: *Journal des savants,* 2017. Janvier-Juin 2017, pp. 93–155.

3 Contamine, Philippe. Office d'armes et noblesse dans la France de la fin du Moyen Age. In: *Bulletin de la Société Nationale des Antiquaires de France,* 1994, 1996, pp. 310–322.

4 Chérin, *Abrégé chronologique d'édits, déclarations, règlemens, arrêts et lettres-patentes des rois de France de la troisième race, concernant le fait de noblesse,* 1788, p. 45.

5 BnF, Département des Manuscrits, Clairambault 924, mentioned by Rémi Mathieu.

6 Nicolas Vernot, *L'Armorial général de 1696 et son application en Franche-Comté,* Versailles : Mémoires et Documents, 2003, rééd. 2011.

7 Ciaudo Pierre-Jean. L'application de l'édit de novembre 1696 dans la région grassoise. In: *Cahiers de la Méditerranée,* n°15, 1, 1977. Grasse et sa région, pp. 49–73.

8 See Nicolas Vernot's article in this volume.

Participants during the visit in the Main University Building. Photo: Selma Rosenfeld.

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Académie Internationale d'Héraldique

No Regulation, Regulation, and Deregulation

Republican Tradition and Government Interference in Dutch Heraldry

By Jos van den Borne

Abstract: Heraldry in the Dutch Republic (1579/1581–1795) was common law. Noblemen, citizens and government bodies were not bound by official heraldic regulations, but traditionally adopted their coats of arms without the intervention and permission of any competent heraldic authority.

After 1795, the federal republic gradually evolved into a monarchical unitarian state under French influence and rule. An initial form of government regulated heraldry took place in the Napoleonic Kingdom of Holland (1806–1810) with the establishment of a hereditary 'constitutional nobility'. Its statutes contained provisions relating to coats of arms of noblemen and provided for the establishment of a Supreme College of Arms. In 1810, however, the Kingdom of Holland was incorporated into the French Empire and the constitutional nobility was abolished. From then on, French laws on heraldry and noble titles applied.

At the end of 1813, the United Netherlands became independent again under the House of Orange-Nassau. The nobility was re-established and given a political role in the government of the state. The registration and de facto recognition of coats of arms, which were related to the grants of nobility, meant a next step in the regulation of Dutch heraldry. Advisory and executive tasks with regard to nobility and heraldry were assigned to the Supreme Council of Nobility, established in 1814.

The government interference with heraldry was not restricted to the arms of noble families. In 1815 all local governments and other authorities were also asked to send in their coats of arms. The confirmation of these coats of arms on behalf of the King was entrusted to the Supreme Council of Nobility. Initially, the heraldic duties of the council were limited to confirming and registering existing coats of arms. Over time however, they increasingly extended to the assessment and even design of new coats of arms for government organizations. This contribution outlines the development from non-regulated heraldry in the Dutch Republic to regulated noble and civic heraldry in the Netherlands in the last two centuries and the role of the heraldic councils. Attempts to extend the tasks of the Supreme Council of Nobility to civil coats of arms and initiatives by genealogical-heraldic societies to set up their own, unofficial armorials will be discussed. More recently, the government is taking a more strict approach regarding official grants of coat of arms. Simultaneously initiatives in the field of a 'living', deregulated heraldry are emerging. These developments will be discussed as well.

Résumé : Dans la République néerlandaise (1579/1581–1795), l'héraldique relevait du droit commun. Les nobles, les citoyens et les organes gouvernementaux n'étaient pas liés par des règles héraldiques officielles, mais adoptaient traditionnellement leurs armoiries sans l'intervention ni l'autorisation d'une autorité héraldique compétente.

Après 1795, la république fédérale s'est progressivement transformée en un État monarchique unitaire sous l'influence et la domination françaises. Une première forme d'héraldique réglementée par le gouvernement a vu le jour dans le royaume napoléonien de Hollande (1806–1810) avec l'établissement d'une « noblesse constitutionnelle » héréditaire. Ses statuts contenaient des dispositions relatives aux armoiries des nobles et prévoyaient la création d'un Collège suprême d'armoiries. En 1810, cependant, le Royaume de Hollande est incorporé à l'Empire français et la noblesse constitutionnelle est abolie. Dès lors, les lois françaises sur l'héraldique et les titres de noblesse s'appliquent.

Fin 1813, les Pays-Bas unis redeviennent indépendants sous l'égide de la Maison d'Orange-Nassau. La noblesse est rétablie et joue un rôle politique dans le gouvernement de l'État. L'enregistrement et la reconnaissance de facto des armoiries, qui étaient liées à l'octroi de la noblesse, constituaient une nouvelle étape dans la réglementation de l'héraldique néerlandaise. Les tâches consultatives et exécutives relatives à la noblesse et à l'héraldique ont été confiées au Conseil suprême de la noblesse, créé en 1814.

L'ingérence du gouvernement dans l'héraldique ne se limitait pas aux armoiries des familles nobles. En 1815, tous les gouvernements locaux et autres autorités ont également été invités à envoyer leurs armoiries. La confirmation de ces armoiries au nom du roi était confiée au Conseil supérieur de la noblesse. Au départ, les tâches héraldiques du Conseil se limitaient à la confirmation et à l'enregistrement des armoiries existantes. Au fil du temps, elles se sont toutefois étendues à l'évaluation et même à la conception de nouvelles armoiries pour les organisations gouvernementales.

Cette contribution décrit l'évolution de l'héraldique non réglementée dans la République néerlandaise vers l'héraldique noble et civique réglementée aux Pays-Bas au cours des deux derniers siècles, ainsi que le rôle des conseils héraldiques. Les tentatives d'extension des tâches du Conseil suprême de la noblesse aux armoiries civiles et les initiatives des sociétés généalogiques et héraldiques visant à créer leurs propres armoriaux non officiels seront examinées. Plus récemment, le gouvernement a adopté une approche plus stricte en ce qui concerne l'octroi officiel d'armoiries. Simultanément, des initiatives dans le domaine d'une héraldique « vivante » et déréglementée voient le jour. Ces développements seront également discutés.

1. Introduction

I would like to present to you a concise overview of the development in heraldic law, or rather regulations in the Netherlands, that is the Kingdom of the Netherlands, and its predecessor states: the Dutch Republic, the Batavian Republic, and the Kingdom of Holland. In this overview particular attention is given to developments in the last two centuries, regarding the coats of arms of the nobility, civic heraldry, and bourgeois coats of arms. The successive national (Royal) coats of arms will be left out, as this is a subject in itself.[1]

2. Heraldic law in the Dutch Republic (1579/1581–1795)

The independent federal Republic of the Seven United Netherlands or Dutch Republic was established by seven Northern Dutch provinces in the Spanish Netherlands during the Dutch revolt against the Spanish king Philip II. In 1579 they signed the Treaty of Utrecht to form an alliance against Spain. In 1581 they declared their independence in the Act of Abjuration.

In the Dutch Republic a strong central authority was absent. There was no heraldic authority, and the government hardly interfered with heraldic matters. Heraldic law was essentially customary law as it has been in the centuries before. Everyone could adopt or change a coat of arms at will without permission of any heraldic authority. Adopting the arms of someone else, however, was of course not done.

The bearing of coats of arms back then was widespread. One of the prominent European legal scholars, the Dutch humanist Hugo de Groot or Hugo Grotius (1583–1645; *fig. 1*), stated in his Inleydinge tot de Hollantsche rechtsgeleertheit (Introduction to Dutch jurisprudence), published in The Hague in 1631, that only noblemen traditionally had the right to bear arms openly, but that over time this right had become common practice.[2]

Coats of arms were pre-eminently marks of social distinction and representation of the nobility and the upper bourgeoisie. Social groups like regional and urban regents, members of water boards, and guildsmen, showed a shared identity in public by means of their collective heraldic display, for instance on painted armorial plates, armorial stained-glass windows, armorial charts (like the one of the members of the Haarlem city council; *fig. 2*), and heraldic facade stones and other ornaments (like the arms of the Amsterdam guild of surgeons; *fig. 3*). Those who achieved office and did not bear a coat of arms simply adopted one.[3]

Fig. 1. Portrait of Hugo Grotius (1583–1645) by (the workshop of) Michiel Jansz van Mierevelt, 1631. Source: coll. Rijksmuseum, Amsterdam, inv. no. SK-A-581.

3. Heraldic iconoclasm in the Batavian Republic (1795–1806)

At the end of the 18th century, dissatisfaction with the existing oligarchy in the Dutch Republic increased. The patriot faction advocated a more egalitarian society and more 'democratic' influence on national, provincial, and local government, at least for the bourgeois class to whom these patriots belonged.

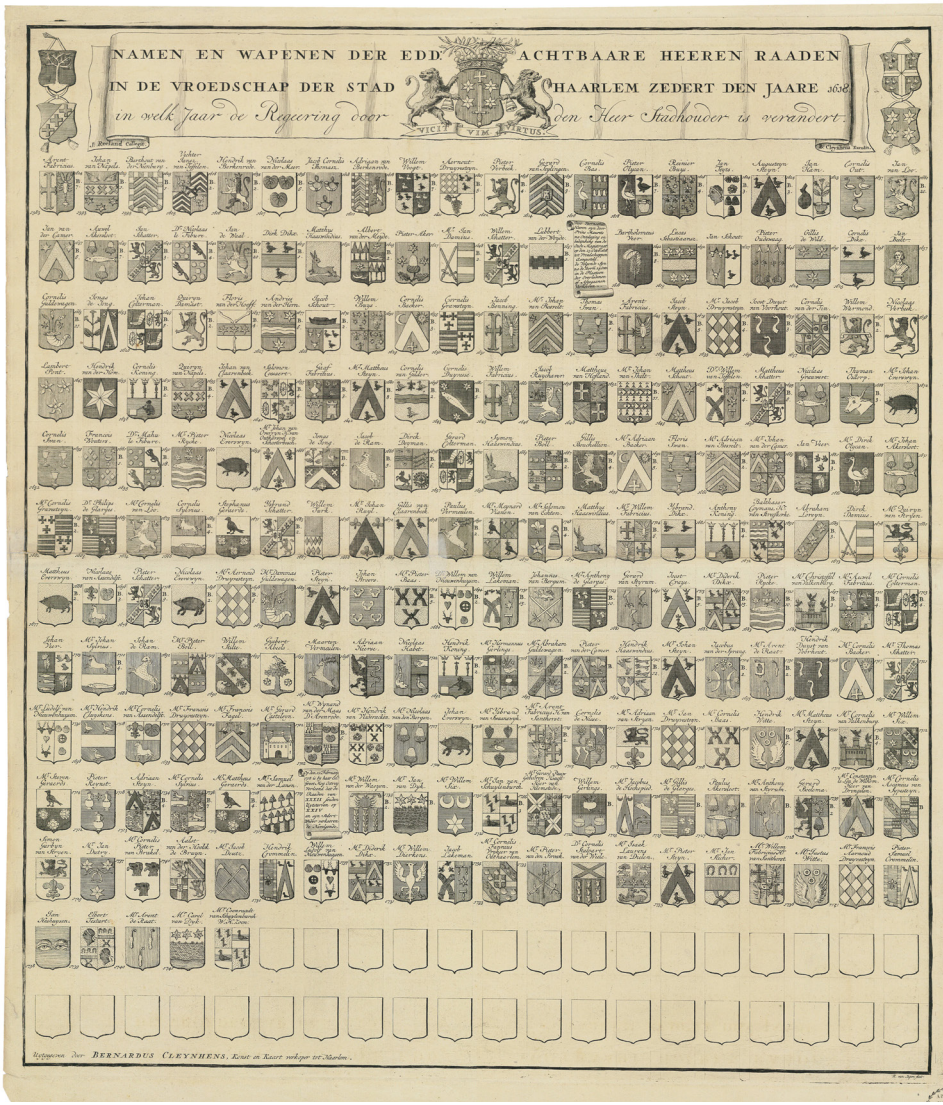

Fig. 2. 'Names and arms of the honourable gentlemen of the council of the city of Haarlem since 1618'. Armorial chart engraved by K. van Jagen and printed by Bernardus Cleynhens, Haarlem, c. 1743. Source: coll. Supreme Council of Nobility, The Hague.

They opposed the rule of William V, Prince of Orange-Nassau (1748–1806), the hereditary stadtholder in all seven provinces of the Republic (1751–1795), and his followers, the Orangists.

In 1795, the oligarchic rule in the Dutch

Fig. 3. Coats of arms of the Amsterdam guild of surgeons, painted between 1731 and 1789 on the ceiling of the Theatrum Anatomicum in the weigh house of Amsterdam. Photo: Eddo Hartmann for Waag Futurelab, 2019.

Republic came to an end. Under French influence and with French military support a new client state emerged, the Batavian Republic, that was initially a federal republic but became a unitary state over time. On the 19th of January, William V, who was de facto head of state of the Dutch Republic, went into exile in England, and the revolutionary 'provisional representatives of the people' in provincial and local governments seized power.

In the field of heraldry, the first act of government intervention was as draconian as it was destructive: the explicit ban on bearing coats of arms and wearing liveries. In France a decree was issued on the 19th of June 1790 aiming at the suppression of the hereditary nobility, liveries, coats of arms, and other symbols of 'feudalism' so detested by the revolutionaries. The decision was followed by a series of measures in which the revolutionaries also ordered the removal of arms. It led to a true 'chasse aux armoiries', especially in the epicentre of the revolution, the city of Paris.[4] The suppression of the hereditary nobility, coats of arms and other manifestations of the 'feudality' and the subsequent heraldic iconoclasm in France was

Fig. 4. Destruction of tombstones and epitaphs, 1795. Lithography by Clemens Schreurs published in: Jacob van Lennep, De geschiedenis des vaderlands in schetsen en afbeeldingen [The history of the fatherland in stories and pictures] (Amsterdam, 1855–1861). Source: coll. Rijksmuseum, Amsterdam, inv.no. RP-P-OB-86.586.

copied in the Batavian Republic where, in the course of 1795, the provisional representatives of the people in the various provinces and cities issued decrees, banning the bearing of coats of arms, and ordering the removal and even destruction of coats of arms and other 'marks of distinction' (*fig. 4*).[5]

The revolutionary suppression of feudalism and heraldic display turned out to be a brief but turbulent interlude when the heraldry of the Ancien Régime was replaced temporarily by revolutionary symbols. In France the revolution ended in 1799. From then on Napoleon Bonaparte held a virtually monarchical position as first consul, which culminated in the establishment of the French Empire in December of 1804. To create a loyal elite in his empire, Napoleon established a knightly order, the 'Légion d'honneur', in 1802 and an imperial nobility in 1808. The imperial nobility was a nobility of merit, granting titles to military, civil and ecclesiastical dignitaries. Its privileges included land ownership in the form of 'majorats' and the right to bear coats of arms.[6]

4. Heraldic revival and regulation in the Kingdom of Holland (1806–1810)

In 1806 the Batavian Republic was replaced by a new client state of the French Empire,

the Kingdom of Holland. On the 5th of June, the emperor Napoleon installed his younger brother Louis Napoleon as king of Holland. Like in France, a revival of the nobility took place in the new kingdom. As a foreign monarch ruling a foreign country, king Louis Napoleon decided to strengthen the young monarchy with an entourage of loyal noblemen. For that purpose, he established a 'constitutional nobility' and a 'Hoog Heraldiek Collegie' or Supreme College of Arms to advise him on matters concerning the nobility.[7]

The Statuten ('statutes') regarding the nobility of the Kingdom of Holland of the 1st of October 1809 contain 36 articles regarding this constitutional nobility. Eight articles (articles 14–21) are devoted to the coats of arms of the noblemen.[8] These coats of arms had to be confirmed by the king on the proposal of his Supreme College of Arms. The arms had to be inherited demonstrably from the noblemen's ancestors. The king could allow to the grantee an augmentation with charges or mottoes that had to be registered by his Supreme College of Arms.

The counts and barons themselves were obliged to bear a count's or baron's coronet, the model of which would later be determined by the king. The arms of sons and daughters of the counts and barons were also subject to certain rules in the Statuten. The son of a count or baron, in the case of several sons the eldest one, was allowed to use his father's coat of arms but had to bear it with a lambel. Younger sons and other descendants were allowed to bear their father's coat of arms but covered with a lesser noble or squire's coronet. Finally, the unmarried daughters of a count or baron were allowed to bear their father's arms in a lozenge-shaped shield with the corresponding coronet.

The Statuten of the constitutional nobility in the Kingdom of Holland instructed the Supreme College of Arms to register the blasoned drawing of the coat of arms, which could not be changed without the express permission and approval of the king. Finally, it was forbidden for anyone to adopt or bear the coat of arms of a noble family without being entitled to do so or belonging to that family. The ban also extended to coronets and other distinctive elements that the king had established for the constitutional nobility or had granted to counts and barons.

Despite the detailed provisions contained in the Statuten, the constitutional nobility and its heraldry never got off the ground in the relatively short existence of the Kingdom of Holland. This was due to an irreconcilable difference of opinion between the emperor and his brother about the position and role of the nobility. The emperor mainly had a nobility of civil and military merit in mind, while his younger brother advocated a more traditional nobility based on descent. On the 18th of February 1810, at the insistence of the emperor, king Louis Napoleon abolished the constitutional nobility 'as if it had never existed'.[9] Five months later, on the 9th of July 1810, the Kingdom of Holland ceased to exist and was incorporated into the French Empire. From then on, French decrees regarding the imperial nobility and its coats of arms and those regarding civic arms applied in the Netherlands (*fig. 5*).

As for the abolished constitutional nobility in the former Kingdom of Holland, its

Fig. 5. Letters patent issued by the French emperor Napoleon on behalf of Willem Philip Barnaart (1781–1851) 'maire' of the city of Haarlem. The emperor granted him the title of Chevalier de l'Empire on the 25th of November 1813, just five days before the future sovereign William Frederic of Orange-Nassau (1772–1843) returned to the Netherlands from exile. Barnaart became a member of the Dutch nobility on the 27th of September 1817.

constitution and statutes, although mainly paper measures, were a foreshadowing of the regulations in the Kingdom of the Netherlands regarding the nobility, coats of arms and coronets of the nobility, and the establishment of a college of arms to advise the king in matters of nobility and heraldry.

5. Continuation of regulated heraldry in the Kingdom of the Netherlands (1813 to the present)

On the 30th of November 1813, William Frederic Prince of Orange-Nassau (1772–1843), son of the last hereditary stadtholder, Wil-

Fig. 6. Portrait of William I (1772–1843), sovereign and king of the Netherlands (1813–1840), by Charles Hodges, 1816. Source: coll. Amsterdam Museum, inv.no. SA 1770.

liam V, landed on the beach of Scheveningen near The Hague after nineteen years of exile. On the 2nd of December, he was inaugurated in Amsterdam as Sovereign of the newly independent Dutch unitary state. The Constitution of the 29th of March 1814 transferred sovereignty to him and his legitimate descendants and regulated the constitution of the United Netherlands. On the 16th of March 1815, he accepted the sovereignty over the Southern Netherlands as well and became king William I of the United Kingdom of the Netherlands (*fig. 6*).

The constitution of 1814 contains provisions regarding the re-establishment of the Dutch nobility that would fulfil a constitutional role in the new kingdom. A college of arms under the name 'Hoge Raad van Adel', or Supreme Council of Nobility, established by Sovereign decree of the 24th of June 1814, was commissioned to keep, and maintain the official registration of the nobility in armorials and pedigree registers and the safekeeping of copies of the letters patent.[10]

A sovereign decree of the 13th of February 1815 enumerates the privileges of the nobility, including the right to bear a recognized coat of arms.[11] Not the right to bear coats of arms as such was exclusively reserved for the nobility, but the bearing of arms that were officially emblazoned in the letters patent issued by the king and registered in the armorials of the Supreme Council of Nobility. These officially recognized and registered coats of arms and the hereditary predicates and titles are the only remaining prerogatives of the Dutch nobility today.

The coronets were already explicitly mentioned in the provisions regarding the constitutional nobility of the Kingdom of Holland. Following the augmentation of the coat of arms of Florent Joseph van Ertborn (1784–1840), a nobleman from Antwerp, the coronets were formally established by Royal disposition of the 4th of February 1816 on the advice of the Supreme Council of Nobility, and in accordance with the coronets in use on the European continent. The knight's coronet was also declared applicable to the non-titled nobility.[12]

From 1814 to the present the Supreme Council of Nobility has registered 1.920 coats of arms of 1.116 noble families in its armori-

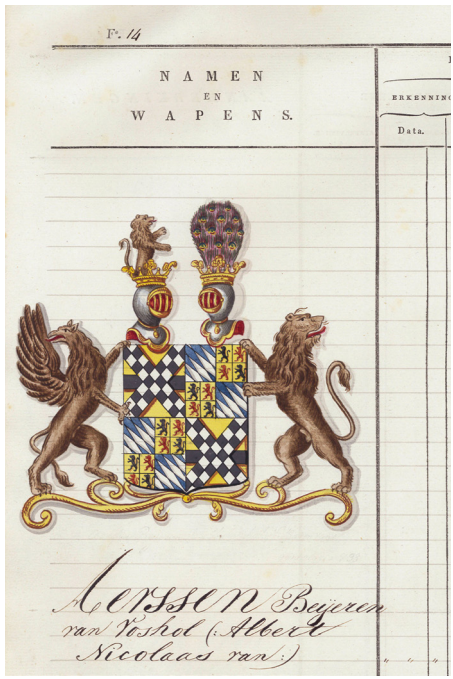

Fig. 7. Coat of arms of Albert Nicolaas van Aerssen Beijeren van Voshol (1786–1834). Source: Supreme Council of Nobility, The Hague, Archives of the Council, inv.no. 501, Armorial of the Dutch nobility, vol. A, fol. 14.

als (*fig. 7*), including the arms of families from the Southern Netherlands till 1830 and, very exceptionally, 11 coats of arms of non-noble families.[13] The last entry in the armorials of the Dutch nobility was the coat of arms of a member of the Lauta van Aijsma family, whose descent from an old Frisian noble family and membership of the Dutch nobility was officially recognized in 2022.[14]

6. Civic heraldry in the Netherlands

Initially, the tasks of the Supreme Council of Nobility, like that of its predecessor, the Supreme College of Arms in the Kingdom of Holland, were limited to the nobility and its coats of arms. By Sovereign decree of the 24th of December 1814, the Sovereign commissioned the Council to make an inventory of the arms of all cities, villages, water boards, manors, and other local authorities, to be confirmed by him subsequently.[15] Due to the massive response of the local authorities to the appeal issued by the Council on the 5th of January 1815, the confirmation of coats of arms was delegated to the Supreme Council of Nobility by Royal decree of the 20th of February 1816.[16] The granting of new coats of arms remained reserved to the king himself. From that moment on, the arms of many municipalities and other local authorities were confirmed by a Council's decree on behalf of the king. The arms of some private authorities were submitted and registered as well, for instance the arms of the roman-catholic Chapter of Saint George in Amersfoort, the Church Council of the Dutch Reformed Church of Rhenen, and the civic guard of The Hague.

7. Current regulations of civic heraldry

By Royal decree of the 23rd of April 1919, issued by Wilhelmina (1880–1962), queen of the Netherlands (1890–1948), new regulations for the granting of arms to public bodies came into force.[17] The reason for that was that part of the old regulations were outdated, in particular the classification of these

public bodies and the fees for the manufacture of the letters patent, associated with this classification.

The confirmation of arms by the Supreme Council of Nobility on behalf of the king formally came to an end. From then on, coats of arms of all provinces, municipalities and other public bodies or institutions are granted by Royal decree only, upon the advice from the Council. Public bodies that use seals are obliged to state their capacity in the circumscription or in case they do not bear a coat of arms to use a seal with the inscription 'Municipality of […]'. Finally, the fees for manufacturing the letters patent would be passed on to the public bodies. By Royal decree of the 21st of October 1977, an additional provision was issued that allowed newly established public bodies, bearing the same name as a dissolved one, to adopt the latter's coat of arms.[18]

In the same year the Minister of the Interior issued guidelines for the design and review of coats of arms, according to general heraldic principles, and heraldic tradition in the Netherlands. The guidelines, which were drawn up upon the advice of the Supreme Council of Nobility, contain provisions regarding civic coronets, mottoes and supporters and the adoption of charges by legal successors of dissolved public bodies.[19]

The Sovereign decree of the 24th of December 1814 – the king confirms or grants arms with the advice and mediation of the Supreme Council of Nobility – was not revoked. The Sovereign decree of 1814 and the Royal decrees of 1919 and 1977 are still the basic rules for the grants of arms to public bodies (*fig. 8*).

8. Deregulation of civic heraldry

The Royal decree of 1919 refers to 'public bodies'. The granting of arms to private institutions by Royal decree however was not explicitly excluded. Even after 1919 arms were still granted to private bodies by Royal decree, for instance the arms of Saint Elisabeth's Hospital in Haarlem in 1949, and the arms of the Order of Saint John in the Netherlands in 1971. From 1950 till 2013 the arms of several roman-catholic dioceses and 'basilica minores' were granted by Royal decree as well. Even the arms of some manors were confirmed by Royal decree. Although manors had been formally abolished in the Netherlands in 1848, some of the rights associated with these former jurisdictions continued to exist as private property, put down in notarial acts.

In 2013, however, a heraldist objected to the official granting of coats of arms to ecclesiastical institutions, in accordance with the principle of the separation of Church and State. The Minister of the Interior, who is politically responsible for arms granted by the king, appreciated this point of view. On the 12th of September 2013, he issued new policy rules in consultation with the Supreme Council of Nobility. As from the 1st of January 2014, only the arms of public bodies are eligible for granting or change by Royal decree.[20] The last private coat of arms officially granted by Royal decree was that of the Basilica of Saint Nicholas in Amsterdam on the 8th of February 2013.[21]

To date, the Supreme Council of Nobility has registered a total of 2,543 coats of arms of public bodies as well as private organiza-

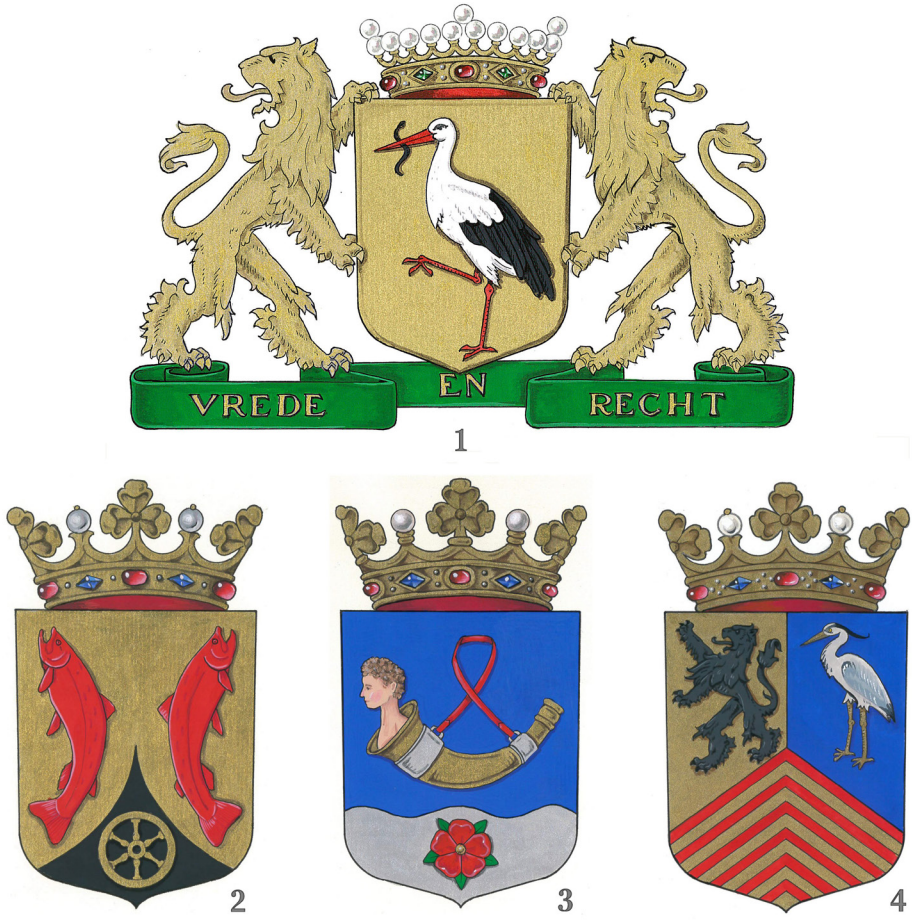

Fig. 8. Municipality coats of arms granted in the 21st century, painted by Piet Bultsma-Vos. 1. The Hague (city of 'peace and justice'; 2012), 2. Altena (2019), 3. Uithoorn (2020), and 4. Dijk en Waard (2021). Source: Supreme Council of Nobility, The Hague, Archives of the Council, inv.no. 617s, Armorial of the Dutch public bodies.

tions. Most of these arms (1,998) are those confirmed for or granted to municipalities. In 1820, the highest number of municipalities in the Netherlands was 1,249. That number has fallen steadily over the course of two centuries due to municipal redivisions. In a period of 200 years, 907 of the 1,249 municipalities, that is more than 70%, have been dissolved. The number of municipalities today is 345, including 3 public bodies in the Dutch Caribbean. The number of water boards has declined even more dramatically: from circa 3,500 to 21 today. In this ongoing process of municipal redivisions the new municipalities

as large supra-local entities no longer coincide with the villages as social communities. They consist of quite some villages and former municipalities whose inhabitants identify themselves primarily with the places where they live. They want to maintain the village's social and cultural identity.

This process is also reflected in heraldry. Unlike the arms of existing municipalities, the arms of villages, however, are not eligible for granting by Royal decree. Instead, the officially expired coats of arms or even newly designed arms of villages located in the newly established municipalities are adopted for the purpose of enhancing the social cohesion of these villages. This phenomenon – in Dutch indicated as 'dorpswapens' (literally 'village arms') – is a form of non-regulated, living heraldry that exists alongside the arms of municipalities officially granted. Sometimes these coats of arms have been established, in some cases even re-established, for the village communities by decisions of municipal councils.

9. Bourgeois coats of arms

I would like to conclude with a few words dedicated to the arms of non-noble, bourgeois families. Like their ancestors in the Middle Ages and those who lived in the times of the Dutch Republic, everyone in the Netherlands is entitled to design, adopt, and bear a coat of arms at their will, without the permission of a heraldic authority. An official grant and registration of the arms of non-noble families by the king or the Dutch government never took place, except in a very few cases, I mentioned before.

However, in the 19th and 20th centuries some heraldists made attempts to regulate the registration of bourgeois coats of arms to give those arms a more official status. Some of them were inspired by the example of the College of Arms in England. One of them was the Dutch-South-African heraldist Cornelius Pama (1916–1994) who, in 1940, proposed the registration of authorized genealogies and coats of arms, preferably by the Supreme Council of Nobility, whose name, however, should be altered, because in his opinion ancestry and coats of arms too often were wrongfully associated with nobility. Instead of the Supreme Council of Nobility, the Dutch Bureau for the Registration of Arms within the 'Nederlandsch Verbond voor Sibbekunde', the folkist Dutch Association for Genealogy established by the German occupier in 1940, started the registration of coats of arms.[22]

The most notable and most far-reaching initiative was the Heraldic Bill, a real heraldic law, that was proposed by the municipal archivist of Nijkerk, R.R. Baar, in 1952.[23] He proposed a legal registration of old and newly designed arms of the non-noble 'aristocrat' as well as 'the common man'. His law includes armorials in duplicate held by the Minister of Justice, and the hallmark of coats of arms with a star or two stars in different tinctures, depicted alongside the shield and indicating the age of the coat of arms. Baar's detailed, complex and, to be honest, unenforceable Heraldic Bill reached the Ministry of Justice, but it never came into force.

In 2011 the heraldist Christoph ten Houte de Lange published an opinionated article in the genealogical quarterly De Neder-

landsche Leeuw on the official grant and registration of bourgeois coats of arms, in his opinion a necessity beyond any doubt. Apparently dissatisfied with the lack of legal protection of the registered coats of arms and the supposed fragmentation of heraldic expertise, he suggests the establishment of a 'central college of heraldry' that should be given the task of granting and registering family coats of arms, as well as issuing letters patent. The new heraldic college should also advise the Minister of Education, Culture and Science on this matter, who is supposed to sign and issue the heraldic letters patent together with the president of the central college of heraldry.[24]

None of these initiatives were successful. The medieval and (Dutch) 'Republican' customary heraldic law regarding non-noble and private coats of arms in a way still applies in the Netherlands up to the present day … unregulated or rather self-regulated. The registration of non-noble, bourgeois coats of arms is a task that several Dutch genealogical and heraldic societies and their heraldic experts and 'colleges' have taken on, for instance the 'CBG Centrum voor Familiegeschiedenis' (Centre for Family History) in The Hague, the 'Fryske Rie foar Heraldyk' (Frisian Council for Heraldry), the heraldic department of the 'Nederlandse Genealogische Vereniging' (Dutch Genealogical Society), and more recently the 'Nederlands Genootschap voor Heraldiek' (Dutch Heraldic Society).

Only the coat of arms of the Dutch nobility and those of Dutch public bodies are granted by letters patent or Royal decrees and therefore are protected to a certain extent.

Notes

1 On this subject see: E.J. Wolleswinkel, 'Heraldiek van het Koninklijk Huis' [Heraldry of the Royal House], in: Coen Schimmelpenninck van der Oije, Egbert Wolleswinkel, Jos van den Borne and Conrad Gietman, Wapenregister van de Nederlandse adel. Hoge Raad van Adel 1814–2014 (Zwolle: WBOOKS, 2014) pp. 91–116.

2 Hugo Grotius, Inleydinge tot de Hollantsche rechtsgeleertheit (The Hague, 1631), Veerthiende deel. 'Van edelen ende onedelen', § 9.

3 J.A. de Boo, Familiewapens. Kentekens van verwantschap (The Hague, 2008) pp. 42–46; Redmer Alma, 'Heraldiek' in: Willem Frijhoff, Catherine Secretan and Andreas Nijenhuis-Bescher (eds.), De gouden eeuw in 500 portretten, taferelen & analyses vol. 1 (Amersfoort, 2022) pp. 582–585.

4 'Décret concernant la suppression de la Noblesse héréditaire, des livrées, des armoiries, des qualités & d'honneurs qui en étoient la suite', in: Collection général des décrets rendues par l'Assemblée Nationale avec la mention des sanctions et acceptations données par le Roi. Mois de Juin 1790 (Paris, s.d.) pp. 103–104; Michel Pastoureau, Traité d'héraldique (3ème édition; Paris, 1997) pp. 76–77.

5 On Dutch heraldry in the Batavian-French period see: J.A. de Boo, 'Heraldiek in de Franse tijd', Jaarboek van het Centraal Bureau voor Genealogie vol. 31 (1977) pp. 180–196, and Jos van den Borne, 'Het verbod op het voeren van wapens in de Bataafse Republiek', Jaarboek van het Centraal Bureau voor Genealogie vol. 49 (1995) pp. 165–181.

6 Pastoureau, Traité d'héraldique, pp. 77–83; Philippe Lamarque, L'Héraldique napoléonnienne. 2 vols. (Saint-Jorioz: Édition du Gui, 1999).

7 Grondwet op den constitutionelen adel van het Koningrijk Holland. Gegeven den 22sten van Grasmaand 1809 [Constitution of the constitutional nobility of the Kingdom of Holland. Issued the 22nd of April 1809] (The Hague: Koninklijke Staatsdrukkerij, 1809). A copy of this publication is kept in de archives of the Supreme Council of Nobility, The Hague (Archives of the Council, inv.no. 889,

Archives of the Supreme College of Arms) and is depicted in: E.J. Wolleswinkel, Nederlands adelsrecht. Wettelijke adeldom als historisch gegroeid instituut (The Hague, 2012) pp. 297–301.

8 Statuten betrekkelijk den adel, van het Koningrijk Holland. Gegeven den 1sten van Wijnmaand 1809 [Statutes regarding the nobility of the Kingdom of Holland. Issued the 1st of October 1809] (The Hague; Koninklijke Staatsdrukkerij, 1809). A copy of this publication is kept in de archives of the Supreme Council of Nobility, The Hague (Archives of the Council, inv.no. 889, Archives of the Supreme College of Arms) and is depicted in: Wolleswinkel, Nederlands adelsrecht, pp. 302–307.

9 [Royal decree of the 18th of February 1810 regarding the abolition of the constitutional nobility] (The Hague; Koninklijke Staatsdrukkerij, 1810). A copy of this untitled publication is kept in de archives of the Supreme Council of Nobility, The Hague (Archives of the Council, inv.no. 889, Archives of the Supreme College of Arms).

10 Sovereign decree establishing the Supreme Council of Nobility of the 24th of June 1814, no. 10, including the Council's instruction (Supreme Council of Nobility, Archives of the Council, inv.no. 1, 'Notulen' (proceedings) of the Council 1814, no. 1. See also: De Hoge Raad van Adel. Geschiedenis en werkzaamheden (The Hague, 1966) pp. 171–175 ('Bijlage III B'). The printed instruction is depicted in: Wolleswinkel, Nederlands adelsrecht, pp. 309–312.

11 Sovereign decree of the 13th of February 1815 (Staatsblad [Official Journal] 1815, no 60). The decree is also published in: De Hoge Raad van Adel, pp. 185–186 ('Bijlage III C').

12 Royal disposition of the 4th of February 1816, nr. 272 (Supreme Council of Nobility, The Hague, Archives of the Council, inv.no. 8, Proceedings of the Council of 1816, nos. 85, 449 and 947).

13 On the non-noble, bourgeois coats of arms, registered by the Supreme Council of Nobility see: Jos van den Borne, 'Voorportaal van adeldom? De Hoge Raad van Adel en burgerwapens in Nederland', in: Redmer Alma, Conrad Gietman and Albert Mensema (eds.), Adel en heraldiek in de Nederlanden. Adellijke identiteit en representatie (Hilversum, 2012) pp. 277–312.

14 Hoge Raad van Adel. Jaarverslag 2022 [Annual report of the Supreme Council of Nobility 2022], pp. 4 and 12–16. Internet: https://www.hogeraadvanadel.nl/documenten/jaarverslagen/2022/12/31/jaarverslag-hogeraad-van-adel-2022.

15 Sovereign decree of the 24th of December 1814, no. 32 (Supreme Council of Nobility, Archives of the Council, inv.no. 1, Proceedings of the Council of 1814, no. 200).

16 Royal decree of the 20th of February 1816, no. 69 (Supreme Council of Nobility, Archives of the Council, inv.no. 9, Proceedings of the Council of 1816, no. 135).

17 Royal decree of the 23rd of April 1919 (Staatsblad, no. 181). Internet: http://wetten.overheid.nl/jci1.3:c:BWBR0001895.

18 Royal decree of the 21st of October 1977 (Staatsblad, no. 605). Internet: http://wetten.overheid.nl/jci1.3:c:BWBR0001895.

19 Decision of the Minister of the Interior of the 18th of October 1977, no. B76/3937, containing guidelines regarding the granting of coats of arms to public law bodies (Supreme Council of Nobility, Archives of the Council, inv.no. 242, Proceedings of the Council of 1975, no. 5). Internet: https://www.hogeraadvanadel.nl/heraldiek/overheidswapens/richtlijnen).

20 Hoge Raad van Adel. Jaarverslag 2013, p. 2; 'Beleidsregels van de Minister van Binnenlandse Zaken en Koninkrijksrelaties van 12 september 2013, no. 2013-0000459488, omtrent het verlenen, bevestigen en wijzigen van wapens (…)' [Policy rules of the Minister of the Interior of the 12th of September 2013, no. 2013-0000459488, regarding the granting, confirmation and modification of coats of arms (…)] (Staatscourant, nr. 26583, 23rd of September 2013). Internet: https://wetten.overheid.nl/jci1.3:c:BWBR0033886.

21 Hoge Raad van Adel. Jaarverslag 2013, pp. 22–23.

22 C. Pama, 'De taak van den Hoogen Raad van Adel' [De tasks of the Supreme Council of Nobility], Nederlandsch Archief voor Gene-

alogie en Heraldiek, vol. 3 (1940) 11–14.

23 R.R. Baar, Ontwerp van een burgerwapenwet, houdende een regeling omtrent het voeren van familiewapens door onadellijke personen [Coat of arms bill, containing regulations regarding the bearing of family coats of arms by non-noble persons] (Nijkerk 1952) (typescript in the library of the Supreme Council of the Nobility).

24 C.E.G. ten Houte de Lange, 'Familiewapens en het nut van officiële verlening en registratie' [Family coats of arms and the benefit of official grant and registration], De Nederlandsche Leeuw, vol. 128 (2011) pp. 142–144.

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Signifier et contester les droits en image

Les conflits de bornage héraldique aux frontières de la principauté bourbonnaise

Par Antoine Robin [1]

Résumé : Dans le cadre de la mise en image de la justice seigneuriale, princière ou royale, les bornes, panonceaux ou brandons armoriés formaient un vaste arsenal iconographique pour signaler les limites d'un territoire ou d'une juridiction. Il est cependant à déplorer que ces images, bien que très présentes dans le paysage rural des derniers siècles du Moyen Âge, n'aient fait l'objet d'aucune étude spécialisée. Cette contribution entend ainsi répondre à cette lacune et définir la nature de ces marqueurs, principalement connus par l'analyse des riches procès-verbaux réalisés par les officiers ducaux ou royaux à l'occasion des conflits entre les princes.

Cette étude traitera spécifiquement des pratiques des ducs de Bourbon, entre 1400 et 1531. Pendant cette période, ces princes n'ont cessé de se quereller avec leurs voisins pour la délimitation des frontières de leurs territoires et, plus spécifiquement, pour la délimitation des droits de justice sur les villages frontaliers. Ils s'opposèrent ainsi à maintes reprises aux rois sur la frontière sud du Beaujolais, aux ducs de Savoie sur la frontière de la principauté de Dombes et aux ducs de Bourgogne sur la frontière charolaise.

Pour manifester ces droits, les grands princes envoyaient leurs officiers faire apposer bornes, panonceaux ou brandons à leurs armes au cœur des villages, sur les champs, sur les chemins, sur le bord des rivières, etc… Nous présenterons l'ampleur de ces campagnes de marquage héraldique au cours desquelles les officiers se livraient parfois à de véritables déchainements iconoclastes, détruisant et remplaçant par dizaines les armoiries des princes adverses. L'étude de ces trois conflits permettra ainsi une réflexion de fond sur les enjeux « géopolitiques » du marquage héraldique médiéval, sur son importance dans le développement de stratégies de communication visuelle et dans l'expression de l'autorité judiciaire princière.

Abstract: As part of the visualization of seigneurial, princely or royal justice, boundary stones, signs or coats of arms formed a vast iconographic arsenal to indicate the limits of a territory or a jurisdiction. It is however regrettable that these images, although very present in the rural landscape of the last centuries of the Middle Ages, have not been the subject of any specialized study. This chapter thus intends to respond to this gap and define the nature of these markers, mainly known through the analysis of the rich reports produced by ducal or royal officers on the occasion of conflicts between princes.

This study will specifically address the practices of the dukes of Bourbon, between 1400 and 1531. During this period, the dukes of Bourbon would constantly quarrel with their neighbours over the delimitation of the borders of their territories and, more specifically, over the delimitation of the rights of justice over the border

villages. They thus repeatedly opposed the kings on the southern border of Beaujolais, the dukes of Savoy on the border of the principality of Dombes and the dukes of Burgundy on the Charolais border.

To demonstrate these rights, the great princes sent their officers to have markers, signs or brands of their coats of arms affixed in the heart of villages, on fields, on roads, on river banks, etc. We will present the scale of these heraldic marking campaigns during which officers sometimes engaged in veritable iconoclastic outbursts, destroying and replacing dozens of the coats of arms of opposing princes. The mapping and synthetic study of these three conflicts will thus allow for an in-depth reflection on the "geopolitical" issues of medieval heraldic marking, on its importance in the development of visual communication strategies and in the expression of princely judicial authority.

> *« L'idée que nous nous faisons d'une frontière, c'est-à-dire d'une ligne séparant deux unités territoriales, est une idée moderne, pratiquement sans rapport avec l'idée qu'ont pu se faire d'une frontière les gens du Moyen Âge. »*[1][2]
>
> Robert Fawtier

1. Introduction

De nombreuses études ont déjà démontré le rôle immense de la communication visuelle dans les pratiques politiques médiévales. Parmi le vaste arsenal iconographique employé par les puissants pour mettre en scène leur pouvoir et leur autorité, l'héraldique constitua un système visuel prédominant, privilégié tant pour sa clarté que pour sa richesse sémantique, évoquant aussi bien l'homme et son lignage que le territoire leur étant associé. Abondamment documenté dans les villes médiévales, ce marquage héraldique n'a fait l'objet que de peu d'études concernant les espaces ruraux, défavorisés par l'absence de vestiges matériels et par la pauvreté des sources textuelles. Or, c'est pourtant dans les marges des principautés, sur les frontières, en ces zones rurales où cohabitaient des hommes d'appartenances politiques différentes, que le marquage du territoire revêtait un enjeu supérieur.

Pour clarifier ces limites et lorsque les repères naturels (montagnes, fleuves, forêts) ne suffisaient pas, les princes pouvaient recourir à un vaste ensemble de marqueurs anthropiques, leurs permettant d'exprimer leurs droits ou de contester ceux de leurs rivaux. Les marqueurs pérennes (croix monumentales, bornes, piliers) répondaient à une fonction principalement topographique : repères monumentaux, ils constituaient des images hautement performatives, dessinant les lignes virtuelles des frontières. Ces bornes, dont nous conservons encore de nombreux vestiges, trop rarement recensés, plus rarement encore étudiés, pouvaient représenter toutes les échelles de pouvoir, du seigneur local au roi lui-même. Ainsi, une entité politique comme la principauté bourbonnaise accueillait plusieurs bornages en son sein : on conserve par exemple encore les bornes marquant la limite entre les seigneuries de La Tour D'Auvergne et du Dauphiné d'Auvergne.[3] De même, on sait que le baillage

royal de Montferrand était délimité par plusieurs bornes, marquées des fleurs de lis royales et des armoiries des seigneuries avoisinantes.[4] Cependant, aucun de ces marqueurs, pourtant apposés en terres bourbonnaises, ne portaient les armoiries des ducs de Bourbon. Signées des seules armes des autorités locales, construisant la géographique politique interne de la principauté, ces images s'imbriquaient dans un jeu de bornage plus vaste, télescopé, multipliant les échelles de territorialité.

Mais ces bornes ou croix monumentales ne permettaient pas toujours d'exprimer efficacement les réalités ambiguës, changeantes, parfois conflictuelles, des villes et villages frontaliers, souvent partagés entre deux réalités politiques. Dans ces espaces contestés, les sources bourbonnaises nous révèlent l'emploi massif d'un autre type de marquage, jusqu'alors très peu étudié : les panonceaux et les brandons.[5]

Si, malheureusement, ni représentations ni traces matérielles ne nous sont parvenues de ces objets, l'étymologie et l'étude des sources nous permettent de nous figurer partiellement leur apparence. Le panonceau, ou *penoncel*, terme en usage depuis au moins le XII^e^ siècle,[6] dériverait du mot penon, que les lexiques français et anglo-saxon ont conservé sous cette forme pour désigner un étendard de format réduit. Il s'agissait donc d'une petite enseigne vexillaire, un marqueur héraldique de nature textile, ce que les sources médiévales et modernes confirment fréquemment.[7]

Le brandon est plus difficile à identifier. Attesté sous cette forme (*brandeum*) depuis au moins 1275,[8] le brandon, comme le panonceau, est régulièrement associé par les textes juridiques du XVI^e^ et XVII^e^ siècles à son ancêtre, le *velum,* désignant dans le droit romain un drapeau marquant les saisies.[9] La Coutume de Paris le désigne comme un bâton fiché dans le sol, au sommet duquel était attaché un assemblage de paille, d'herbes ou de branches ; ou un morceau de tissu, portant les armoiries d'un seigneur.[10] Le même terme désignait également, au Moyen Âge, une torche faite de paille, utilisée à l'occasion de la fête éponyme des Brandons.[11]

Malheureusement, les sources normatives médiévales définissant les usages et fonctions exactes de ces marqueurs héraldiques, souvent confondus, font cruellement défaut. Comme l'avait déjà remarqué Sylvie Bepoix, ces signes étaient principalement employés afin de marquer des sauvegardes ou de signaler la saisie d'un bien immeuble.[12] Ils semblaient également être soumis à une forme de hiérarchie : le brandon aurait été employé par les seigneurs tandis que le panonceau serait une prérogative royale et princière.[13] Plusieurs témoignages attestent également du fait que les brandons aux armoiries d'un seigneur et les panonceaux du duc aient pu coexister sur le même support.[14] Ce double marquage permettait certainement de souligner les droits d'un seigneur sur un bien tout en plaçant celui-ci sous la protection élargie de son prince.

Par leur nature publique et inhéremment politique, ces objets ont également joué un rôle important dans le processus de mise en signe des frontières. Cette contribution tentera ainsi de définir les formes et fonctions variées de ces marqueurs héraldiques par l'étude de deux dossiers aux frontières de la

principauté bourbonnaise : le conflit avec la Savoie pour l'occupation de la Dombes ; et le conflit avec la Bourgogne pour le contrôle de la frontière charolaise.

2. Le conflit entre Bourbon et Savoie pour la frontière de la Dombes

La frontière partagée entre les principautés de Bourbon et de Savoie constitua une source de conflits constante entre les deux entités politiques dès la donation, en 1400, de la baronnie de Beaujolais au duc Louis II de Bourbon. Ce prince fit immédiatement apposer des panonceaux à ses armes sur plusieurs villages frontaliers, afin de rapidement affirmer les limites de sa justice et de son autorité. Cette première campagne de marquage bourbonnais, en 1401, eut lieu dans les paroisses de Chanins, Messimy, Mottadey, Villion, Saint-Trivier, Chaillouvre, La Bâtie, Bereins et Thoissey.[15] Cette démarche n'avait rien d'inusuel. Elle s'inscrivait dans la continuité des gestes des anciens seigneurs de Beaujeu, qui apposaient déjà leurs panonceaux armoriés sur leurs terres frontalières afin d'en marquer les limites avec la Savoie.[16] Ce marquage se poursuivit pendant plus de 130 ans, jusqu'à l'annexion de la principauté bourbonnaise par la Couronne. Au cours de cette période, on recense plus de 70 cas de marquage des droits par l'apposition de panonceaux ou de brandons dans un territoire d'une quarantaine de kilomètre de rayon. Ces pratiques pouvaient parfois être de grande envergure, ciblant des villes entières, comme en 1424, dans la cité de Chatelard, où les officiers du duc de Savoie firent apposer des panonceaux aux armes de leur prince sur plusieurs dizaines de maisons de la ville en contestation des droits du duc de Bourbon.[17]

Ces marquages étaient sources de perpétuels conflits et conduisaient fréquemment les officiers des deux camps à des gestes d'iconoclasme à l'encontre des signes adverses.[18] De tels abus allaient cependant à l'encontre de la coutume locale qui interdisait le retrait des panonceaux d'une autre personne sans son autorisation[19] et, fréquemment, ces conflits menaient à des actions en justice. La destruction des panonceaux ou leur usage inapproprié par un autre seigneur pouvaient ainsi être punie d'amendes. En 1468 par exemple, trois habitants du village d'Amareins, en terre bourbonnaise, apposèrent les panonceaux de Savoie sur leurs maisons, leurs fonds et ceux de certains de leurs voisins, et furent condamnés à six livres d'amende pour cet abus.[20] Les contrevenants pouvaient également être incarcérés. Un habitant de Dompierre fut ainsi arrêté par les officiers savoyards pour avoir fait apposer les panonceaux d'Anne de France sur ses vignes par les officiers de Thoissey. Il ne devait être libéré qu'à condition de renoncer aux panonceaux et à la sauvegarde de la duchesse, ce qu'il refusât.[21] Plus rarement, ces abus pouvaient être l'objet de sanctions religieuses, comme en 1480, lorsque les officiers bourbonnais placèrent les armoiries de leur duc sur l'église de Savigneux, après avoir ôté les armoiries du chapitre de Lyon, et furent menacés d'excommunication par le vicaire de la ville.[22]

Lorsque la justice ne parvenait pas à les réguler, ces querelles héraldiques tournaient

parfois au conflit armé. En 1450 par exemple : ayant appris la présence des panonceaux de Bourbon au moulin de la Thielle (en territoire savoyard), le chatelain de Bourg-en-Bresse se rendit sur place pour les ôter et les remplacer par ceux du duc de Savoie. Les habitants du village de Lent, vivant à proximité du moulin et fidèles au duc de Bourbon, le virent agir et attaquèrent et blessèrent plusieurs de ses hommes avant d'arracher les panonceaux de Savoie et de les jeter au sol. Le chatelain de Bourg-en-Bresse revint par la suite avec plus d'hommes pour ôter à nouveau les panonceaux de Bourbon mais se fit attaquer derechef par les habitants du village.[23]

Le nombre et l'intensité de ces contestations attestent de l'enjeu de ces pratiques. La variété des supports ciblés aussi : champs, vignes, rivières, forêts, étangs, fossés, maisons, moulins ou, plus rarement, places publiques, églises ou chemins… Aucun espace ne semblait échapper à cette mise en image des droits, qui constituait pour le prince une véritable démonstration de souveraineté. Les sources le soulignent d'ailleurs clairement : en 1455, on fit remplacer les panonceaux du roi par ceux du duc de Bourbon sur la maison d'un habitant du village de Parcieux car il était interdit d'apposer d'autres signes dans la région que ceux du duc « *qui n'y reconoissoit aucun seigneur supérieur auquel on put réclamer* ».[24] À partir de 1452, plusieurs conflits opposèrent ainsi les officiers royaux et ceux du duc. En 1481, Aubret relate par exemple comment des officiers royaux vinrent à nouveau remplacer les panonceaux du duc de Bourbon, « *enervant la souverainté* » de celui-ci.[25]

Cependant, les panonceaux et les brandons n'étaient pas les seuls marqueurs des droits seigneuriaux. Bien plus rarement cités dans les sources bourbonnaises, les pals, pieux, piliers ou bâtons ont également pu servir à marquer les limites d'une justice. En 1487 par exemple, au carrefour de la Boissonnée, entre Saint-Didier-de-Chalaronne et Illiat, le châtelain de Chatillon, au service du duc de Savoie, fit élever, en terre bourbonnaise, un pieu avec les gants et les verges du bourreau et y fit bannir un malfaiteur. Les sergents du duc de Bourbon ôtèrent rapidement ce pieu qui fut déplacé sur un autre carrefour, à la frontière entre Bresse et Dombes, où l'on fit élever un pilier aux armes de Bourbon, défendant à quiconque de troubler la justice du prince au-delà de ce marqueur.[26] La symbolique judiciaire du pilier de justice était connue de tous et devait convoquer dans l'imaginaire collectif l'image des fourches patibulaires sur lesquels les seigneurs détenteurs des droits de haute justice apposaient parfois leurs armoiries.[27]

Les arbres, intimement associés à la mise en scène de la justice souveraine, pouvaient également servir de marqueurs héraldiques des droits. Le 12 juin 1508, le châtelain de Thoissey fit ainsi apposer les armoiries de la duchesse Anne de France sur l'orme de Dompierre « *pour marque de souveraineté* ». Ces armes furent ôtées plus tard par les Savoyards qui gravèrent à la place celles de leur prince, puis furent remplacées à nouveau par celles de la duchesse par un charpentier.[28] L'orme, comme le chêne ou le tilleul, constituait l'une des essences privilégiées des « arbres de justices » au Moyen Âge[29] et servait également de repère spatial dans la région, comme en atteste une carte conservée

aux archives de la Côte d'Or.[30] Son héraldisation manifestait ainsi un double enjeu, mettant en scène les limites d'un territoire et la capacité judiciaire du souverain.

Les croix ont également joué un rôle important dans la mise en signe du territoire.[31] Il faut cependant distinguer les croix monumentales, qui servaient de marqueurs topographiques, des croix « éphémères », employées à des fins similaires aux brandons et panonceaux, pour signaler la mise sous sauvegarde ou la saisie d'un bien. Les Savoyards marquaient ainsi leurs terres de croix de bois blanches évoquant le meuble des armoiries de leur seigneur.[32] Mais l'emploi de la croix est également attesté dans d'autres principautés : au XVII^e^ siècle, dans les Vosges, les conflits de voisinage entre les communautés minières bourguignonnes et lorraines ont également menés à des campagnes de marquage. Les bornes séparant les deux entités étaient alors signées de croix de saint André, devise des ducs de Bourgogne ; et de croix double, ancienne devise angevine reprise par les ducs de Lorraine.[33] Ces images constituaient de puissants outils de communication visuelle, intimement associés à l'idée d'une identité politique et territoriale, et permettaient l'expression des droits et la mise en scène de la souveraineté du prince sur l'ensemble de son territoire.

3. Le conflit entre Bourbon et Bourgogne pour la frontière charolaise

Systématiquement apposées par des agents de l'administration ducale[34] ces images servaient ainsi à réactualiser l'espace monumental, au fil des changements politiques. Certains espaces pouvaient faire l'objet de tensions pendant de nombreuses années, parfois des décennies. Les officiers procédaient alors à des enquêtes sur le terrain pour trancher ces affaires. S'échelonnant sur plus d'un siècle, le conflit entre Bourbon et Bourgogne constitue un dossier de choix pour l'étude de ces procédures. Sur la frontière charolaise, les mentions « d'escarmouches emblématiques » ne sont pas aussi abondantes qu'en Dombes mais les sources sont en revanche plus riches et détaillées.[35] Le conflit opposait les deux ducs pour les droits de justice sur les paroisses de Céron, Chambilly, Arcy et Bourg-le-Comte. Bien qu'une lettre du roi Charles V, en 1375, établisse que la Loire devait être partagée par les deux ducs, chacun en possession de la moitié du fleuve et des terres attenantes,[36] les deux princes ne tardèrent pas à se contester la frontière.

Les premières sources documentant la situation dans la région remontent à l'an 1399 et les procès-verbaux réalisés par les officiers nous apprennent que les ducs de Bourbon et de Bourgogne apposaient déjà leurs brandons respectifs sur la même frontière.[37] Bien que ce dossier soit semblable et contemporain aux conflits en Dombes, où les officiers se livraient une véritable guerre des signes pour le contrôle des droits frontaliers, le dossier était ici partiellement arbitré par la justice royale. En effet, en 1436[38] puis en 1437,[39] le sergent royal Hugonin Ciroul se rendit sur le terrain pour enquêter et maintenir le duc de Bourbon « *dans sa souveraineté* ». En 1439, ce fut l'inverse : le sergent apposa cette fois-ci les panonceaux royaux pour maintenir le duc de Bourgogne en son droit, « *enlevant et otans toute autre mains et empechement mises si point*

en y avoit été mis ».[40] Contrairement à la Dombes, où les conflits étaient résolus par les officiers ducaux et où les actes d'iconoclasme héraldique étaient fréquents, le conflit sur la frontière charolaise était donc partiellement arbitré par un officier de la Couronne. Le panonceau royal agissait alors comme un signe de sauvegarde, plaçant un bien sous la protection étendue et irréfutable du souverain. Cette qualité protectrice de l'armoirie royale tenait à sa complexe nature ontologique : l'écu était perçu comme une véritable manifestation *in absentia* de son possesseur. De ce fait, le panonceau royal – ou princier – recevait les égards dus au souverain lui-même. Les descriptions de nombreux rituels de dépose confirment d'ailleurs le rapport révérencieux de l'homme médiéval à ces images. L'officier en charge de cet acte, une serviette sur l'épaule, devait s'incliner devant l'armoirie avant de l'ôter avec de grandes précautions, l'emballant parfois dans du tissu et/ou du papier pour le transporter ailleurs.[41] Ce décorum semble d'ailleurs avoir perduré bien après le Moyen Âge puisque des exemples semblables, et même plus ritualisés encore, sont relatés jusqu'au début du XVII^e^ siècle.[42]

Suivant ces premières enquêtes royales, de nouvelles furent conduites par les officiers ducaux et royaux en 1440,[43] 1462[44] et 1484[45] afin de recueillir les témoignages des habitants de la région concernant le respect des limites entre les duchés. Ces enquêtes témoignent de la diversité, déjà observée en Dombes, des biens marqués par les panonceaux et brandons. Les maisons, moulins, loges et champs faisait l'objet d'un fréquent marquage ainsi que la Loire elle-même où les brandons étaient apposés par les officiers « *dedans l'eau tant avant qu'un homme y pouvoit aller de pied* ».[46] Le marquage héraldique d'une telle frontière naturelle était évidemment superflu et ne répondait à aucune fonction topographique : l'enjeu était ici pleinement symbolique.

Ces enquêtes témoignent également de l'importance de ces signes dans le quotidien des riverains. Lors de l'interrogatoire de 1462, sur les soixante-sept témoins interrogés, de professions variées, âgés de trente à soixante-douze ans, cinquante-six témoins mentionnent la présence des brandons et des panonceaux ducaux ou royaux. On interrogea alors certes les sergents locaux, acteurs de ces poses et déposes de panonceaux, mais également – et surtout – les habitants des paroisses : hommes de labour, femmes, marchands, religieux... Tous furent menés à donner leur âge et leur « âge de mémoire ».[47] Car c'était en effet la mémoire populaire, régulièrement mise à l'épreuve par l'exercice de l'enquête, qui était garante de la réalité territoriale dans ces espaces frontaliers. Pour assurer la perpétuité de ce souvenir, l'apposition des panonceaux et des brandons armoriés était donc régulièrement réalisée en présence de témoins. Ainsi, interrogé en 1462, un habitant de la paroisse de Chambilly témoigne avoir vu, alors qu'il était « *bien jeune enfant* », le châtelain de Chavroche et un sergent faire apposer les brandons du duc dans la Loire. Afin que les témoins gardent souvenir de cette procédure, le châtelain « *tira les oreilles a luy qui depose et autres enfants qui etoient avec luy afin qu'il leur souvenis dudit exploit et puis les mena boire en la taverne ou ils burent si bien qu'ils furent joyeux de vin* ».[48] L'exercice

fut efficace car le témoin se rappelait l'épisode plusieurs dizaines d'années plus tard. En Dombes également, les rituels de marquage, qu'il s'agisse de borne, de brandons ou de panonceaux, étaient fréquemment réalisés en présence de témoins, parfois présents par dizaines.[49] Ces signes étaient extrêmement communs dans le quotidien de l'homme médiéval en milieu rural et constituaient une forme de langage visuel dont il comprenait, au moins partiellement, les codes et les enjeux. Même l'homme de labour d'une petite paroisse charolaise savait ainsi reconnaitre les enseignes aux armes du roi, des ducs ou des seigneurs locaux. Ces éléments constituaient pour lui la manifestation visuelle des droits et des justices, parfois confus, auquel il devait se soumettre. Comme le rappelle Sylvie Bepoix, l'étude de ces signes, encore lacunaire, laisse entendre un espace rural bien plus saturé d'images que nous pourrions l'imaginer,[50] et nous invite à repenser la place de l'héraldique dans le quotidien de l'homme et la diversité des fonctions associées à ces images.

Ces guérillas symboliques constituaient un moyen pour les princes de s'affronter virtuellement, généralement sans violence ni incident diplomatique majeur. Pour le souverain, il s'agissait également d'un moyen de redéfinir les couleurs politiques d'un territoire conquis. La frontière de Dombes en est un parfait exemple : le duc Louis II de Bourbon remplaça les panonceaux de Beaujeu dès l'annexion des terres ; Louise de Savoie fit de même dès que le duché lui fut donné ; et son fils, le roi François Ier, les imita également dès le rattachement de la principauté bourbonnaise à la Couronne, en 1531.[51] L'héraldique, même sous cette forme éphémère, contribuait activement à la politisation du paysage rural. Chaque changement d'autorité se voyait ainsi accompagné de sa campagne de marquage héraldique, « réactualisant » le paysage visuel. Par cette politique en image et par l'exercice de l'enquête, le souverain affermissait sans cesse son autorité en ses terres.

Mais de telles pratiques existaient-elles partout dans le Royaume ? Comme le rappelait Bernard Guenée, la frontière médiévale n'était pas aussi instable ni aussi souvent source de conflit que nous pourrions l'imaginer.[52] Les querelles frontalières bourbonnaises sont peut-être extrêmes et ne concernent par ailleurs qu'une infime partie de la frontière de la principauté. En outre, l'emploi massif de marqueurs éphémères (panonceaux et brandons) pourrait également relever de considérations purement pratiques et économiques. En effet, en Dombes, la seule mention de marquage monumental cité par Aubret – une pierre gravée d'armoiries, placée au-dessus de la porte de l'église d'Illiat – fit l'objet d'une destruction peu de temps après sa pose.[53] La nature vraisemblablement peu couteuse, éphémère et mobile du panonceau ou du brandon a certainement mieux servi les intérêts des Bourbonnais, des Savoyards ou des Bourguignons sur leurs frontières communes, plus faciles à remplacer en réponse aux nombreuses campagnes d'iconoclasme. Dans d'autres contextes, moins conflictuels, moins instables, on a pu préférer des marqueurs héraldiques plus pérennes. Il faut également imaginer qu'il puisse y avoir un effet de source et que d'autres régions aient pu faire un usage semblable de ces ima-

ges, simplement moins documenté ou moins observé par la recherche. Un tel sujet gagnerait certainement à faire l'objet d'études comparatives, opposant les pratiques de bornages et de mise en image des droits dans plusieurs régions. Un vaste travail reste donc à accomplir pour mieux saisir le rôle de ces images et identifier leur place véritable dans le paysage visuel médiéval.

Notes

1 Institut National d'Histoire de l'Art – École Pratique des Hautes Études (SAPRAT).

2 Robert Fawtier, « Comment, au début du XIVe siècle, un roi de France pouvait-il se représenter son royaume ? », dans Comptes rendus des séances de l'Académie des Inscriptions et Belles-Lettres, 103e année, n° 2, 1959. p. 117–123.

3 https://www.pop.culture.gouv.fr/notice/merimee/PA00091920

4 Archives Départementales du Puy-de-Dôme, E-dépôt 113 II, DD 1.

5 Parmi les rares études à avoir soulevé l'enjeu des panonceaux et des brandons dans le marquage des droits au Moyen-Âge mentionnons en premier lieu les récents travaux d'habilitation à diriger des recherches de Sylvie Bepoix (à paraitre), que je remercie ici chaleureusement pour m'avoir partagé ses premières conclusions. Voir également : Julien Lagalice, « Contre l'hosneur du duc. Subversions, offenses et rébellion dans le comté de Bourgogne (XIVe–XVe siècles) », dans Publications du Centre Européen d'Etudes Bourguignonnes, vol. 60, 2020, p. 89–105 ; Léonard Dauphant, Le Royaume des Quatres Rivières. L'espace politique français (1380–1515), Champ Vallon, 2012.

6 Le terme, dans son sens de petit étendard, est déjà employé dans la Geste de Raoul de Cambrai. Les origines de son utilisation dans un cadre juridique demeurent cependant à éclaircir.

7 De nombreuses coutumes et textes juridiques témoignent de la polymorphie de ces objets. Les archives de la ville de Saint-Flour mentionnent par exemple des panonceaux réalisés en « tela blava » (étoffe bleue) mais il semblerait qu'ils puissent également être fait de papier. Philippe Olivier, Dictionnaire d'ancien occitan auvergnat : Mauriacois et Sanflorain (1340–1540), De Gruyter, 2009, p. 160 ; p. 463.

8 Paul Lucas-Championnière, De la Propriété des eaux courantes, du droit des riverains et de la valeur actuelle des concessions féodales, Paris, 1846, p. 200.

9 Ibid.; http://ducange.enc.sorbonne.fr/BRANDO2

10 Paul Lucas-Championnière, De la Propriété des eaux courantes, op.cit., p. 200.

11 Cette fête, célébrée le premier dimanche de Carême, serait d'origine celtique. François Pommerol, « La fête des brandons et le dieu gaulois Grannus », in Bulletins de la Société d'anthropologie de Paris, Ve série. Tome 2, 1901, p. 427–431. Le terme brandon dériverait quant à lui du germanique « brand », désignant le feu ou l'action d'enflammer.

12 Sylvie Bepoix, Habilitation à diriger des recherches, à paraître.

13 En parlant des brandons apposés par un seigneur, Louis Aubret précise : « c'est ainsi qu'on appeloit les armoiries que les seigneurs faisoient mettre sur les effets qu'ils saisissoient, que l'on appeloit pannonceaux pour le prince ». Louis Aubret, Mémoires pour servir à l'histoire de Dombes, Tome II, Trévoux, 1868, p. 603. Les textes juridiques de la période moderne différenciaient les panonceaux des brandons, aussi nommés affiches ou tituli, mais leur fonction semblait identique : tous permettaient de signifier la saisie sur un bien. Le brandon pouvait par exemple être apposé à l'entrée des champs ou des vignes pour marquer la saisie du fruit de l'exploitation. Claude Brossette, Les titres du droit civil et du droit canonique, Lyon, 1705, p. 34 ; p. 105 ; p. 201. Il semblerait également que l'on ait discriminé les vela dominica, armoiries seigneuriales, des vela regia, désignant les armoiries du souverain. Jean Le Paige, Nouveau commentaire sur la coutume de Bar-le-Duc, Bar-Le-Duc, 1711, p. 464.

14 En 1451, le seigneur de Verfay fit mettre ses brandons ainsi que les panonceaux du duc de Savoie sur les maisons de plusieurs habitants.

Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. II, op.cit, p. 644.

15 Louis Aubret, Mémoires pour servir à l'histoire de Dombes, Tome II, Trévoux, 1868, p. 404–405. L'abondant marquage héraldique de ce territoire nous est connu par le récit des nombreux conflits entre les officiers des deux camps, relatés dans ce précieux ouvrage, source inestimable pour l'étude de l'histoire de cette région.

16 Plusieurs conflits entre Savoie et Beaujeu sont documentés et décrivent comment les officiers d'Antoine de Beaujeu firent ôter les panonceaux aux armes du comte Amédée VI de Savoie pour les jeter dans la boue ou dans les fossés. Ibid., p. 514–515.

17 Ibid., p. 504.

18 S'en prendre aux armoiries, les traiter avec irrespect, les jeter au sol et les briser publiquement représentait, dans la logique médiévale, une atteinte directe au double symbolique de l'individu, à son nom, à sa fama. Sur l'iconoclasme héraldique médiéval, voir : Laurent Hablot, « Corps ravagés, emblèmes outragés. L'utilisation de l'emblématique dans les châtiments à la fin du Moyen Âge », Actes du colloque Corps outragés, corps ravagés, Rennes, 2010, p. 139–154 ; Antoine Robin, « Emblematic iconoclasm. The case of Charles of Bourbon in 1527 » in Heraldic Hierarchies. Identity, status and State intervention in Early Modern heraldry, Leuven University Press, 2021, p. 191–211.

19 Cette coutume est mentionnée par Aubret lors d'un conflit, en 1409–1410, opposant les officiers de deux villes frontalières. Ibid., p. 454.

20 Aubret, Louis, Mémoires pour servir à l'histoire de Dombes, Tome III, Trévoux, 1868, p. 72.

21 Ibid., p.175–176.

22 Ibid., p. 89. Le vicaire, Claude Gaste, ordonne aux sergents d'ôter les panonceaux et de rétablir ceux de l'église de Lyon « sinon, après la troisième monition, de les déclarer excommuniés ».

23 Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. II, op.cit, p. 641.

24 Ibid., p. 662.

25 Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. III, op.cit., p. 93.

26 Ibid., p. 112.

27 Voir par exemple : Antoine Altieri, Murles (bois de Valène, Montferrand ?), fourches patibulaires, https://armma.saprat.fr/monument/murles-bois-de-valene-montferrand-fourches-patibulaires/, consulté le 05/11/2023.

28 Ibid., p. 177.

29 Paolo Alvazzi del Frate, « Le Grand-Justicier et l'Arbre de Justice : considérations sur la justice retenue sous l'Ancien Régime », in Histoire, écologie et anthropologie. Trois générations face à l'oeuvre d'Emmanuel Le Roy Ladurie, Paris, Presses Universitaires Paris Sorbonne, 2011, p. 392–393.

30 Cette carte fut vraisemblablement réalisée à l'occasion de ces querelles frontalières. Sa datation, encore imprécise, pourrait peut-être être affinée par la comparaison avec les témoignages de bornages recensés dans la région. À ce sujet, voir : Florentin Briffaz, « Attention à la marche ! La politique des confins chez les comtes de Savoie et les ducs de Bourgogne (XIII^{e}–XV^{e} siècles) », dans Marges politiques et identités communautaires au Moyen Âge, Siècles. Cahiers du CHEC, vol. 54, 2023.

31 L'association des armoiries aux croix monumentales est très ancienne. Voir par exemple les deux premiers grands sceaux de la ville de Lyon, en 1271 et 1320, montrant déjà une croix fleurdelisée, symbole de la nouvelle autorité royale sur la ville. http://www.sigilla.org/sceau-type/lyon-premier-grand-sceau-39581 et http://www.sigilla.org/sceau-type/lyon-deuxieme-grand-sceau-39585. Au XVI^{e} siècle encore, lors de la découverte du Nouveau Monde, croix et armoiries étaient régulièrement associées entre elles pour marquer la prise de possession d'un nouveau territoire par les Français, les Espagnols et les Portugais. À ce sujet, je me permets de renvoyer à mon article : Antoine Robin, « The Cross of Gaspé: Between Territorial Appropriation and Colonial Emancipation », Heraldry in Contact. Perspectives and Challenges of a Connective Image Form, Thorbecke, 2023.

32 L. Aubret parle de « la croix, c'est à dire les pannonceaux de Mr de Savoie », confirmant que la croix de Savoie est synonyme de panonceau et partage les mêmes fonctions. Louis Aubret, Mémoires pour servir à l'his-

toire de Dombes, t. II, op.cit, p. 613.

33 Francis Pierre, Jean-Pierre Galmiche, Isabelle Manet, Alain Weber, « Les conflits miniers entre St-Nicolas du Thillot et Château-Lambert au XVIIe s. », Annales de la Société d'Emulation des Vosges, Epinal, p.61–72. Je tiens à remercier chaleureusement Nicolas Vernot pour m'avoir transmis cette information.

34 Presque toujours des sergents, parfois des chassipols ou des châtelains, très anecdotiquement des membres de l'Église.

35 Le conflit est documenté par plusieurs longs procès-verbaux, copiés au XVIII[e] siècle, et conservées dans la série A des Archives départementales de l'Allier.

36 Cette lettre est par la suite confirmée par le roi Charles VIII, sous la régence d'Anne de France, en 1487. Archives départementales de l'Allier, A 157, f. 40r–41v.

37 Le document mentionne « plusieurs exploits de justice, pannonceaux, brandons, mains mises et autres empechements fait et posés par les officiers d'un coté et d'autre es lieux ». Archives départementales de l'Allier, A 004, f. 37r–38v.

38 Ibid., f. 34r–35v. « ledit Hugonin Ciroul à l'instance et requête de Mondit Seigneur Le duc, se transporta outre la rivière de Loire en vu territoire appellé les Herres de Giverdon et la pareillement il mit les panonceaux du Roy notredit Sire en comprenant toutes les dires Heres de Giverdon depuis la riviere de Loire jusques es eaux mortes qui s'apelle la vieil loire par la manière que lesdites Heres de Giverdon se comporte en gardant maintenant Mondit seigneur leduc de Bourbonnois en la souferaineté desdites heres de Giverdon ».

39 Ibid., f. 38v–39v. « ledit hugonin Ciroul mis et posa les pannonceaux du Roy notre sire en ladite Rivière de loire, à la Conservation du droit de Mondit seigneur le duc ».

40 Ibid., f. 40r–41v.

41 En 1484, les panonceaux de Charles II de Bourbon sont ôtés de l'église de Savigneux suivant un rituel très précis et codifié : le sergent, « habillé convenablement », une serviette sur l'épaule, fit trois génuflexions devant l'armoirie avant de l'ôter, s'inclina à nouveau avant de les prendre, de les emballer dans du papier puis de les déposer dans un drap blanc. Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. III, op.cit., p. 102. De nombreux autres exemples précisent que les panonceaux sont ôtés avec de grands égards, comme le 18 juillet 1527, lorsque Jacques Romans « avoit levé, avec honneur et révérence et après avoir fait trois génuflexions jusqu'à terre, une croix que les officiers de Savoie avoient mise dans une terre de la paroisse de Lent, appartenant à Christophe Berlet ». Ibid., p. 236.

42 En 1634 par exemple, on commanda d'ôter des armoiries royales, de les envelopper dans un linge blanc, de les reposer dans l'église des lieux puis de les déplacer dans une autre église, de faire tirer au mousquet par des gens d'armes et crier « Vive le roy », avant de mettre les armoiries dans un chariot couvert d'un drap bleu fleurdelisé. Cité dans Rémi Mathieu, Le système héraldique français, J.B. Janin, 1946, p. 230.

43 Archives départementales de l'Allier, A 004, f. 43r–48v.

44 Ibid., f. 50r–103v.

45 Ibid., f. 5r–32r. Ces grandes procédures d'enquêtes n'étaient pas uniques en leur genre. Dans un article récent, Julien Lagalice décrit des procédures semblables en territoire bourguignon. Julien Lagalice, « Contre l'hosneur du duc. », art. cit.

46 Archives départementales de l'Allier, A 004, f. 64v.

47 Suivant des formulations de ce type : « Guillaume Aliegne, homme de labour, paroissien de Bourg le Comte agé de 82 ans ou environ, de bonne mémoire de 60 ans environ » ; ou « Robert Quoquet, homme de labour, paroissien de Bourg le Comte, 75 ans de bonne mémoire de 60 comme il dit ». Ibid., 43v–44r.

48 « ledit Guichard Bourel fit mettre les brandons de mondit seigneur le duc par un nommé Guillaume Gonniet sergent de mondit seigneur qui les mit dedans loire a l'endroit du moulin et de la paissiere de Rrobert Maréchal jusqu'au filain de loire et la ou le mit hier Denis Gay sergent de monseigneur le duc et dont vue luy acte fait et aux autres temoins devant et apres ecrits et que ledit Guichard Bourel tira les oreilles a luy qui de-

pose et autres enfants qui etoient avec luy afin qu'il leur souvenis dudit exploit et puis les mena boire en la taverne ou ils burent si bien qu'ils furent joyeux de vin ». Ibid., f. 56v–57r. Le recours à une forme de « violence pédagogique » sur les enfants afin qu'ils se souviennent d'un bornage est également documenté en d'autres temps et lieux : Léonard Dauphant, Le Royaume des Quatre Rivières, op.cit., p. 48.

49 Un exemple paroxystique : le 11 avril 1527, sous le principat de la duchesse Louise de Savoie, un rituel d'apposition de panonceaux eut lieu en public, en présence d'une centaine de témoins. Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. III, op.cit., p. 237.

50 Sylvie Bepoix, Habilitation à diriger des recherches, à paraître.

51 Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. III, op.cit, p. 253.

52 Bernard Guenée, « La géographie administrative de la France à la fin du Moyen-Âge : élections et baillages », dans Le Moyen-Âge : bulletin mensuel d'histoire et de philologie, Tome 67, 1961, p. 293–323.

53 Louis Aubret, Mémoires pour servir à l'histoire de Dombes, t. III, op.cit., p. 110 ; 118.

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Seals of Lithuanian Courts and Judges 1564–1792

By Dr. Justina Sipavičiūtė

Abstract: The article deals with seals of land courts and their officials in the Grand Duchy of Lithuania (in nine districts of Vilnius and Trakai) voivodeships in 1564–1792. The study is based on about three hundred unpublished seals of land courts and their officials. The article is divided into three parts: part one presents an analysis of the law of seals. Part two deals with how the use of seals by land courts and officials was described in the Statutes of Lithuania and the *Volumina legum*, and in what way those regulations were implemented in practice. Part three is devoted to a thorough heraldic and sphragistic analysis of the institutional and official seals of land courts, and an analysis of land court officials: judges, and sub-judges (singular: *podsedek, subiudex*).

Résumé : L'article traite des sceaux des tribunaux fonciers et de leurs fonctionnaires dans les voïvodies du Grand-Duché de Lituanie (dans neuf districts de Vilnius et Trakai) entre 1564 et 1792. L'étude est basée sur environ trois cents sceaux inédits de tribunaux fonciers et de leurs fonctionnaires. L'article est divisé en trois parties : la première partie présente une analyse du droit des sceaux. La deuxième partie traite de la manière dont l'utilisation des sceaux par les tribunaux fonciers et les fonctionnaires a été décrite dans les statuts de la Lituanie et dans le *Volumina legum*, et de la manière dont ces réglementations ont été mises en œuvre dans la pratique. La troisième partie est consacrée à une analyse héraldique et sigillographique approfondie des sceaux institutionnels et officiels des tribunaux fonciers, ainsi qu'à une analyse des fonctionnaires des tribunaux fonciers : les juges et les sous-juges (singulier : *podsedek, subiudex*).

1. Law

The legislation related to seals and the seals themselves were different in each state and in different historical periods.[1] As Andrea Stieldorf, a German historian, has put it very vividly in her book, by sealing a document a seal holder would assume long-term obligations, but notwithstanding the great significance of a seal, there was no global seal legislation that would be uniformly applied and defined in a written document, a kind of "Constitution of Sphragistics". Some regulations have been found that controlled what kind of documents could have a seal, and by whom and when they could be stamped, although they were period- or region-specific and thus were possibly different.

In order to learn about these regulations and norms, the practice of seal use is analysed by looking at documents sealed by a specific group of persons from a specific region over a selected time period.[2] In this paper, the concept of seal legislation is defined by examining the following five points:

1. A state: the Grand Duchy of Lithuania (Vilnius and Trakai voivodeship).
2. Seals: the seals used in land courts.[3]
3. Period: from 1565 to 1792.
4. Key criterion: the correlation between law and practice. To examine the legal norms of the Grand Duchy of Lithuania that regulated the use of Land court seals and, most importantly, to establish how these norms were implemented in practice. It means, were legal provisions actually implemented in real life.
5. Law: The Statutes of Lithuania and the Diet Constitutions.

Until the Statutes of Lithuania, the law was regulated by the privileges of the ruler.[4] The Statutes of Lithuania,[5] originally known as the Statutes of the Grand Duchy of Lithuania, were a 16th-century codification of all the legislation of the Grand Duchy of Lithuania and its successor, the Polish–Lithuanian Commonwealth.

The Statutes consist of three legal codes (1529, 1566 and 1588), all written in Ruthenian language, translated into Latin and later into Polish. They formed the basis of the legal system of the Grand Duchy of Lithuania. The main purpose of the First Statute 1529 (282 Articles) was to standardise and collect various tribal and customary laws in order to codify them as a single document. A decision was made to improve and supplement the Statutes of Lithuania. Consequently, the Second Statute came into effect in 1566 and was larger (367 Articles) and more advanced. It was also decided that the second statute needed to be improved as well, which resulted in the Third Statute coming into effect in 1588. In the Statutes of Lithuania, you can find some really interesting information about the law of seals. For example, what strict penalties were established for the forgery of stamps and seals, a variable fee for the use of court institutional and official seals, and so on.[6]

There were many groups of seals in the Grand Duchy of Lithuania: ecclesiastical seals,[7] seals of universities,[8] seals of cities,[9] and so on, but the Statutes of Lithuania regulated three groups: the ruler's, the courts' and the private seals. The least explored seals are the court seals.

During the years 1565–1566 a huge court reform[10] took place in the Grand Duchy of Lithuania, in the course of which the following courts were established: land courts (for civil proceedings),[11] castle courts (for criminal proceedings),[12] and chamberlain courts (for land boundary disputes).[13] Land and castle courts also performed a notary function while the castle court also carried out state-related functions within the district. The Supreme Tribunal of Lithuania[14] was established in 1581 (the first session took place on April 30th, 1582) to hear appeals from the land, castle and chamberlain courts. These courts reformed the very essence of the legal system in the second half of the 16th century. They gradually started their activities and had their

seal stamps created, and the documents of these courts were certified with seals.

2. The land court seals

2.1 Examples of land court seals according to different laws

Because I researched court seals in my PhD thesis,[15] I would like to draw your attention to one of the courts – the land courts (which handled civil cases and also performed notarial functions) and especially their seals. The main focus will be to show how three judicial reforms (1565–1566, 1764 and 1792) have changed the heraldry of land court seals and what information in these court seals a heraldist and genealogist can find.

Unpublished archive sources (more than 300 documents with seals) have been the largest and most important body of references for this research. So, the first regulation for the use of seals at land courts set out in law was the Second Statute of Lithuania (1566) and later the Third Statute of Lithuania (1588).

There you can find information that from 1566 until 1764, each land court in any of 9 districts of the Grand Duchy of Lithuania used two types of stamps (matrices): its own institutional stamp (used only for summons) and officials' (the judges' and the deputy judges') stamps (used for other documents except summons, and these documents were signed by the land court scribe).[16]

For example, you can see an institutional land court seal of Vilnius district from 1565 (with the Lithuanian coat of arms) (*fig. 1*).

Fig. 1. An institutional land court seal of Vilnius district from 1565 (with the Lithuanian coat of arms). Source: LMAVB RS F16-92, I.74 v.

Fig. 2. Seals of Ukmergė land court officials (the judge's and the deputy judge's seals) from 1731. Source: VUB RS, f. 5-A28-4975.

Another example is the seals of Ukmergė land court officials (the judge's and the deputy judge's seals) from 1731 (*fig. 2*).

In 1764 huge and significant administrative and judicial reforms took place in Grand Duchy of Lithuania, which reformed and changed all the legal system. The use of land court officials' stamps was discontinued after the reform of 1764, and until 1792 each land court of nine districts used one specific land court stamp (with new heraldry) for certifying all types of deeds (summons, transcripts and any other deeds). See, as an example, the institutional land court seal of Vilnius district from 1765 (with the Lithuanian coat of arms and Vilnius district scribe's coat of arms – a black-crowned night heron) (*fig. 3*).

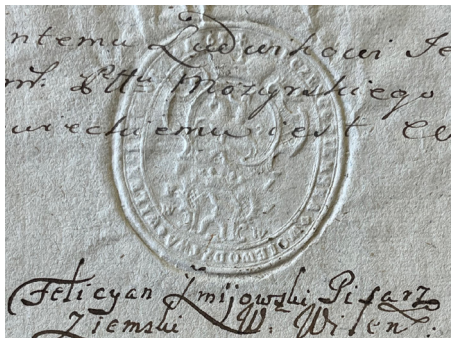

Fig. 3. The institutional land court seal of Vilnius district from 1765. Source: VUB RS, f.5-f.118-31302/6.

2.2 Historiography

Many prominent historians from Lithuania and other states have shown an interest in sphragistics and have written some valuable historical studies. European countries have deep-rooted traditions of research in the field of sphragistics. In conclusion, it can be said that the fragmentary notes on seals used at courts were mostly integrated in summarising studies on courts. Notwithstanding individual important studies, the types of seals used in courts is a topic that still remains on the margins of judicial historiography. As historiography shows, reviews published by historians were mostly limited to the institutional seals used by courts and lacked any wider summarising insights on official court seals that were also used by the courts. Lithuanian, German, Polish, English, Russian, Belorussian and Ukrainian literature sources were used, along with some Latin and Ruthenian texts.[17]

2.3 The sources

The sources used in this research can be divided into two groups: published and unpublished historic sources stored in the collections of Lithuanian and Polish libraries and archives. Published sources: the Lithuanian Statutes of 1566 and 1588. In the 17th to the 18th centuries, the use of court seals in the Grand Duchy of Lithuania was additionally regulated by the Diet Constitutions. Unpublished archive sources have been the largest and most important body of references for this research. Most of the required sources are stored in the manuscript collections and archives of Lithuanian libraries. Several hundred archive collections were used in the material collection stage of the research. The sources from the Manuscripts Department of Vilnius University Library; the Manuscripts Department of the Wroblewski Library of the Lithuanian Academy of Sciences; and the Rare Books and Manuscripts Department of the Martynas Mažvydas National Library of Lithuania. The author also tried to look for sources in archives in Krakow and the manuscript collections kept in Polish libraries.[18]

The research period ends in 1792, when the courts under examination were dissolved. However, Russia, Austria and Prussia had partitioned the Commonwealth, although leaving the Lithuanian Statutes in effect in Lithuania until 1840, when it was replaced by the Russian laws. So, what was the heraldry of land court institutional seals from 1565 to 1792?

Fig. 4. Land court seal of Ašmena district from 1565. Source: VUB RS, f. 77-3

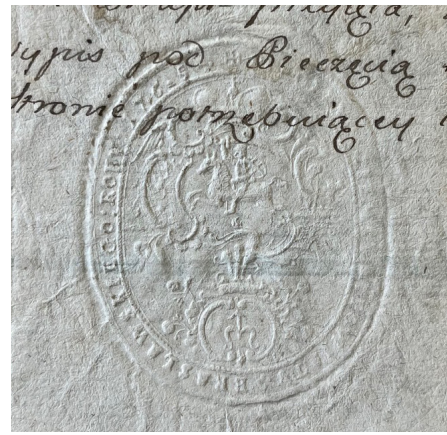

Fig. 5. Land court seal of Breslauja district from 1765. Source: VUB RS, f.67-3118.

3. The heraldry on the seals

3.1 Seals with one or more coats of arms

From the perspective of visual heraldry, land court institutional seals can be classified into two groups:

1. Seals containing just the state coat of arms. Period from 1565 to 1764. For example, the institutional land court seal of Ašmena district from 1565 (with the Lithuanian coat of arms). (*fig. 4*).
2. Seals containing the state coat of arms, below which the coat of arms of the district scribe is located. Period from 1764 to 1792. For example, the institutional land court seal of Breslauja district from 1765 (with the Lithuanian coat of arms and Breslauja district scribe's coat of arms) (*fig. 5*).

I want to draw your attention to the fact that the heraldry of the image of the earliest institutional seals of the land court was copied from the heraldry of the ruler's small seals.[19]

From the 16th to the 18th centuries, the figures of the state coat of arms had already been established on the land court institutional seals, but their depiction was different, it depended on the qualification of stamp master.[20]

3.2 Design of the shields of the court officials

From the perspective of visual heraldry, all seals of court officials can be classified into the following 2 groups (*fig. 6*):

1. A single coat of arms.
2. More than one coat of arms or a marshalled coat of arms on a shield.

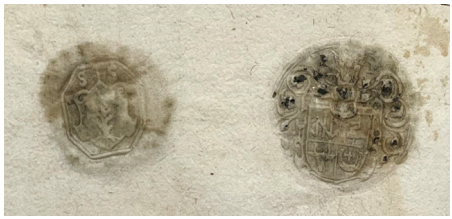

Fig. 6. Seals from 1586 of Ašmena land court officials (a seal with a single coat of arms of Stanislovas Stanislovovičius Sakovičius, the judge, and a seal with a marshalled coat of arms of Andriejus Sasinovičius Belikovičius, the deputy judge). Source: LMAVB RS, F16-77, l. 150.

Fig. 7. Seal of judge Jurgis Gruževskis 1647. Source: LMAVB RS, f. 12-4494.

Marshalled coats of arms are really important for the study of genealogical self-awareness.[21] They can reveal a lot of genealogical information about a person.

For example, in 1647, a statement from the Samogitian Land Court Book contains a seal of judge Jurgis Gruževskis, depicting the marshalled coat of arms (*fig. 7*).

The first field of the marshalled shield depicts the coat of arms called Lubisz of Jurgis Gruževskis, inherited from his father Jonas Gruževskis, which shows a horseshoe with two crosses, one inside and one above. The second field shows the coat of arms of his mother, Sofija Radziminskytė, which is the same as the coat of arms of Lubicz and shows a horseshoe with two crosses, one inside and the other on top. The third field depicts a double lily, this is the coat of arms of the Double Lily (Polish: Gozdawa). As we do not know the wife of Povilas Gruževskis, paternal grandfather of Jurgis Gruževskis, we cannot comment further at this time if it is her coat of arms. The fourth field shows the same coat of arms as the one on the tomb of Magdalena Bilevičiūtė, Jurgis Gruževskis' grandmother on the mother's side, daughter of Petras Bilevičius. In the field is a horizontally stretched rectangle with crosses at the top and on either side. The legend of the seal in Latin states the judge's name in Latin and that he is a judge of the Samogitian Land Court.

The shapes of shields visible on court institutional and official's seals were governed by the traditions of depiction of shields of that period. They changed over time, but shield images from previous periods were also used in the 18th century.[22]

3.3 Helmets, coronets and crests

Court officials extensively used crests from the second half of the 16th century to the second half of the 17th century, but these became quite uncommon in the 18th century. In seals of court officials, there were usually helmets depicted above the shield.[23]

It was common for court officials to locate the crest above the heraldic helmet.

Fig. 8. The seal of V. Kulvinskis the deputy judge of the Kaunas land court from 1596. A horse in the shield and half a horse as crest. Source: LVIA, f. 716, ap. 2, b. 137, l. 101v.

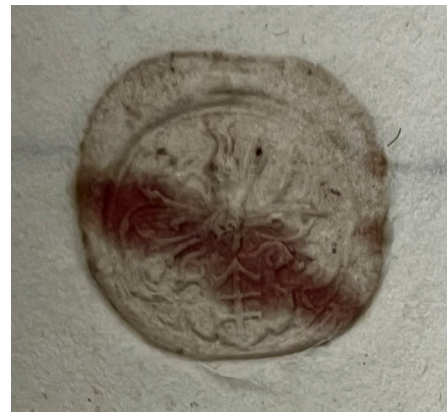

Fig. 9. Crest – a half fox. The seal from 1582 of B. F. Sapiega, the judge of Trakai land court. Source:LMAVB RS, F16-75, l. 104.

1. Very often the ornaments, both in form and appearance, repeated all or part of the figures on the shield (*fig. 8*).
2. Sometimes the crest could be beasts or people, usually the upper half of the figure (*fig. 9*).
3. Feathers were the most common crest. The favourite crest in Lithuania was ostrich feathers.[24]

Over time, heraldic helmets were replaced by crowns and caps of rank. They were increasingly used on institutional seals of courts and officials from the second half of the 17th century, but their introduction and development were different, following both the traditions of that period and the wishes of the owner of the seal. In the land court institutional seals, you can find a knight's crown over a shield, in the land court official seals you can find caps of rank over a shield.

For example, the institutional land court seal from 1765 of Vilnius district with a knight's crown[25] and the seal from 1751 of J. Radziminskis, the judge of Ašmena land court, with the cap of rank.[26]

3.4 Supporters, mantles and other attributes

The use of supporters and mantles was not common on land court institutional seals and court official seals. They were introduced quite late (*fig. 10*).

Supporters start to appear from the first half of the 18th century, and mantles are found from the second half of the 18th century. For example, there is a mantle in the seal from 1783 of Vilnius land court (*fig. 11*),[27] but in seals of land court officials you can find acanthus leaves.[28]

The visual structure and decorations show that floral motifs and military attributes were introduced in the second half of the 17th cen-

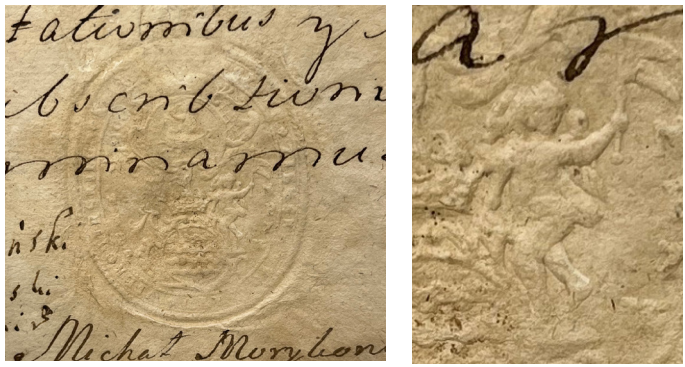

Fig. 10. Institutional seal of Upytė land court from 1767. Source: LVIA, f. 79, ap. 1, b. 206, l. 127.

Fig. 11. Mantle in 1783 seal of Vilnius land court. Source: VUB RS, f. 5-f. 90-26637

tury. For example, the institutional seal from 1776 of Vilnius land court with floral motifs[29] and the institutional seal from 1688 of Vilnius land court with military attributes.[30]

3.5 Legends and dates

The legends of institutional court seals were not the same from the 16th century to the 18th century. Renaissance lettering (humanistic majuscule) appeared on the legends, most of which were written in Polish, sometimes very rare Latin inclusions can be found.

The seals of land court officials were classified as private or official, depending on their inscription:

1. Private seals had two letters (denoting the first name and the last name of the court official) or three letters (denoting the first name, paternal name and last name of the court official) above the coat of arms. For example, a seal from 1586 of Ašmena land court and the judge Stanislovo Stanislavovičiaus Sakovičiaus. S – letter of Name Stanislovas, S – letter of Surname, Sakovičius.[31]
2. Official seals had two or three letters, same as in private seals, with one additional Latin inscription of a Polish capital letter on the left and right side of the coat of arms. These letters denoted the abbreviated position of the official and

the district where this position was held. For example, the seal from 1631 of P. Tiškevičius, the judge of Trakai land court. P – letter of Name Pavel, T – letter of Surname, Tiškevičius. P means "podsędek" in Polish, which is "deputy judge" in English, T – the initial letter of city of Trakai.[32]

Official seals are further classified into two subgroups: legend only, or legend and initials. It means there can be seals bearing just a legend, e.g., the seal from 1731 of J. K. Bialozoras, the judge of Ukmergė land court,[33] or those bearing both legend and initial, e.g. the seal from 1720 of M. S. Naramowskis, the judge of Ašmena land court.[34]

Dates were introduced on court seals in the second half of the 16th century and remained until the end of the 18th century. They were commonly placed at the end of the legend, less commonly on the visual area. For example, a seal from 1748 of Vilnius land court with the date in the legend: year 1748, month August and day 20th.[35] Most of the dates on institutional court seals indicated when the stamp was produced, while on the seals of land court officials they could specify when the official started working at the court, the date of manufacture, or when the stamp had been renewed.

3.6 Size of the seals

Institutional land court seals tended to increase in size, almost doubling in size from the second half of the 16th to the 18th century. Land court seals increased from small round shapes under 30 mm in the second half of the 16th century to 72 mm in the second half of the 18th century. The size of seals used by land court officials also tended to almost double from the second half of the 16th to the 18th century.[36]

The earliest institutional seals of land courts had a round shape, the oval shape was introduced in the second half of the 17th century and was established in the 18th century putting the round seals behind. Meanwhile the officials of land courts used multiple shapes: round, oval and octagonal seals from the second half of the 16th century to the 17th centuries, round and oval seals in the 18th century.[37]

4. Conclusions

In conclusion, this paper aims to confirm that sphragistics, being one of the auxiliary historical sciences, can reveal great amounts of important material not only about the seals themselves, but also about the courts. Specifically, sealed documents served as tools of trade of these institutions. This research also analyses the ways reformation of law worked in reality as well as issues related to the other auxiliary historical sciences, such as heraldry, and to an extent genealogy. The seals are a really interesting material from pre-modern times to any historian who knows how to make them speak.

Notes

1 G. A. Seyler, Geschichte der Siegel, Leipzig, 1894, p. 1 etc., 52–55; Th. Ilgen, Sphragistik, pp. 49–57; W. Ewald, Siegelkunde, München und Berlin, 1914, pp. 27–51; M. Gumowski, M. Haisig, S. Mikucki, Sfragistyka, Wars-

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2 A. Stieldorf, Siegelkunde, pp. 54–55.

3 J. Sipavičiūtė, Antspaudas Lietuvos Didžiosios Kunigaikštystės teismų sistemoje XVI–XVIII a. PhD dissertation, University of Vilnius. This article presents a summary of information from a doctoral dissertation and updated with new sources.

4 Law codification in Europe in XVI c. H. Lück, The Codification of Law in Europe during the 16th Century – Conceptions, Results, Effects // Lietuvos Statutas: Temidės ir Klėjos teritorijos. Straipsnių rinkinys, sudarė I. Valikonytė ir N. Šlimienė, Vilnius, 2017, pp. 17–32.

5 Pirmasis Lietuvos statutas, t. 2. d. 1. Tekstai senąja baltarusių, lotynų ir senąja lenkų kalbomis, Vilnius, 1991; Statut Litewski drugiej redakcyi (1566) // Pomniki prawa Litewskiego z XVI wieku (Archiwum komisyi prawniczej, t. 7) / Wyd. F. Piekosiński, Kraków, 1900; I. Lappo, 1588 m. Lietuvos Statutas. T. II. Tekstas. Kaunas, 1938.

6 J. Sipavičiūtė, Antspaudas Lietuvos Didžiosios Kunigaikštystės teismų sistemoje XVI–XVIII a. PhD dissertation, University of Vilnius, pp. 60–61 etc.

7 E. Rimša, Heraldry. Past to Present, Vilnius, 2015, pp. 142–162.

8 R. Kondratas ir V. Kubeckaitė, Vilniaus universiteto simboliai: herbas, akademinės regalijos ir tradicinės ceremonijos, 2018, Vilnius.

9 E. Rimša, Lietuvos Didžiosios Kunigaikštystės miestų antspaudai, Vilnius, 1999; E. Rimša, Pieczęcie miast Wielkiego Księstwa Litewskiego, Warszawa, 2007.

10 The administrative reforms of 1564 to 1566 had divided the entire territory of the Grand Duchy of Lithuania into voivodeships and districts, thus introducing new territorial units, or more precisely, 12 voivodeships and the Samogitian Elderate that was later referred to as the Duchy. In 1566 to 1569, the Grand Duchy of Lithuania had 13 voivodeships and 30 districts, while from 1569 to the end of the 18th century only nine voivodeships and 22 districts remained. The Palenkė (Podlasie), Voluinė (Volhynia), Kijevas (Kiev), Podolė (Podole) and Braclavas (Bratstaw) voivodeships came under Polish rule following the Union of Lublin. This administrative division remained in the Grand Duchy of Lithuania until the end of the 18th century. It is not possible to examine the entire court system of the Grand Duchy of Lithuania as it would be physically impossible to collect a sufficient amount of court seals. Therefore, not the entire court system but just a part of it was analysed from both the institutional (seals used in the land court) and the geographical (Vilnius and Trakai voivodeships and their nine districts) aspects. The selection of these two voivodeships for full-scale research was determined by the higher availability of materials kept in Lithuanian archives and manuscript departments in libraries. Vilnius voivodeship, which included the capital city, had five districts: Vilnius, Ašmena, Lyda, Vilkmergė (present-day Ukmergė), and Breslauja. Trakai, Gardinas, Kaunas, and Upytė districts were part of the Trakai voivodeship. Incidentally, document samples from other districts of the Grand Duchy of Lithuania not included in the scope of this research were used to show that the development of seals in those districts was similar to that of seals used in Vilnius and Trakai voivodeships.

11 И. Лаппо, Земский суд в Великом Княжестве Литовском в конце XVI века // Журнал Министерства Народного Просвещения. (toliau – ЖМНП), 1897, No. 6, pp. 263–301; М. Любавский, Литовско-русский сейм, Москва 1900, p. 719 etc.; И. Лаппо, Великое Княжество Литовское за время от заключения Люблинской Унии до смерти Стефана Батория (1569–1586), ч. 1. С.-

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The Law against Arms: Obliteration of Seals, Emblems, and Coats of Arms by King Fernando VII, King of Spain (1808–1833)

By Professor Agregat Dr. Gerard Marí Brull[1]

Abstract: The destruction of heraldic emblems is evidence of historical struggles against some mentality, social order, political structure, or ideology and their symbols and emblems, especially violent in the most revolutionary episodes and intending to erase all traces of the political regime they want to destroy.

This destruction does not usually leave documentary traces of its legal justification. My purpose is to investigate the legal texts that led to the total or partial elimination of those heraldic emblems related to the political structure of the monarchy of Ferdinand VII, King of Spain (1808–1833), in a period as complex as the Napoleonic Wars (and the coronation of Joseph Bonaparte as King in 1808), his first restoration in 1814, the constitutional period known as the Trienio Liberal between 1820 and 1823, and the second restoration of his power as absolute monarch in 1823, as a result of the expedition of the so-called Hundred Thousand Sons of Saint-Louis. It has been 15 years of interesting heraldic innovations and repeated returns to traditional designs, depending on the political faction in power.

These legal texts come from King Ferdinand VII himself and his Royal Council (or from certain institutions that ruled the country in episodes of royal weakness: Government of the Regency, Provisional Government Board of Spain and the Indies, Supreme Governing Board), or his Ministries: Interior, Grace and Justice, Finance, War… I'm intended also to verify the actual application of those royal decrees, that is, check if those instructions to destroy certain emblems were really followed.

Résumé : La destruction des emblèmes héraldiques est la preuve de luttes historiques contre une certaine mentalité, ordre social, structure politique ou idéologie et leurs symboles et emblèmes, particulièrement violentes lors des épisodes les plus révolutionnaires et visant à effacer toute trace du régime politique qu'ils veulent détruire.

Cette destruction ne laisse généralement pas de traces documentaires de sa justification légale. Mon objectif est d'enquêter sur les textes juridiques qui ont conduit à l'élimination totale ou partielle de ces emblèmes héraldiques liés à la structure politique de la monarchie de Ferdinand VII, roi d'Espagne (1808–1833), durant une période aussi complexe que les guerres napoléoniennes (et le couronnement de Joseph Bonaparte comme roi en 1808), sa première restauration en 1814, la période constitutionnelle connue sous le nom de Trienio Liberal entre 1820 et 1823, et la deuxième restauration de son pouvoir en tant que monarque absolu en 1823, suite à l'expédition des Cent Mille Fils de Saint-Louis. Ce furent quinze années d'innovations héraldiques intéressantes et de retours répétés aux motifs traditionnels, en fonction de la faction politique au pouvoir.

Ces textes juridiques proviennent du roi Ferdinand VII lui-même et de son Conseil royal (ou de certaines institutions qui ont gouverné le pays lors des épisodes de faiblesse royale: le Gouvernement de la Régence, la Junte Provisoire de Gouvernement d'Espagne et des Indes, la Junte Suprême de Gouvernement), ou de ses ministères: Intérieur, Grâce et Justice, Finances, Guerre… Je vise également à vérifier l'application effective de ces décrets royaux, c'est-à-dire à vérifier si ces instructions de destruction de certains emblèmes ont réellement été suivies.

1. Introduction1

Heraldry has been and continues to be interested in studying the processes that create, protect, or regulate the use of coats of arms. However, the destruction of heraldic emblems is also extremely interesting, as evidence of historical struggles against certain mentalities, social orders, political structures, or ideologies. These struggles among certain human groups also involve a battle against their symbols and emblems, aimed at erasing all traces of the political regime they want to change. These destructive acts are particularly intense during the most revolutionary episodes and provide us with insights into political changes.[2]

The destruction of heraldic emblems does not always leave a clear documentary trail of its legal justification. The aim of this work is to find the legal texts that led to the total or partial removal of those heraldic emblems associated with the policies of Fernando VII, King of Spain (1808–1833).

These legal texts were created by King Fernando VII himself and his Royal Council, or from specific institutions that governed the country during episodes of royal weakness: The government of the Regency, Provisional Government Board of Spain and the Indies, Supreme Governing Board, or even his Ministries: Interior, Grace and Justice, Finance, War… The documentary typology was called by different names, common at that time: *Reales Decretos*, *Reales* Órdenes, *Reales Cédulas*, *Circulares*, etc.

The goal is not only to identify the legal texts but also to verify the actual implementation of those royal decrees, specifically whether the instructions for the destruction or cancellation of certain emblems were followed and how the process of cancellation, suppression, or mutilation was carried out.

2. The Sealed Paper as a source

The source used is the Sealed Paper in notarial books.[3] This is an official paper (as a royal monopoly created by the Courts of Castile in 1632 and enforced by the Royal Pragmatic in 1636), which bears an imprint of the king's coat of arms and an inscription detailing the price, category, and year. Originally, it was applied in the territories of the Crown of Castile, with exceptions for the Crown of Aragon, the Kingdom of Portugal, the Kingdom of Navarre, and the Basque Provinces.

It is a highly dynamic system: it is valid only for the year in which it was printed, and new paper must be printed for the following year. However, in cases of scarcity, paper from previous years can be reused through

an authorization system called "habilitación", which involves printing a note that grants it new legal value. For example, paper from 1813 with the note "Valga para el año de mil ochocientos catorce"[4] would still be usable. Furthermore, in the event of sudden and unexpected political changes, it can also be validated with a similar note. For example, on the paper from the reign of Carlos IV in 1808, a note is added: "VALGA PARA EL REYNADO DEL SEÑOR DON FERNANDO VII",[5] which was a result of his abdication in favour of his son Ferdinand VII. An additional note is added when Ferdinand VII renounces the throne (as a consequence of the abdications of Bayonne) and authority is transferred to the representative of the new dynasty, the Grand Duke of Berg, Marshal Joachim Murat, as the Lieutenant General: "VALGA POR EL GOBIERNO DEL LUGAR-TENIENTE GENERAL DEL REYNO".[6]

This system was useful for highlighting the power and its changes, serving as evidence of the authority of the state or the reigning dynasty.[7] Today, it is valuable for historical research, providing insights into the historical context and transitions of power.

3. The Reign of Ferdinand VII

The reign of Fernando VII lasted 25 years, which can be divided into four periods:

1. The Peninsular War (1808–1814).
2. His first Restoration and the absolute rule that lasted for 6 years, known as the "Sexenio absolutista" (1814–1820).
3. The constitutional period, known as the "Trienio Liberal" (1820–1823).
4. His second Restoration as an absolute monarch in 1823; it was facilitated by the French army known as the *Hundred Thousand Sons of Saint Louis*, a period known as the "Década Ominosa" (1823–1833).

During Fernando VII's 25-year reign (1808–1833), a wide range of significant political events took place:

1. A plot, known as the "El Escorial Conspiracy" in 1807 and a "popular" mutiny, the "Aranjuez Mutiny" in 1808, against his father.
2. Some abdications, often referred to as the "Abdications of Bayonne" in 1808.
3. Two invasions by the French army, with opposing intentions: the Napoleonic invasion in 1807–1808 and the absolutist invasion in 1823.
4. A civil and international war, the "Peninsular War" from 1808 to 1814.
5. Two liberal revolutions, the "Cortes of Cádiz" from 1810 to 1814 and the "Trienio Liberal" from 1820 to 1823.
6. Various revolts or military *pronunciamientos*, the most decisive being that of Rafael de Riego in 1820.
7. Two restorations that led to two periods of absolutist government in 1814 and 1823.

Almost every one of these historical events left a mark on the state emblem; it was 25 years of interesting heraldic innovations and repeated returns to traditional designs, depending on the political faction in power.

4. Period 1: Dynastic change and Peninsular War, 1808–1814

The year 1808 was extraordinarily complex because there were several changes in heads of state (up to five), and almost all of them left a trace on the Sealed Paper.

a) Charles IV and Ferdinand VII:

That year began with Carlos IV continuing his reign, but as a result of the Aranjuez Mutiny on March 19, he abdicated in favor of his son, Fernando VII. At that time, on his original Sealed Paper (*fig. 1a*),[8] bearing his coat of arms and name, an additional note was printed: "VALGA PARA EL REYNADO DEL SEÑOR DON FERNANDO VII" (*fig. 1b*).[9] Starting from the beginning of the war in 1808, his seal was used in all regions not under the control of the French army, either temporarily or permanently.

b) Lugarteniente General del Reyno:

After the abdications in Bayonne and the resignations of Fernando VII and Carlos IV in favor of Napoleon (on May 5 and 6), the emperor appointed the Grand Duke of Berg, Marshal Joachim Murat, as the head of the government to facilitate an orderly transition of power. At this time, they added the printed note: "VALGA POR EL GOBIERNO DEL LUGARTENIENTE GENERAL DEL REYNO" (*fig. 1c*).[10]

c) Joseph I:

Joseph Napoleon was declared King of Spain by his brother on June 6, 1808. In January 1809, the first Sealed Paper with his new coat of arms and the legend "JOSE NAPOLEON I. POR LA GRACIA DE DIOS REY DE ESPAÑA Y DE LAS INDIAS" was issued (*fig. 1d*).[11]

The legal origin of this coat of arms can be traced to the Royal Decree of February 10, 1809, which was printed in the Gazeta de Madrid the following day.[12] In this Decree, it is ordered: *The arms of the crown from now on will consist of a shield divided into six quarters: the first of which will be that of Castille; the second, that of León; the third, that of Aragon; the fourth, that of Navarra; the fifth that of Granada and the sixth that of the Indies, represented according to the ancient custom by the two globes and the two columns; and in the centre of all these quarters will be surmounted by scutcheon the Eagle that distinguishes our Imperial and Royal family.*

d) Napoleon and specific governments:

Since the 14th century, there have been intentions to assimilate Catalan territory into the Kingdom of France, especially the counties of Roussillon and Cerdanya, either temporarily (as in the years 1462 to 1493) or permanently (the absorption of Roussillon and part of Cerdanya as a result of the Treaty of the Pyrenees in 1659). There were proposals for annexation south of the Pyrenees also after the French Revolution, with reports and debates in the Committee of Public Safety (1793–1795). The proposals were to annex the territory to France (General Jacques François Dugommier) or create a small independent republic (member of the Committee Georges Couthon).[13]

In letters from Godoy to Carlos IV on

Fig. 1.

December 2, 1804, shortly before the Treaty of Fontainebleau (which fragmented and divided Portugal), Napoleon's desire to extend the borders of the French Empire to the Ebro River was expressed: *Leur but est connu: l'Ebre, l'Ebre. Tel est l'objet de leur ambition.*[14] The implementation of these projects led to the establishment of private governments in

the Ebro riverfront territories from 1810 onwards.

Therefore, even though the emperor directly participated in the Peninsular War in late 1808, his own imprint on the Sealed Paper only developed between 1810 and 1814 as a result of those separate governments outside of his brother Joseph's control.

This happened in Catalonia, where the emperor created the first private government by decree on February 8, 1810,[15] and where his emblematic representation on the Sealed Paper was richer. His first emblem from 1810 is marshalling the Napoleonic eagle with the four gules pales (or palets), as well as a second dry seal with the Napoleonic coat of arms (an eagle displayed with wings inverted, the head to the right (and not to the left), standing upon a thunderbolt or), always bearing the legend "GOVERN DE CATALUNYA" (*fig. 1e*).[16] However, in 1813, a new seal was created, without a legend, featuring a vegetal crown surrounded by the Collar of the Golden Fleece, accompanied by a dry seal with the Napoleonic eagle correctly facing to the left and the legend "GOUVERNEMENT GENERAL DE LA CATALOGNE" (*fig. 1f*).[17]

In Aragón, a similar form of specific government was established. Two years after the French army captured Zaragoza in February 1809 (when they began using Joseph I's Sealed Paper), Napoleon created a government under his control between 1811 and 1813. During this time, he introduced his own Sealed Paper with the Napoleonic eagle and the printed note *Gobierno de Aragón* (*fig. 1g*).[18]

Something similar to what happened in Aragon also happened in Valencia following the occupation of the city by the French army on January 9, 1812. They used the Sealed Paper with the seal of Joseph I: "JOSE NAPOLEON I. POR LA GRACIA DE DIOS REY DE LAS ESPAÑAS Y DE LAS INDIAS", but they added the inscription "EXERº DE ARAG." (Army of Aragon) near the coat of arms (*fig. 1h*).[19] Valencia was conquered by General Suchet, commander of the Army and the French military government in Aragon. Therefore, even though Valencia officially fell under the government of Joseph I, it was, in fact, closely connected to General Suchet.

Navarre and the Basque Country were also somewhat segregated from the government of Joseph I, but there was no Sealed Paper used for them because they were exempt from the beginning.[20]

e) Cortes de Cádiz:

Another institution of this period that had its own Sealed Paper was the Cortes of Cádiz, convened in 1809 by the Junta Suprema Central and gathered on September 24, 1810 (and dissolved in 1814). They developed their own policies and their own concept of monarchy. In 1812, the deputies voted and approved the liberal Constitution, and marked the Sealed Paper with a constitutional legend starting the following year: "FERDINANDUS VII. DEI GRATIA ET CONSTITUTIONE MONARCHIE HISPANIARUM REX" (*fig. 1i*).[21]

The resolutions of the Cortes also stipulated what to do with the Sealed Paper of their opponent, King Joseph I, to whom they denied all validity or the possibility of being authorized, demanding its destruction. A provision from the Ministry of Finance, dated in Cádiz on September 16, 1812, pub-

lished the Cortes' agreement that throughout the entire kingdom (*en todos los puntos de la monarquía*), only the Sealed Paper printed in Cádiz (meaning the one that bore the annotation of the Constitutional Monarchy in its seal) should be used. Under no circumstances should the Sealed Paper of the intrusive government be authorized, and any found should be burned.[22]

f) Juntas y Consejo de Regencia de España e Indias:

At the end of May, Juntas were organized, specifically Boards created upon learning about the abdications in Bayonne following the publication in the Gazeta de Madrid on May 20.[23] In several cities and regions, especially in provincial capitals (Asturias, Valencia, Galicia, Seville...), these institutions were established as legitimate governing bodies with the capacity to prevent the absence of power and disorder. The primary purpose of the Juntas was to break away from the Government of Madrid and the central Spanish institutions that accepted that situation. On September 25, a *Junta Central Suprema Gubernativa del Reino*[24] was created, which was meant to centralize all the Juntas, until January 31, 1810, when it was dissolved and replaced by the *Consejo de Regencia de España e Indias* until the establishment of the Regencia del Reino on January 20, 1812.

From the creation of the Juntas and their supplantation or representation of the highest authority of the head of state (Joseph Bonaparte, Ferdinand VII, Napoleon I, or territorial governments), the diversity of Seals and *habilitaciones* became even more complicated, and it has not been well studied. The heraldic emblems on the Sealed Paper of the *Juntas* often vary greatly. For example, the two oval coats of arms that represent "FERNANDO VII. REY DE ESPAÑA E INDIAS. CONDE DE BARCELONA" (*fig. 1j*)[25] or the Suprema Junta de Gobierno del Principado de Cataluña (*fig. 1k*).[26]

The Regency Council also appears on the Sealed Paper as an *habilitación*. This is what is documented in the notary books of Vicente Boix, a notary of San Juan and Benimagrell, north of Alicante. In these books, we can see the Sealed Paper of Ferdinand VII from the year 1811, validated with the note *"Valga para el año de mil ochocientos y doce",* and also an interesting second validation: *"Habilitado en virtud de orden del Consejo de Regencia",* which includes the seal of the JUNTA SUPERIOR DE GOBIERNO DEL REINO DE VALENCIA, dated March 1812 (*fig. 1l*).[27]

The Sealed Paper from Juntas and Consejo de Regencia has not been sufficiently studied, but there are examples in some editions of images.[28]

All this diversity of powers, Sealed Papers, Seals, and Shields was completely nullified with the restoration of Fernando VII in 1814 as an absolute monarch, through the Royal Decree of 1815.

5. Period 2: Restoration and Six Years absolutism, 1814–1820

The Russian campaign of 1812, the War of the Sixth Coalition (started in 1813) and the Battle of Leipzig in October 1813 were setbacks for Napoleon that led to the end of the Peninsular War. On December 11, 1813, Na-

poleon and Ferdinand VII signed the Treaty of Valençay, in which the Emperor committed to restoring freedom and the kingdom to Ferdinand VII and withdrawing French troops. In return, Ferdinand VII guaranteed peace with France and his neutrality in the European military situation. The treaty also included amnesty for supporters of Joseph I (the so-called *afrancesados*) and the withdrawal of the British army from the Kingdom.

Ferdinand VII left Valençay on March 14, passing through Toulouse and Perpignan; on the 24th, he crossed the border and entered Figueres. His route took him through Zaragoza and Valencia, with a deliberate delay in entering Madrid. A few days later, significant events unfolded in France: Paris was occupied by the forces of the Sixth Coalition on March 31, 1814, and on April 4, Napoleon abdicated.

Indeed, Ferdinand VII was free from any commitment to Napoleon, and he quickly revealed his true political intentions. In Valencia, he received the so-called *"Manifiesto de los Persas"*, dated April 12, 1814, and signed by 69 absolutist deputies, in which they requested the annulment of all laws passed by the Cortes of Cádiz. Consequently, on May 4, 1814, Ferdinand VII issued a decree nullifying the Cortes of Cádiz and all their legislative work, especially the Constitution of Cádiz. From that moment on, his repressive activities unfolded without limitations, affecting laws, institutions, and individuals.

He erased the work of both the French governments and *las llamadas Cortes generales y extraordinarias Cortes*. He annulled decrees related to ecclesiastical contributions, extinguished constitutional councils, ordered the return of confiscated properties, and reinstated institutions from the Old Regime as they were in 1808 and even earlier: Consejo Real, Consejo de Guerra, Consejo de la Inquisición, Ministerio Universal de Indias y Supremo Consejo de Indias, Consejo de Hacienda, Consejo de las Órdenes Militares, Sala de Alcaldes de la Casa y Corte, Concejo de la Mesta, Rentas Provinciales y Estancadas, Señoríos jurisdiccionales… in such a way that it was not just a return to the previous situation but rather a strengthening of the king's power, a concentration of his power, taking advantage of his popularity and the weakness of the army, the church, and the nobility.[29]

Real Cédula, February 19, 1815:

Regarding documentation and Sealed Paper, the Royal Decree of February 19, 1815,[30] regulated the validity of civil and criminal proceedings and judgments from the years 1808 and 1814 in the courts and determined what to do with documents bearing Sealed Paper from the government of Joseph I or private French administrations.

Thus, doubting the validity of pending proceedings and those already adjudicated in the courts of justice during the time of the French governments (a consequence of Bonaparte's perfidious invasion, who abolished the old Councils and Courts of Justice and established new ones), and recognizing that it is necessary to eliminate any trace of acts of sovereignty carried out in his name; taking into account the unfortunate residents of the cities occupied by the enemy who had no choice but to resort to such courts, despite the Royal Council's decree of August 11, 1808,

which declared null and void the acts and decrees signed in France, those granted by Napoleon and his brother Joseph, the Constitution drafted in Bayonne, and everything carried out by the intrusive government; considering the confusion that would arise if all of this were annulled, requiring new litigation in the Courts of Justice, incurring new expenses, and, in many cases, being impossible due to the death of individuals or the destruction of records; for all these reasons, this decree establishes:

1. Pending lawsuits must continue from the point at which they currently are.
2. Final judgments are valid.
3. A new extraordinary appeal is granted within four months for lawsuits that have not been appealed.
4. Second appeal and manifest injustice appeals remain valid.
5. Complaints of perversion of justice, bribery, lack of freedom, defencelessness, or the seduction of judges or witnesses, by which trials can be annulled, remain valid.
6. Acts and judgments against people who left their homes to flee to free territory are annulled (unless they have left a lawyer).
7. Criminal cases against individuals labelled as criminals due to their loyalty to Fernando VII are without merit, and the confiscated assets must be returned to them or their heirs.
8. Criminal cases for common crimes shall follow the provisions outlined in points 1, 2, 3, and 5.
9. This point regulates the validity of documentation through the cancellation of seals: *To remove the odiousness associated with everything done by the intrusive government or under its domination in legal proceedings, lawsuits, and public instruments that are considered to be subsisting, a note shall be added stating that they are validated by me, and the seal of the intruder shall be crossed out and erased, without which circumstances they shall have no value.* This repression is not only directed at those involved in French governments but also against all individuals or institutions associated with liberal ideas.
10. Cases transferred from ecclesiastical courts to secular courts must be returned to their original tribunal.
11. The same should be done with cases transferred from military courts.

The consequences of this decree are reflected in the cancellation of seals and Coats of Arms on the Sealed Paper, with varying intensity depending on the region and depending on the notary.

In the case of Barcelona, there are notaries who diligently cancel the seals of the Government of Catalonia before submitting them for inspection. This is the case with Antoni Ubach i Claris, who not only cancels the seals (*fig. 2a–b*)[31] but also any notation that in any way may refer to the Govern: written authorizations from government authorities, entries in official records, references to settlements and fee payments, and even the French page numbering of each document (*première page, deuxième page…*),[32] expressing in writing his meticulous obedience

Fig. 2.

to the royal decree. "*En cumplimiento de la Real Cédula de 19 febrero 1815 borré todo lo del intruso govierno. Antonio Ubach y Claris (rúbrica)*".[33] Constitutional seals were also cancelled, as is the case with Ramon Barberí Lledó, who crossed out the paper with much less intensity (*fig. 2c*).[34] The difference is that Ubach stayed in Barcelona during the *Govern de Catalunya*, disregarding Ferdinand VII's order to leave the territory under French authorities, whereas Barberí was obedient and practiced in various towns (Barcelona, Tarragona, Manresa, Reus, Barcelona), always evading Napoleonic control.

Something similar happened in Aragón with the seals of Napoleon's government and the constitutional seals: notary Joaquín Vicente Almerge only cancelled some from the years 1813 and 1814 (*fig. 2d–e*),[35] without concerning himself with those from the earlier period of Joseph I and Napoleon himself.

A very similar case of low-intensity cancellation can be observed in Madrid: notary Antonio López de Salazar only cancelled the last documents in the year 1814 (*fig. 2f*).[36] The same pattern can be seen in Cádiz, with notary Luis Barrera de los Heros, where only the constitutionalist seals are cancelled after May 20 (*fig. 2g*).[37]

During this six-year period of heraldic

and personal repression, several military attempts were made to compel the Monarchy to accept the Liberal Regime. Five military revolts, known as *pronunciamientos*, failed: Espoz y Mina in Navarra in September 1814, Juan Díaz Porlier in La Coruña in September 1815, Vicente Richart's attempt in Madrid in February 1816, Luis Lacy in Barcelona in April 1817, and Joaquín Vidal in Valencia in 1819. Only the pronouncement by Rafael de Riego in Cabezas de San Juan (Seville) in January 1820 would be successful and force King Ferdinand VII to swear allegiance to the Constitution of 1812.

6. Period 3: Three Liberal Years, 1820–1823

On January 1, 1820, Lieutenant Colonel Rafael de Riego uprose in Cabezas de San Juan (Seville) with the army ready that was supposed to be sent to the Spanish colonies in America.[38] Although the uprising initially failed and Riego's troops spent two months moving through Andalusia, over time, new military and civilian rebellions joined the cause (La Coruña, Murcia, Oviedo, Toledo, Zaragoza, Tarragona, Segovia, Barcelona, Pamplona...). Faced with this situation, on March 7, King Ferdinand VII expressed his willingness to accept the Constitution of 1812, and on March 9, he took an oath in the Throne Room of the Royal Palace. This oath had a significant impact on the course of events. This oath left its mark on the *Papel Sellado*, indicating his commitment to the Constitution.

In the Gazeta de Madrid of March 25, 1820,[39] the royal decree of March 22 is published, which concerns the new Stamped Paper that must be created to update it in relation to the new political context:

In order to standardize all paper in the Peninsula and Overseas territories in the same manner since the Constitution was approved, and to avoid rendering the existing paper in circulation for this year and the following years unusable, it is approved:

a. First: all the paper that is stamped in the National Factory henceforth must bear, on both the printed seal and the stamp, the motto: *Ferdinandus Septimus Dei gratiae et Constitutione Monarchiae Hispaniarum Rex*.
b. Second: on the already sealed paper existing in the Factory ... the following authorization has to be stamped immediately in a single line: *authorized, sworn by the King to the Constitution on March 9, 1820.*
c. Third: that in the Factory and offices equipped with a printing press, it should be printed... and in places without one, it should be written, in a single line, initialled at the end by the secretary of the Constitutional City Council.
d. Fourth: that the small amount of sealed paper already produced at the Factory for the year 1821, be rendered useless.

As we can see, during the year 1820 they wrote or printed the validation *Habilitado, jurada por el Rey la Constitución en 9 de marzo de 1820* (*fig. 3a*).[40] In the following two years (1821 and 1822) an addiction related to the Constitution was added to the Seal: "FERDINANDUS VII. DEI GRATIA ET CONSTITUTIONE MONARCHIE HISPANIARUM REX" (*fig. 3b–c*) and the same was done in the Dry Seal.[41]

Fig. 3.

The last year of the Trienio, 1823, is indeed the most interesting regarding the changes: the legend on the seal is written in Spanish and in Arabic numerals: "FERNANDO 7º POR LA GRACIA DE DIOS Y LA CONSTITUCIÓN REY DE LAS ESPAÑAS". Another notable innovation is found in the dry seal. It transitions from the image of the king dressed as a Captain-General, with the Order of the Golden Fleece and the Cross of Charles III, to a bare bust of a person with a more realistic and older representation than the previous seals (*fig. 3d*).[42]

As we can see, the evolution during this period is entirely uniform when compared to the great diversity of Stamped Paper during the Peninsular War. There is only one exception of very limited scope: between August and December 1822, supporters of Ferdinand VII's absolutism established an ephemeral Regency in La Seu d'Urgell, located in the northern part of Catalonia. This was known as the Regency of Urgell. It was a kind of extremely small absolutist state that created its own seal for Stamped Paper, featuring the large coat of arms of Charles III surrounded by the Order of the Golden Fleece. There are only examples of this seal from September to November of that year. The

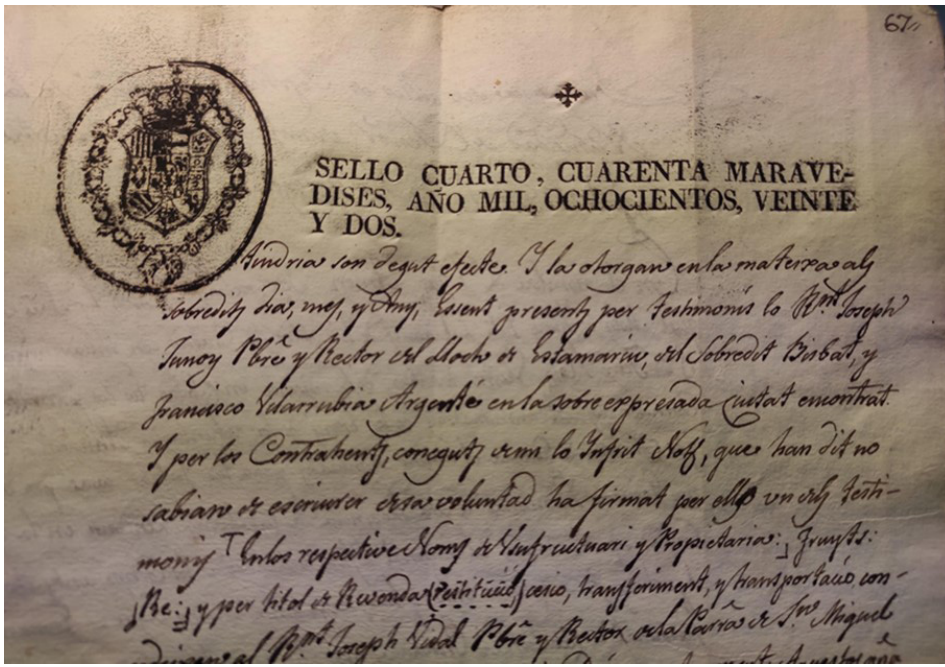

Fig. 4.

seal does not bear a legend and is accompanied by the caption "SELLO CUARTO, CUARENTA MARAVEDISES AÑO MIL, OCHOCIENTOS, VEINTE Y DOS" (*fig. 4*).[43]

7. Period 4: Second Restoration and Ominous Decade, 1824

The Liberal Triennium came to an end with the intervention of a French army known as the *Hundred Thousand Sons of Saint Louis*, mobilized by the Bourbon King of France, Louis XVIII, and led by the Duke of Angoulême, which invaded the Peninsula in April 1823, entered Madrid on May 23, 1823 (and appointed a Regency Council), and continued southwards to Cadiz, where the liberal government held Ferdinand VII as a hostage. On September 30, the king was liberated, and the next day, he joined the French army. On that very day, he decreed the abolition of all the legal norms that had been enacted during the previous three years. Thus, Ferdinand VII was restored as an absolute monarch.

The repression of Stamped Paper during the Triennium was carried out through a decree issued by the Regency, which was published in the Gazeta de Madrid in June 1823, only a couple of weeks after the Duke of Angoulême entered Madrid and established the Regency (*fig. 5*).[44]

La Regencia del reino se ha servido resolver que los intendentes dispongan que inmediatamente se recoja todo el papel sellado que hubiese existente en sus respectivas provincias, procedente del Gobierno revolucionario, y manden se tilden las palabras *y de la Constitucion*, que se hallan dentro del sello, y que á continuacion se imprima la nota siguiente: *téngase por no válido lo tachado*: que para evitar la venta fraudulenta y la suplantacion del expresado papel se estampe al pie de dicha nota la rúbrica del respectivo intendente, á cuyo efecto se les autoriza á fin de que puedan usar de estampilla para solo este caso: que en las provincias que ya estuviese habilitado el papel sellado, aunque en diversa forma y con nota diferente, corra y continúe con la que se haya puesto, estampándose siempre la rúbrica del intendente, y tildándose precisamente las palabras ya expresadas *y de la Constitucion*, por no deber subsistir, como depresivas de la soberanía del Rey nuestro Señor y de sus imprescriptibles derechos: que se prohiba absolutamente el uso del papel sellado sin estar rehabilitado; y que los intendentes cuiden de asegurar por todos los medios posibles la cuenta y razon del papel distribuido, para evitar todo fraude y perjuicio al Real Erario. De orden de S. A. lo comunico á V. S. para su mas puntual cumplimiento en la parte que le toca; dando aviso desde luego del recibo de esta. Dios guarde á V. S. muchos años. Madrid 11 de Junio de 1823.=Juan de Erro.

Fig. 5.

Decreto de la Regencia del Reino, June 1823:

In that decree, the Regency ordered:

1. that the *Intendentes* order that all the stamped paper that was in their respective provinces coming from the revolutionary Government be immediately collected, and order the words *y de la Constitución*, which are inside the seal, to be scratched, and that the following note be printed afterward: *consider what is crossed out as invalid*.
2. that, to avoid fraudulent sales and the impersonation of the aforementioned paper, the signature of the respective Intendente be stamped with that note, for which they are authorized to use their *estampilla* for this case only.
3. that in the provinces where the stamped paper has already been enabled, although in a different form and with a different note, run and continue with the one that has been placed and precisely crossing out the words and the Constitution, for not having to subsist, as depressive of the sovereignty of the King our Lord and of his imprescriptible rights.
4. that the use of sealed paper without being rehabilitated be absolutely prohibited.
5. and that the *Intendentes* take care to ensure by all possible means the account and reason for the paper distributed, to avoid all fraud and damage to the Royal Treasury.

In accordance with this text, various methods were employed to cancel the Seal from the Liberal Triennium, and all of these methods

Fig. 6.

were permitted by the decree. This could be achieved by either crossing out the words "Y LA CONSTitución", both in the printed seal and in the dry seal (*fig. 6a*),[45] or by adding printed statements such as "Habilitado en nombre del Rey nuestro Señor, quitada la Constitución en 23 de mayo de 1823" (*fig. 6b*),[46] "Téngase por no valido lo tachado" (*fig. 6c*),[47] or "Habilitado pr el Rey N. Sr. en la plenitud de sus derechos soberanos" (*fig. 6d*).[48]

Thus began the so-called "Ominous Decade," which lasted until the death of Ferdinand VII in 1833. During this period, Stamped Paper maintained stability in its forms

Fig. 7.

and ideological message, reverting to the models used before the Liberal Triennium (*fig. 7*).[49]

Notes

1 This Paper is part of two research Projects: *Mercados y espacios económicos en el Mediterráneo Occidental: la formación de un entorno internacional de comercio europeo en el tránsito a la modernidad* ([HAR2015-65285-R MINECO/FEDER, UE)] and Globalización económica y nuevos espacios internacionales: mercados europeos y redes comerciales bajomedievales en el Mediterráneo Occidental ([PID2019-104157GB-I00/AEI/10.13039/501100011033 MICINN)]. It has been financed by Fundación "La Caixa" (ID 100010434) al proyecto *FENIX. La formación de un entorno internacional de comercio en red: los negocios de un mercader catalán en el tránsito a la modernidad ([2017ACUP0195)], in the Grup de Recerca Consolidat en Arqueologia Medieval i Postmedieval (GRAMPMed)* (Generalitat de Catalunya 2021SGR 236) and the *Instituto de Arqueología* of Universitat de Barcelona (IAUB).

2 Marí Brull, Gerard: "La cancelación de la heráldica napoleónica del Govern de Catalunya (1810–1814): el notario Antoni Ubach en 1815", *A investigação sobre heráldica e sigilografia na Península Ibérica: entre a tradição e a inovação,* Universidade de Coimbra, 2018, pp. 441–470. Marí Brull, Gerard: "Heraldic Policy in Catalonia during the Napoleonic Government (1810–1814): when Napoleon ruled over the King of Spain", 2nd Georgian National Conference of Heraldry and Vexillology, Mestia, Georgia, 2019, pp. 22–23; Marí Brull, Gerard: "Revolution(s), Restauration(s) and heraldic Policy during the Reign of Ferdinand VII (1808–1833)", *Genealogica and Heraldica XXXV: Reformation Revolution Restoration,* Cambridge, 2023, pp. 447–462. Marí Brull, Gerard: La destrucción de emblemas heráldicos por motivos ideológicos: revoluciones de los siglos XVIII–XIX en Europa y en México. Garritz, Amaya; Sanchiz, Javier (coord.): Genealogía, Heráldica y Documentación, México, UAM, 2019, pp. 283–306. https://historicas.unam.mx/publicaciones/publicadigital/libros/626/626_04_10_DestruccionEmblemas.pdf [November 2, 2023]

3 The acronym for the consulted files is: Barcelona (AHPB); Cádiz (AHPC); Cerdanya-Puigcerdà (ACCE); Lleida (AHPL); Madrid (AHPM); Valencia (RCS CC); Zaragoza (AHPZ).

4 AHPM, Antonio Lópèz de Salazar, 22881, f. 1r. Valid for the year 1814.

5 AHPM, Antonio Lópèz de Salazar, 22873, f. 394r. Valid for the reign of Ferdinand VII.

6 Ibidem. Valid for the government of the Lieutenent General of the Kingdom.

7 El carácter psicológico que le atribuye Iván Rodríguez Cortés para fijar el poder del Estado en el imaginario colectivo. Rodríguez Cortés, Iván: El Papel Sellado, https://www.periciadocumental.es/index.php/2017/10/15/el-papel-sellado/ 12 octubre 2023.

8 AHPM, Antonio López de Salazar, 22873, f. 1r. January 2, 1808.

9 AHPM, Antonio López de Salazar, 22873, f. 150r–151r. March 4, 1808) Valid for the reign of Ferdinand VII. However, the document in this paper is dated before the abdication of

Charles IV, indicating that it was written after its actual date.

10 AHPM, Antonio López de Salazar, 22873, f. 233r–234v. March 17, 1808. Valid for the government of the Lieutenant General of the Kingdom.

11 AHPM, Antonio López de Salazar, 22876, f. 38r-39r. February 16, 1809). Joseph Napoleon I. by the grace of God king of Spain and of the Indies.

12 Gazeta de Madrid, núm. 42, February 11, 1809, p. 227: Madrid 10 de febrero: https://www.boe.es/datos/pdfs/BOE//1809/042/A00227-00227.pdf [October 3, 2023]; Company i Mateo, Rafael; De Francisco Olmos, José María: El poder en la butxaca. Imatges dels governants en les monedes d'Espanya (s. XVIII–XXI), Diputació de València, pp. 158–161.

13 Vigo, Emili: *La política catalana del Gran Comité de Salut Pública,* Barcelona, IEC, 1956, pp. 31–41.

14 Fugier, André: *Napoléon et l'Espagne,* vol I, París 1930, p. 311. Their goal is known: the Ebro, the Ebro. Such is the object of their ambition.

15 Printed in *Diario de Barcelona,* 77, 18 march 18, 1810, p. 305: Art. II: La provincia de Catalunya formará un gobern particular, baix lo títol de Gobern de Catalunya. Mercader, Joan: "La anexión de Cataluña al Imperio Francés (1812–1814)", *Hispania,* XXVI, Madrid, 1947, p. 126.; De Puig i Oliver, Lluís M.: *La identitat catalana en temps de Napoleó (1808–1814)*, pp. 84–109.

16 AHPB, Ramon Barberí i Lledó, 1203/8, f. 82r. January 23, 1813. Government of Catalonia.

17 AHPB, Ramon Barberí i Lledó, 1203/11, f. 270r. April 30, 1813. General Government of Catalonia.

18 AHPZ, Almerge, 1811, f.1r. January 4, 1811. Government of Aragon.

19 RCC CC, Valencia, notari Mateo Manuel Boix, 8013, f. 72v, 2 September 1812, Army of Aragon.

20 Pérez-Ainsua Méndez, Natalia, *De sellos, heráldica y alegorías: el papel sellado en España,* Sevilla, Universidad, 2014, p. 43, note 20; Allende, Ángel: *Timbres españoles (Catálogo, 1969)*, Barcelona, Documentos Antiguos S.A., 1968, p. 211

21 AHPC, Luis Barrera de los Heros, notaría 20,5011, f. 1r. January 11, 1813. Ferdinand VII, by the grace of God and the Constitution of the Monarchy, king of the Spains.

22 Printed in Gaceta de la Regencia de las Españas, núm. 150, 10 noviembre 1812, p. 1240.

23 Hocquellet, Richard: "Elites locales y levantamiento patriótico: la composición de las juntas provinciales de 1808", en *Historia y Política,* Madrid, 2008, p. 132.

24 This institution is different from the Junta Suprema de Gobierno created in April 1808 by Fernando VII to govern the kingdom in his absence (since he moved to Bayonne). His uncle, Infante Antonio, was president until May 3; the position was then occupied by Lieutenant General Joaquín Murat. This institution ceased with the proclamation of Joseph I as king on July 25.

25 ACCE, Actes 1808, f. 107r, November 2, 1808. Fernando VII. King of Spain and the Indies, Count of Barcelona.

26 ACCE, Actes 1808, f. 47r, november 2, 1808. Supreme Governing Board of the Principality of Catalonia.

27 RCS CC, Valencia, notari Vicente Boix, marzo de 1812. Valid for the year 1812. Validated by order of the Regency Council. Superior Governing Board of the Kingdom of Valencia.

28 Allende, Ángel: *Timbres españoles (Catálogo, 1969),* Barcelona, Documentos Antiguos S.A., 1968, pp. 127–130. Company i Mateo, Rafael; De Francisco Olmos, José María: *El poder en la butxaca. Imatges dels governants en les monedes d'Espanya (s. XVIII–XXI)*, Diputació de València, pp. 158–161.

29 Roca Vernet, Jordi: "La Restauración de Fernando VII: la transformación represiva y autoritaria de la Monarquia. Barcelona, de Manuel Casamada a Luis Lacy", *Rubrica Contemporánea,* 4, núm 8, 2015, p. 5.

30 Martín de Balmaseda, Fermín: *Decretos del rey don Fernando VII año segundo de su restitucion al trono de las Españas. Se refieren todas las reales resoluciones generales que se han expedido por los diferentes Ministerios y Consejos en todo el año de 1815,* Madrid, Imprenta Real, 1819, pp. 110–115: Real cèdula de S.M. y Señores

del Consejo: se declara el valor que deben tenir las actuaciones y sentencias en asuntos asi Civiles como criminales, seguidos y sentenciados durante el Gobierno intruso, y se establecen las reglas que se han de observar.

31 AHPB, notari Antoni Ubach i Claris, 1203/8, f. 463r and 1203/10, f. 19r.

32 Marí Brull, Gerard: "La cancelación de la heráldica napoleónica del Govern de Catalunya (1810–1814): el notario Antoni Ubach en 1815", *A investigação sobre heráldica e sigilografia na Península Ibérica: entre a tradição e a inovação,* Universidade de Coimbra, 2018, pp. 441–470.

33 AHPB, notari Antoni Ubach i Claris, 1203/8, f. 1v. (*In compliance with the Real Cédula of February 19, 1815, I erased everything related to the intrusive government*).

34 AHPB, notari Ramon Barberí i Lledó, 1201/2, f. 72r.

35 AHPZ, not. Joaquín Vicente de Almerge, 1813, f. 263; 1814, f. 215r.

36 AHPM, notario Antonio López de Salazar, 22881, f. 164r, May 25, 1814.

37 AHPC, notario Luis Barrera de los Heros, notaría 20, 5012, f. 254v, May 20, 1814.

38 In the proclamation at the beginning of the revolt he declared to the troops his intentions: I could not allow, as your leader, to take you away from your homeland, in rotten ships, to take you to make an unjust war to the new world.

39 Gaceta de Madrid, 53, March 25, 1820, p. 346. https://www.boe.es/datos/pdfs/BOE//1820/053/A0 0346-00346.pdf [November 6, 2023].

40 AHLleida, Seu d'Urgell, Esteve Guarda i Ninou, S-830, f. 583r. 6 de novembre de 1820. Validated, sworn by the King to the Constitution on March 9, 1820.

41 AHPB, notari Ramon Barberí i Lledó, 1201/4, f. 1r and f. 143r. Fernando VII, by the grace of God and the Constitution of the Monarchy, King of *Spains*.

42 AHPB, notari Ramon Barberí i Lledó, 1201/4, f. 288r. Ferdinand VII, by the grace of God and the Constitution, King of *Spains.*

43 AHLleida, Seu d'Urgell, notari Esteve Feu i Fuster, S-880, f. 67r. Marí Brull, Gerard: *El paper timbrat de la Regència d'Urgell,* in press.

44 Gaceta de Madrid, 18, June 17 1823, p. 52. https://www.boe.es/datos/pdfs/BOE//1823/018/C00052-00052.pdf [November 6, 2023]

45 AHPB, notario Ramon Barberí i Lledó, 1201/4, f. 359r. And the Constitution.

46 AHPM, notario Antonio López de Salazar, 22886, f. 74r. Enabled in the name of our Lord the King, with the Constitution removed on May 23, 1823.

47 AHPZ, notario Pablo Fernández Trebiño, 1823, f. 145r. Consider what is crossed out as invalid.

48 AHPC, notario Luis Barrera de los Heros, 5021, 1823, f. 374r. Enabled by Our Lord the King in the fullness of his sovereign rights.

49 AHPM, notario Antonio López de Salazar, 22887, f. 1r. January 3, 1824.

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The Legal History of the Coat of Arms of Romania

By Drăgan-George Basarabă

Abstract: This paper examines the creation and evolution of the state arms of Romania and the laws that determined this evolution. Thus, it starts with the Union of 1859, when Alexander John I was elected prince in both Moldavia and Wallachia. During his time, projects were designed for the coat of arms of the United Principalities, with some being made official. However, all of them were based on the old coats of arms of Wallachia and Moldavia.

In 1866, Romanians elected a new prince, Charles I. As this was the start of a new dynasty, arms were again adopted in 1867. Then, in 1872, another coat of arms was designed and made official. This heraldic achievement would also include symbols designed for Oltenia and the seaside. This variant would legally stay the same even after the country achieved independence (1877–1878) and even after it was elevated to a kingdom (1881). Although some changes were made, even in official use, no new version of the arms was ever legislated.

After the Great Union of 1918, a new heraldic identity was needed, one that would reflect the new territories united with the Kingdom of Romania. Thus, under Ferdinand I, new arms were designed and adopted in 1921. This heraldic achievement would also include the arms granted to the Grand Principality of Transylvania in 1765, as well as a newly created identity for Banat. The 1921 model would be in use until the fall of the monarchy, in December 1947.

In January 1948, Romania was declared a republic, under Soviet influence. Thus, everything that had to do with the old regime was censored, and a new emblem was designed, following a Soviet pattern. This emblem did not last long, as it was changed again in March of the same year with another Soviet style emblem, one that would last – with minor changes – until the fall of the communist dictatorship in December 1989.

With the Romanian Revolution of 1989 came a new era of freedom, which could not have been represented by the same totalitarian symbols. Thus, although still a republic, Romania adopted a new coat of arms in 1992, one that closely resembled the shield of the royal arms, alas with some changes. Finally, in 2016, the Steel Crown of Romania was added in the state coat of arms.

In total, Romania officially changed its coat of arms nine times from 1859 to 2016, yet the country's identity was crystallised around the one adopted by King Ferdinand I in 1921, arms that inspired the current state symbol.

Résumé : Cet article examine la création et l'évolution des armes d'État de la Roumanie et les lois qui ont déterminé cette évolution. Il commence donc avec l'Union de 1859, lorsque Alexandre Jean Ier est élu prince

en Moldavie et en Valachie. À cette époque, des projets d'armoiries des Principautés unies sont élaborés et certains d'entre eux sont officialisés. Cependant, tous ces projets étaient basés sur les anciennes armoiries de la Valachie et de la Moldavie.

En 1866, les Roumains élisent un nouveau prince, Charles Ier. Comme il s'agit du début d'une nouvelle dynastie, des armoiries sont adoptées en 1867. Puis, en 1872, un nouveau blason est dessiné et officialisé. Cette réalisation héraldique comprend également des symboles conçus pour l'Olténie et le bord de mer. Cette variante reste légalement inchangée même après l'indépendance du pays (1878–1879) et après son élévation au rang de royaume (1881). Bien que certaines modifications aient été apportées, même dans l'usage officiel, aucune nouvelle version des armoiries n'a jamais été légalement validée.

Après la Grande Union de 1918, une nouvelle identité héraldique s'impose, reflétant les nouveaux territoires unis au Royaume de Roumanie. C'est ainsi que, sous Ferdinand Ier, de nouvelles armoiries ont été conçues et adoptées en 1921. Cette réalisation héraldique comprend également les armoiries accordées à la Grande Principauté de Transylvanie en 1765, ainsi qu'une identité nouvellement créée pour le Banat. Le modèle de 1921 sera utilisé jusqu'à la chute de la monarchie, en décembre 1947.

En janvier 1948, la république de Roumanie, sous influence soviétique, est proclamée. Ainsi, tout ce qui a trait à l'ancien régime est censuré et un nouvel emblème est conçu, selon un modèle soviétique. Cet emblème n'a pas duré longtemps, puisqu'il a été remplacé en mars de la même année par un autre emblème de style soviétique, qui a duré – avec des changements mineurs – jusqu'à la chute de la dictature communiste en décembre 1989.

La révolution roumaine de 1989 a marqué le début d'une nouvelle ère de liberté, qui n'aurait pas pu être représentée par les mêmes symboles totalitaires. Ainsi, bien qu'étant toujours une république, la Roumanie a adopté de nouvelles armoiries en 1992, qui ressemblent beaucoup aux armes royales, avec quelques changements toutefois. Enfin, en 2016, la couronne d'acier de la Roumanie a été ajoutée aux armoiries de l'État.

Au total, la Roumanie a officiellement changé neuf fois d'armoiries entre 1859 et 2016, mais l'identité du pays s'est cristallisée autour des armoiries adoptées par le roi Ferdinand Ier en 1921, qui ont inspiré le symbole actuel de l'État.

1. Introduction[1]

In the 19th century, Romania emerged as a unified state in Eastern Europe after the unification of Moldavia and Wallachia in 1859. Prior to this, these lands were fragmented under different rulers. The election of Alexandru Ioan Cuza as the first Prince of the United Principalities marked a turning point, fostering national identity and paving the way for political stability. This unification laid the foundation for modern Romania, leading to independence from the Ottoman Empire in 1877 and the Great Union of 1918, solidifying Romania's status as a unified and sovereign nation.[2]

The union naturally prompted the need for a national coat of arms for Romania. This study explores Romania's coat of arms legislative history and its regulated usage. Six

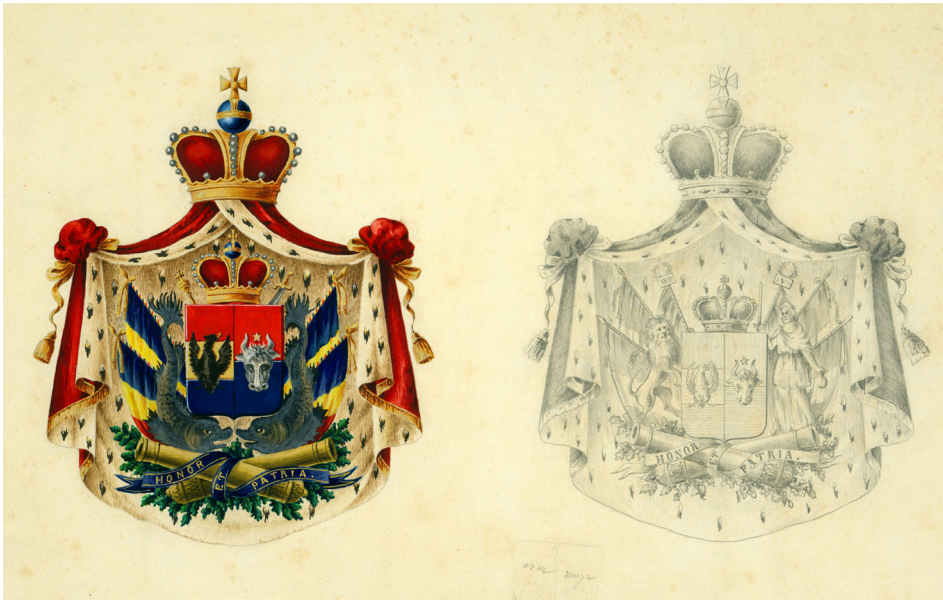


Fig. 1. Project for the coat of arms of the United Principalities by Ion Ghica's government, 1859. The Library of the Romanian Academy.

pivotal moments have defined the evolution of the Romanian arms: 1859, 1866, 1881, 1921, 1947 and 1989.

2. The Union of Moldavia and Wallachia; Alexandru Ioan Cuza is elected prince in both countries as Alexander John I, 1859

The initial attempt to create a coat of arms for the new state occurred in July 1859 when the Central Committee of Focșani drafted a Constitution[3] for the United Principalities. The proposal included a crowned eagle, representing Wallachia, and a hexagonal escutcheon with a bison's head and a star, symbolising Moldavia. However, these provisions were rejected due to concerns about political compatibility with the Paris Convention. It was decided to postpone the creation of a common coat of arms until the complete political-administrative unification of the two principalities.[4]

The concept of using the eagle of Wallachia and the bison's head (or originally auroch's head) of Moldavia was not new; these symbols had been combined in the emblems and coats of arms of the two principalities in the past. This tradition dates back to the seals of Renaissance princes like Sigismund Báthory (1595),[5] Andrew Báthory (1599),[6] Michael Pătrașcu *the Brave* (1600),[7] Basil Lupu (1639),[8] or George Duca (1674).[9] It persisted through the seals and coats of

arms of Phanariote princes in the 18th and early 19th centuries, who successively ruled both Romanian countries.

In any case, following the same idea of using the symbols of the two principalities, the Prime Minister of Wallachia at that time, Ion Ghica, in a session held between January 18 and 31, 1859, decided with general consensus, *"the fixing and establishment of the arms of the United Principalities in a manner consistent with the political situation in which our countries entered upon the realisation of the principle of Union and with the historical data from the colonisation of the Romanians in Dacia."*[10] In this regard, the head of the Wallachian government had already requested, by the end of 1859, the painter Carol Popp de Szathmáry to draft a project for the country's coat of arms in two variants[11] (*fig. 1*).[12]

Two proposed designs for the Romanian coat of arms were considered. The first featured a divided shield with Wallachia's eagle on the right and Moldavia's auroch's head on the left. The shield was crowned and supported by dolphins and cannons, all under a purple mantle. The second design replaced the dolphins with a lion and featured a Dacian woman. Both designs included historical references but were never officially adopted. The Dacian woman symbolised the connection between the new Romanian state and the Romanian population in Transylvania, which was a grand principality within the Austrian Empire at that time. During the 1848 Revolution, Transylvanian Romanians had requested a change in the coat of arms of the Grand Principality of Transylvania, adding a Dacian woman and a lion in reference to Roman coins minted after the conquest of Dacia.[13] The first of these projects was sent, in 1860, to the Government of Moldavia for approval, yet nothing came of it in the end and the United Principalities still had no official arms.[14]

In the same year, a law concerning the national coat of arms was issued by the prince, yet it merely mentioned the national arms as they appeared on the newly instituted "Pro Virtute Militari" Medal:

> *Art. III May the soldiers of every rank, which took part in said battle, be given a commemorative medal that they might wear attached by a* tricolour *ribbon.*
>
> *The medal shall be made out of bronze, 2 cm in diameter, and have the following inscription in relief: on one side* – 13 Septembrie 1848. Dealul Spirei*; and on the other – the eagle with the auroch's head on its chest, in a remarkable shield, with the inscription* Pro virtute militari.[15]

During the initial union, combining Moldavia's shield with Wallachia's eagle in this manner was seen as humiliating by the Moldavians, as it implied an unequal partnership, although this symbol of the Romanian eagle supporting a shield with provinces later became a constant in Romanian national heraldry.[16] Seeing that this law merely instituted a medal, a national coat of arms was yet to be properly adopted.

A year later, Prince Alexander John I established the coat of arms of the United Principalities for military use. This heraldic design, featuring the shields of the two united principalities, was officially consecrated in a

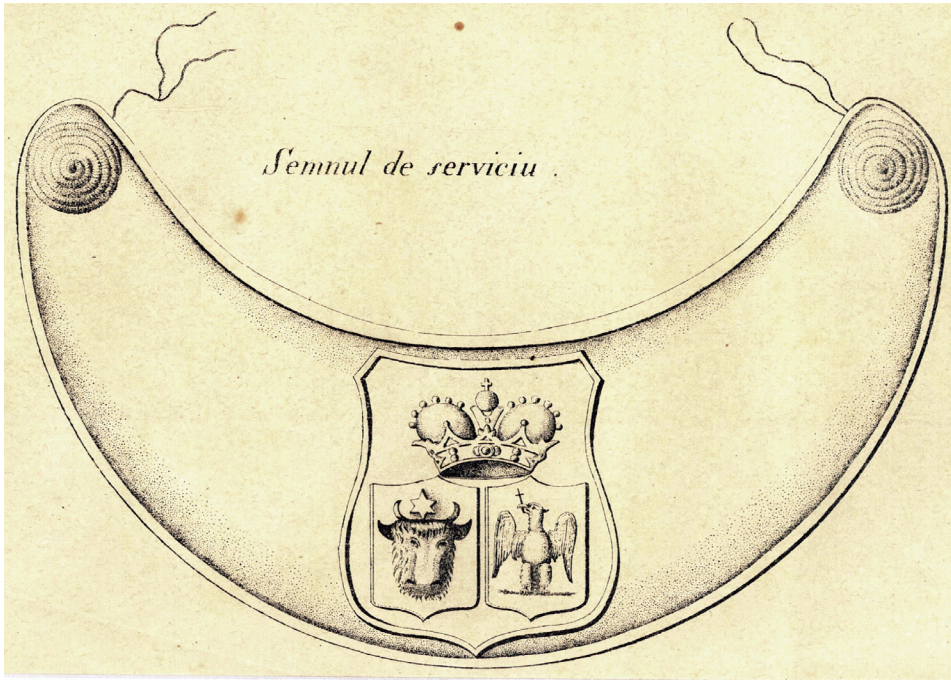


Fig. 2. The coat of arms of the United Principalities on the army gorget, 1861.

General Standing Order in 1861. Although initially meant for officers' gorgets, this order became the heraldic model for the entire army and influenced representations on official seals and letterheads throughout the country. Accompanied by a specific drawing (*fig. 2*), the order aimed to ensure accurate heraldic representation on military accessories:

> *Art. I. The coat of arms of the United Principalities is hereby added on the* gorget *for the entire Army of the United Principalities, as can be seen in the annexed example, while still maintaining the rank differentiation rules held thus far.*[17]

After the complete political and administrative unification at the end of 1861, one would have expected a revival of the initiative to properly legislate the national coat of arms. This anticipation arose because the initial phase of unification, which had hindered such a step in 1859, had been overcome. However, no such initiative was taken that year.

In a March 17, 1862 session, the Council of Ministers, led by Barbu Catargiu, decided to modify state authorities' seals due to incongruity after complete unification. To curb misuse of unofficial symbols, a single shield was established: the Wallachian eagle with a cross and Moldavia's bison with a star, under a princely crown. This remained the

sole official decision until 1863 due to delayed coat of arms legislation.[18]

In 1863, the Romanian government resumed the initiative to establish a national coat of arms. Therefore, during the session of March 12, 1863, of the Council of Ministers presided over by Nicolae Crețulescu, a report presented to Prince Alexander John I decided the following:

> *The Honourable Council, in their meeting of March 12, have hereby decided that the Romanian eagle with the cross in its beak shall be placed, as the emblem of Romania, above the Army flags, and that the bison and the eagle, now united and making up the arms of Romania, shall comprise the seal and stamp of the state.*
>
> *Humbled, I present this to Your Highness, asking you to please give out a high decree for the execution of the Council's dispositions.*[19]

The aforementioned Report to the Prince led to a new General Standing Order, through which the decisions of the Crețulescu government regarding the heraldic symbols of the country would receive the appropriate princely sanction:

> *Seeing that the arms of the United Principalities have yet to be adopted after the new state of affairs.*
>
> *Considering that the convention*[20] *stipulated, through an annex, that the symbol of the union of the Army of the Principalities should be placed upon an armband, while supposing that the two countries were separate.*
>
> *Considering that following the definitive union, thus recognized by all guarantor powers, we are hereby called upon to also decide the future emblem of Romania.*
>
> *Seeing that, since 1861 and until the present time, Regiments No. 6 and 7 and Battalions of Engineering and Huntsmen have not received flags because there was no official emblem.*
>
> *Considering that the Army, following the union, shall have only one flag model.*
>
> *Seeing that the true emblem of Romania cannot be anything other than the Roman eagle.*
>
> *On the report of Our Minister Secretary of State of War No. 2433.*
>
> *We have decreed and hereby decree the following:*
>
> *Art. I. The Romanian eagle with the cross in its beak shall be placed, as the emblem of Romania, above the Army flags.*
>
> *Art. II. The bison and the eagle thus united, making up the arms of Romania, shall devise the seal and stamp of the state.*[21]

The 1863 order officially mandated the unified representation of Romanian Principalities' symbols in the national coat of arms, abandoning separate depictions. Army flags

were to include a Roman eagle at the staff's top, later evolving into the Romanian eagle, symbolising Romania.[22]

Regrettably, the document regulating the country's arms in 1863 lacked precision, causing confusion about the appearance and arrangement of the coat of arms. Alerted by advisors, the prince initiated the creation of a new coat of arms, consulting reputable French heraldists. Based on Prince's recommendations and advice from specialists, a preliminary design was developed in October 1863.[23] The design featured a quartered shield and a central escutcheon, which was painted in watercolour by Carol Popp de Szathmáry, the same artist whom Prime Minister Ion Ghica had enlisted three years earlier (*fig. 3*).[24]

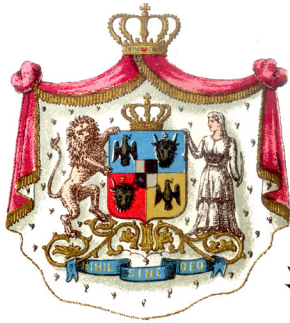
The shield bears in the first and fourth quarters the eagle of Wallachia, while in the second and third quarters, the bison of Moldavia. The central escutcheon displays the arms of the prince. Crowned with an open voivodal crown,[25] the shield is supported by two dolphins and two Roman signums placed in saltire, with cartouches bearing the numerals XXIV and V. The shield is surrounded by a blue ribbon from which hangs the Order of the Union, a distinction whose creation was never realised despite Prince Alexander John I's fervent desire. The shield, along with all its external elements, is sheltered under a purple mantle, lined with ermine, and crowned with a princely crown.

Sadly, the proposed heraldic design, neither at that time nor later, gained approval from state authorities. Politicians, hesitant and fearing misinterpretation as a bid for total independence from Ottoman rule, hesitated to adopt it. Nonetheless, the unapproved design, featuring a quartered shield and central escutcheon, offered a reconciling blend of Wallachian and Moldavian heraldry.

Fig. 3. Project for the coat of arms of the United Principalities by the Princely Cabinet, 1863. The National Museum of Art of Romania.

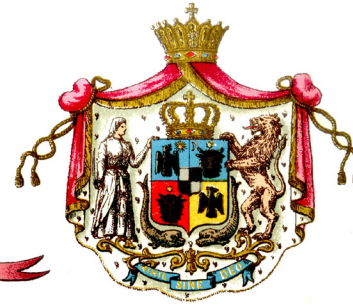
3. Prince Karl of Hohenzollern is elected Prince of Romania as Charles I, 1866

In 1866, Romania's history pivoted with the election of Prince Karl of Hohenzollern as its ruler. Amidst political instability and foreign influence, the Romanian elite sought a strong leader for national unification. Prince Karl, from the influential Hohenzollern dynasty, emerged as the ideal choice. His election showcased his diplomatic skill and the nation's yearning for stability. Under his rule,

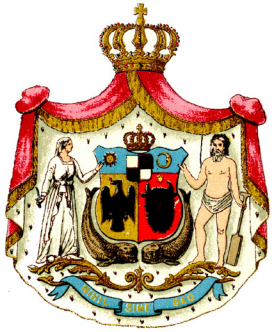


a. 1st project of the Chamber of Deputies and Ion Ghica's cabinet

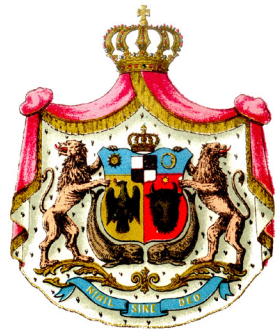
b. Project of A. Holban



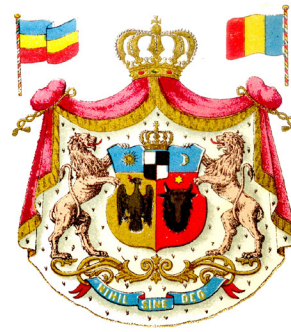
c. 2nd project of the Chamber of Deputies and Ion Ghica's cabinet



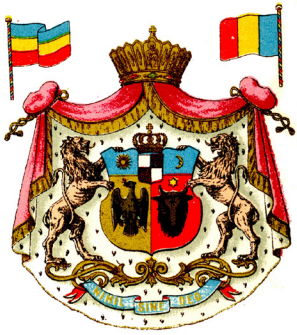
d. 1st project of the Senate



e. 2nd project of the Senate



f. 3rd project of the Senate



g. 4th project of the Senate

h. 5th project of the Senate

i. 6th project of the Senate

Fig. 4. Projects for the coat of arms of Romania, 1866–1867.
The "Lucian Blaga" Central University Library of Cluj-Napoca.

Romania underwent modernization, economic growth, and political reform, laying the groundwork for future progress. Prince Charles I's reign became a defining period, shaping Romania's path toward nationhood and prosperity.[26]

Eager to align with local traditions, Charles I replaced the inescutcheon in his predecessor's arms with his own family's. Amidst a heraldic disarray, efforts to establish and regulate the country's coat of arms began in the Elective Assembly. Debates on state symbols commenced in December 1866, continuing until April 1867, yielding nine proposed coat of arms designs[27] (*fig. 4*).[28] These nine projects revisited heraldic ideas that had already been formulated during the time of the United Principalities. For instance, the Dacian woman[29] appeared in three out of the nine versions of the coat of arms, as did the dolphin supporters[30] or the voivodal crown.[31] Yet these projects also brought new ideas, such as the god Istros[32] as a supporter in one variant, lion supporters,[33] or completely new fields in the shield: a lion for Oltenia and two dolphins for the Seaside.

One of the most interesting projects was the one presented by Deputy A. Holban, which reintroduced the emblem from the "Pro Virtute Militari" Medal, established by Prince Alexander John I in 1860.

The first of the nine projects,[34] proposed by Ion Ghica's cabinet at the end of 1866, sparked numerous controversies until the end of March 1867, when the Chamber of Deputies accepted it with some amendments. After lengthy discussions in the Senate, the law was eventually adopted by Romanian deputies on March 30, 1867, and later by the senators. This occurred for a well-founded reason: without consulting the Senate, the Chamber of Deputies had already placed an order for bronze coins in London, bearing the Romanian coat of arms as voted by the deputies.[35] The law establishing Romania's new coat of arms was promulgated in the same month, April 1867:

> *Art. I. The Arms of Romania are fixated as follows:*
>
> *Art. II. The shield has the shape of a long square with its inferior part rounded at both angles and finished in a point at base. The shield is divided in four sections, by two lines crossed in the middle. In the upper right section, on Azure, and in the lower left one, on Yellow, there is the Roman eagle with its head towards its left wing and with a cross Or in its beak, the symbol of Wallachia. In the upper left section, on Azure, and in the lower right one, on Gules, there is the auroch's head with a star between its horns, the symbol of Moldavia. In both upper sections of the shield, on the left and right side of the dividing line, there is the sun and the moon. The royal crown shall be placed above the shield.*
>
> *Art. III. In the middle of the shield of Romania there is the shield of H. H. The Prince, quartered, having the upper right and lower left sections in White, and the upper left and lower right ones in Black. The shield has the following supporters: on the left a lion, and on the right a woman wearing the Dacian dress, holding in her*

left hand the weapon of the Dacians, called arpi.

Art. IV. An Azure banderole with the motto of the Hohenzollern family: Nihil Sine Deo, is placed on the supporters.

Art. V. The mantle is Gules and lined with Ermine, having the royal crown above it.[36]

For the first time since the Union of 1859, Romania had a law governing the national coat of arms.

However, due to the hasty adoption of the coat of arms in 1867, as mentioned above, discussions resumed in 1871 regarding the necessary modifications to Romania's existing coat of arms. These deliberations resulted in the selection of the final design among the initial nine proposals,[37] created by the heraldist Ștefan D. Grecianu, and sanctioned by the prince in 1872. This new state coat of arms, more balanced, incorporates symbols not only from Wallachia and Moldavia but also newly conceived symbols for other historical provinces of Romania at that time: Oltenia and the Seaside. Oltenia's coat of arms features a lion emerging from a ban's crown, another specific element in Romanian heraldry. For the Seaside, the two facing dolphins were again used. The supporters were the classical ones from the Wallachian armorial, namely two lions, specified in the law as a symbol of Dacia. They had their tails crossing between their legs, as a symbol of vassality to the Ottoman Empire:

Art. I. The arms of Romania are fixated:

Art. II. The shield has the shape of the old Romanian shield, that is to say a long square, rounded at both the lower angles and finished through a point in the middle of its base. And from the middle margins and above, the shield's angles thus sharpen then again raise to the upper angles.

The upper margin (chef) is slightly heightened in an horizontal semicircular shape, from one angle to the other.

The shield is thus divided into four sections by two lines crossed in the middle.

In the 1st, upper right section, on Azure, there is the Roman eagle with its head toward its right wing, with a cross in its beak, with the princely crown, the sword and the sceptre, symbols of the Principality of Wallachia, all Or. On the upper right side of the eagle, a moving (mouvant) sun, also Or.

In the 2nd, upper left section, on Gules, there is the auroch's head with a six pointed star between its horns, the symbol of the Principality of Moldavia, all Or. On the upper left side of the auroch, a moving (mouvant) moon, also Or.

In the 3rd, lower right section, on Gules, there is a rampant lion, crowned and with a split tail (queue fourchée), with a six pointed star between its paws and issuant from the coronet of a ban, all Or; the symbol of the Banate of Craiova.

In the 4th, lower left section, on Azure, there are two dolphins, head to head and

with their tails apart above their heads, which is the symbol of the Black Sea's seaside, all Or. The royal crown shall be placed above the shield.

Art. III. In the middle of the shield of Romania there is the shield of H.H. The Prince, quartered, having the upper right and lower left sections White (Argent) and the upper left and lower right sections Black (Sable).

The shield of Romania has two lions Proper, looking towards the shield and with their tails crossing between their legs as supporters; they are the symbol of Dacia.

Art. IV. Under the supporters there is an Azure banderole, lined with Gules, on which the motto of the Hohenzollern family is written with letters Or: Nihil Sine Deo.

Art. V. The mantle is Purpure, lined with Ermine, having the royal crown above it.[38]

The arms of the Principality of Romania remained unaltered until after the War of Independence of 1877–1878. However, certain modifications to the state coat of arms occurred, not as a result of specific legislation but were instead established through usage after the war. These modifications will be detailed in the following part.

4. The War of Independence; Charles I is crowned King of Romania, 1881

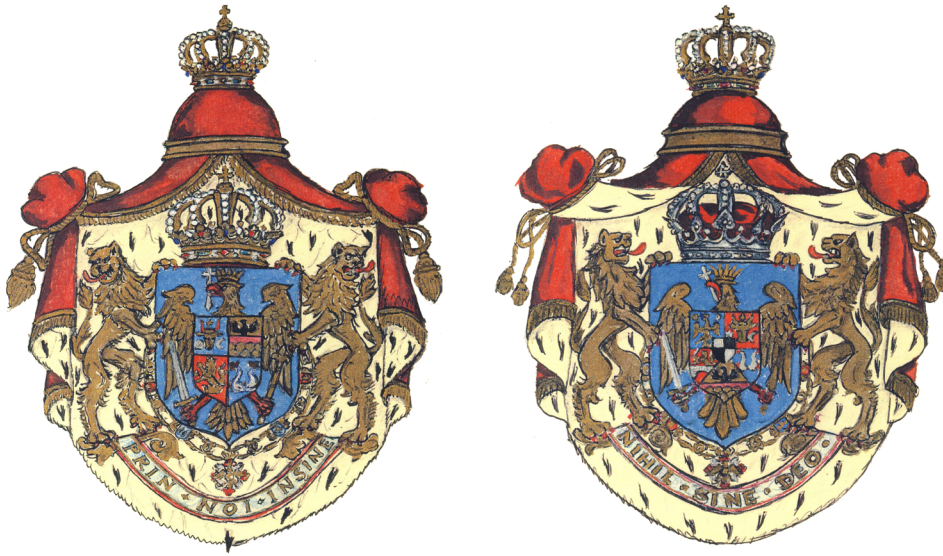
After gaining independence and proclaiming itself a kingdom on May 10, 1881, Romania witnessed gradual changes in its state coats of arms. These modifications occurred without specific legislative involvement, becoming accepted and widely used. The changes began after the War of Independence against the Ottomans and continued progressively, ultimately gaining consensus from the public.

The heraldic changes are limited to the external ornaments of the 1872 shield. Regarding the shield's charges, there are no reported changes in appearance. While none of the elements in the quartered shield have been replaced, there is a symbolic transfer concerning the fourth quarter, which we will discuss later. The modifications to the shield's external ornaments were only three: replacing the royal gold crown that topped the mantle with the Steel Crown,[39] adjusting the positions of the tails of the two lion supporters, and adding, below the motto scroll, the cross of the Order of the Star of Romania, established in May 1877, at the beginning of the war.[40]

Regarding the fourth quarter, it now represented Dobruja, a newly annexed province following the Treaty of Berlin, in which Russia took other territories from Romania, in what is today southern Bessarabia, granting Romania another Black Sea outlet, namely Dobrogea, previously under Ottoman rule.[41] In 1880, a law was passed for the organisation and administration of the new territory, specifying both the colours and the coats of arms of province:

Art. 70. The coat of arms of Dobruja in general, and that of Tulcea County in particular, is a shield charged with two dolphins with their bodies raised.

The coat of arms of Constanța County is a shield charged with a Roman gallera.[42]



a. Project of Paul Gore a. Project of the Committee

Fig. 5. Projects for the coat of arms of Romania, 1921. Private collection.

5. The War of Unification; Ferdinand I is crowned King of Romania, 1921

The Romanian War of Unification (1916–1919) was a pivotal event leading to the consolidation of various Romanian-inhabited regions within the Kingdom of Romania. Romania joined the Allies during World War I in an effort to unify territories with significant Romanian populations under different foreign dominations. After the war's end in 1918, regions like Transylvania, Banat, Bukovina, and Bessarabia voted to unite with Romania through democratic processes, forming a greater Romanian state. This decision reflected the aspirations of the people in these regions and played a crucial role in shaping modern Romania's territorial boundaries.[43]

After Romania's 1918 unification, a swift redesign of the national coat of arms was needed. The constitutional process involved a vote in the Legislative Bodies of the kingdom. King Ferdinand I established a Committee of heraldry experts, leading to proposals by Dimitrie Onciul, Nicolae Iorga, Nicolae Docan, Constantin V. Obedeanu, and an initial version by Paul Gore.[44] In 1921, designs by Gore and the Committee members[45] were prominent (*fig. 5*).

It is assumed that King Ferdinand I, closely overseeing the work of the Committee, frustrated with the failures of its proposed projects, turned to the distinguished Transylvanian heraldist József Sebestyén de Keö-

peczi. He revised the last project from March 12, 1921[46], creating a new one ultimately accepted during the Committee's session of July 1, 1921 (*fig. 6*).[47] This design also received the high approval of the King on July 23 of the same year. According to the law that established the coat of arms for unified Romania, the heraldic symbols appeared as follows:

Fig. 6. The coat of arms of Romania, 1921. The National Archives of Romania.

Art. I. – The coat of arms of the Kingdom of Romania, now whole with the united sister lands, consists of three shields placed one above the other: the great shield, the middle shield, and the small shield (above all).

I. The great shield: Azure, an eagle Or, beaked and membered Gules, with a royal crown Or on its head, holding in its beak a cross pattée Or with a pointy inferior extremity, in the right claw a sword, in the left claw a sceptre Or with the head in the form of a fleur-de-lys, – the Romanian eagle, the arms of Romanian royalty.

II. On the eagle's chest, the middle shield, quartered with an enté en pointe, comprising of the arms of the united sister lands:

1. *In the upper right, the arms of the old Principality of Wallachia: Azure, an eagle Or, beaked and membered Gules, holding in its beak a cross pattée Or, and having a sun Or on the right side and a new moon Or on the left.*

2. *In the upper left, the arms of the old Principality of Moldavia (with Bessarabia and Bukovina): Gules, an auroch's head Sable, mouth open, having a star Or (with five points) between its horns, a rose Or (with five petals) on its right side, and a half-moon on its left.*

3. *In the lower right, the arms of Banat with the old Romanian Banat of Severin (fixed now): Gules, above waves Proper, a bridge Or with two open arches, made from carved stone (Trajan's Bridge), from which a lion Or is issuant.*

4. *In the lower left, the arms of the old Grand Principality of Transylvania (with the parts of Crisiana and Marmatia): Azure and Or, divided by a fess Gules, from which an eagle Sable is issuant, beaked Or, having a sun Or on the right side, a half-moon Argent*

on the left; below, seven towers Gules, four and three, with two rows of crenelations (three above and four below) and two windows, doors closed.

5. *In the enté en pointe, the arms of Dobruja: Azure, two dolphins Or affronté, with their tails raised.*

III. Above all, the small shield, quartered Argent and Sable, the arms of the Ruling House of Hohenzollern.

Above the great shield, the Steel Crown of Romania.

The shield is supported by two lions Or, standing on an arabesque Or.

The collar of the Order of King Charles I.

On a banderole Azure with edges Or, in the fashion of the ribbon of the order, the motto of the Ruling House of Hohenzollern, with Latin letters Or: Nihil sine Deo.

The mantle is Purpure, with a border Or, lined with Ermine, and closed by a royal crown Or, ornate with precious stones.

Art. II. – The coat of arms will be used in three ways: 1st, the great coat of arms, as is described above; the 2nd, the middle coat of arms, without the mantle; the 3rd, the small coat of arms, comprising the three shields with the Steel Crown.

The great coat of arms will be used solely in state documents issued from the King and in official international documents, as well as in other special cases, following the King's High Decree; the middle coat of arms, by the Army and other state authorities; the small coat of arms, on official seals and stamps. Other instances of use shall be governed by special laws and regulations.

Art. III. – A Consultative Heraldic Committee shall be formed within the Ministry of the Interior, to examine the use of the arms in other instances other than the ones mentioned in Art. II and will make sure that the administrative documents concerning coats of arms will take into account the rules of heraldry.

Special regulations will settle the organisation of the Committee.

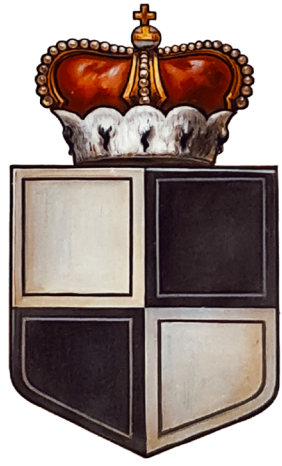
Art. IV. – Art. I to Art. V from the Law for the Modification of the Arms of the Country, sanctioned by the High Royal Decree No. 498 from 1872 is to be repealed."[48]

Interestingly, the law regulated the usage of the coat of arms, with the larger version strictly designated for the King of Romania. Additionally, this law established Romania's first heraldic authority, the Heraldic Consultative Commission. During the interwar period, this commission was responsible for creating the civic, ecclesiastic, and university armorial of the country, laying the foundation for the heraldic system still used in Romania today.

The new coat of arms of Romania, legisla-

a. Province of Wallachia

b. Province of Moldavia



f. House of Hohenzollern

c. Province of Banat

d. Province of Transylvania

e. Province of Dobruja

Fig. 7. The partitions of the middle shield and the small shield from the arms of Romania, 1921. The National Museum of Art of Romania.

ted in 1921, became the primary national symbol, forming the basis for the current state emblem. Here, the Romanian eagle officially appeared. Now, the eagle supports the shield representing the five Romanian provinces: Wallachia, Moldavia, Banat, Transylvania, and Dobruja,[49] united under the House of Hohenzollern's shield (*fig. 7*). The Steel Crown of the Romanian kings now adorns the shield, which is surrounded by the collar of the Order of Charles I, the highest Romanian dynastic order. This 1921 coat of arms was used throughout the existence of the Kingdom of Romania until the forced abdication of King Michael I at the end of 1947.

6. World War II; King Michael's forced abdication and the communist takeover, 1947

As the Red Army advanced in Eastern Europe, the Soviets established a communist government in 1945. The Romanian Communist Party, fearing opposition, forced King Michael I to abdicate on December 30, 1947. The communists then proclaimed the Romanian People's Republic, marking the pinnacle of their power campaign. This move signified Romania's alignment with the Soviet model internally and internationally, marking the end of its modern era characterised by openness to the West.[50]

The installation of the republican regime in Romania, which brought not only an unfamiliar form of government to the Romanian lands throughout their entire history but also a profound transformation in political and social order, naturally required the immediate replacement of the old monarchical symbols of the country with those of the new order established on December 30, 1947. Thus, a decree dated January 8, 1948, which defined the duties of the Provisional Presidium of the Romanian People's Republic, also outlined the appearance of the state's republican symbols. These symbols (*fig. 8*) no longer bore the typical characteristics of heraldry but rather resembled Soviet-style emblems:

> *Art. 7. – The coat of arms of the Romanian People's Republic is portrayed by: a tractor, a group of three furnaces in the field of a rising sun, surrounded by a wreath of wheat ears, and tied by a ribbon with the inscription: Republica Populară Română and the initials* R. P. R. *at the end of the ears.*[51]

This emblem, disseminated abroad as the representation of the country's new symbols,[52] had a short existence. It was replaced after two and a half months by another emblem,[53] in accordance with the provisions of the Constitution of the Romanian People's Republic dated March 28, 1948:

> *Art. 99. – The coat of arms of the Romanian People's Republic is represented by forested mountains with the sun rising above. In the middle, there is an oil well, and around the coat of arms a wreath of wheat ears.*[54]

The swift change in Romania's state emblem during the communist era was likely influenced by the dominant power of the entire Eastern European bloc, the Soviet Union, as it mandated that all countries in this part of the

a. Emblem of Romania, 1948

b. Emblem of Romania, 1952

c. Emblem of Romania, 1965

d. Emblem of Romania, 1968

Fig. 8. The emblems of Romania during the communist period, 1948–1989.

continent adopt emblematic symbols similar to those of the republics of the Soviet Union. These symbols typically featured wreaths of wheat, overlaid with a red star, and specific

elements representing each respective state. In Romania's case, the country aimed to showcase its natural resources: oil and timber.[55]

The constructed ensemble of the state emblem of the Romanian People's Republic remained unchanged until the Constitution of 1952, when the Soviet Union allowed Romania to add a red star in the space between the upper ends of the wheat wreath.[56]

> *Art. 102. – The coat of arms of the Romanian People's Republic is represented by forested mountains with the sun rising above. On the left side, there is an oil well, and around the coat of arms a wreath of wheat ears. In the upper part of the coat of arms, there is a five-pointed star. In the lower part of the coat of arms, the wreath is held together by a tricolour ribbon which has the letters* R. P. R. *written on it.*[57]

On August 21, 1965, during the proclamation of the Socialist Republic of Romania, the country's new state emblem was introduced by the new constitution. The emblem[58] featured a change in the text on the ribbon to reflect the country's new official name.

> *Art. 116. – The coat of arms of the Socialist Republic of Romania is represented by forested mountains with the sun rising above. On the left side, there is an oil well, and around the coat of arms a wreath of wheat ears. In the upper part of the coat of arms, there is a five-pointed star. In the lower part of the coat of arms, the wreath is held together by a tricolour ribbon which has* REPUBLICA SOCIALISTĂ ROMÂNIA *written on it.*[59]

The last modification of the emblem occurred on November 5, 1968, involving minor colour changes which replaced the brown terrace with blue waves[60]. This symbolised the importance of rivers due to the country's hydro-energy network expansion. At the same time, the decree concerning these changes also legislated the way the state emblem was to be used.

> *The Constitution of the Socialist Republic of Romania stipulates, in Title VIII, the symbols of the Romanian state, establishing the general norms concerning the state coat of arms, the state seal, the state flag, and the state anthem of the Socialist Republic of Romania.*
>
> *Because there are no special normatives that build up on these constitutional stipulations, there have been wrong interpretations of said stipulations, incorrect or nonunitary uses of the state symbols.*
>
> *In order to establish a precise framework for the use of the insignia of the Socialist Republic of Romania and to remove the difficulties due to the lack of a special normative act in this matter, the following decree has been adopted which, developing the constitutional provisions, regulates the manner and places where the coat of arms is displayed, the manner, places and occasions when the state flag is flown, the categories of acts to which the state seal is applied and the powers of its application, as well as the occasions and modalities in which the state anthem may or must be sung.*
>
> *The decree contains in annex the official models of the state coat of arms and flag.*

The State Council of the Socialist Republic of Romania decrees: [...]

CHAPTER II
The coat of arms of the Socialist Republic of Romania

Art. 3. – The model for the coat of arms of the Socialist Republic of Romania, its colours and intensity, as well as the way of inscribing the country's title on the tricolour ribbon, are laid down in Annex No. 1 to this decree.

Art. 4. – The coat of arms of the Socialist Republic of Romania can be made of plastic, textile, wood, metal or reproduced in black and white, or in colour, as required, by printing on various materials.

Art. 5. – The coat of arms of the Socialist Republic of Romania shall be displayed in the buildings of state organs, institutions, enterprises and economic organisations, cooperative and other public organisations, diplomatic missions, consular offices, trade representations of the Socialist Republic of Romania abroad, as well as in the saloons of all ships flying under the Romanian flag.

Art. 6. – The coat of arms of the Socialist Republic of Romania shall be reproduced on the seals of state Socialist organisations established by laws, decrees or decisions of the Council of Ministers, on the prints and nameplates of their buildings, on banknotes and other monetary tokens issued in the Socialist Republic of Romania, as well as on the emblems and some accessories of military uniforms, established according to legal provisions.[61]

This emblem remained unchanged until the fall of the Ceaușescu regime. During the 1989 Revolution, it was torn from the flag, refleting widespread public disapproval due to its association with the oppressive communist regime.

7. The Romanian Revolution; The fall of the communist regime in Romania, 1989

Following the Revolution of December 1989, Romania was restored as a democratic state, yet retaining the republican system of government established with the help of Soviet tanks back in 1948. In 1991, the country adopted a new constitution, which did not, however, mention a national coat of arms. Nevertheless, legislative bodies were deeply engaged in addressing the issue of new state symbols, with tens of proposals being forwarded both by specialists and by common people.[62]

Finally, in 1992, the project of Victor Dima (*fig. 9*) was chosen as final and voted into law. The coat of arms thus sanctioned was heavily based on the arms of Romania from 1921, but without the elements seen as monarchical, such as the Steel Crown, or the inescutcheon of the House of Hohenzollern, as those that took power after the Revolution feared the return of King Michael I:

Article 1 – The coat of arms of Romania symbolises the national, sovereign, and

Fig. 9. The coat of arms of Romania, 1992. The Archives of the Chamber of Deputies.

independent Romanian state, united and indivisible, composed of two overlapping shields: the large shield and the small shield.

The large shield, on a blue background, features a golden eagle facing right, with red beak and claws, wings spread open, holding a golden Orthodox cross in its beak, a sword in its right claw, and a mace in its left claw.

On the eagle's chest is the small quartered shield with an enté en pointe:

a) In the first quarter, the coat of arms of Wallachia: on blue, a golden eagle with red beak and claws, holding a golden Orthodox cross in its beak, accompanied by a golden sun on the right and a golden crescent moon on the left.

b) In the second quarter, the coat of arms of Moldavia: on red, a black auroch's head, accompanied by a golden star between its horns, a silver rose with five petals on the right, and a silver crescent moon on the left.

c) In the third quarter, the coat of arms of Banat and Oltenia: on red, above natural waves, a golden bridge with two arched openings, from which emerges a golden lion holding a sword in its front right paw.

d) In the fourth quarter, the coat of arms of Transylvania, Marmatia, and Crisiana: a shield divided by a narrow red stripe. In the upper part, on blue, a black eagle with a golden beak emerging from the separating stripe, accompanied by a golden sun on the right and a silver crescent moon on the left. In the lower part, on gold, seven red crenellated towers arranged in two rows, four and three.

e) In the enté en pointe, the territories of the Black Sea are represented: on blue, two confronting golden dolphins with raised tails.

Article 2 – The coat of arms of Romania can be made from any material, reproduced in colours, in black and white, or through printing on various materials.
The black and white representation of the coat of arms is made using conventional heraldic symbols to denote colours: gold =

evenly spaced dots; silver = empty space; red = vertical lines; blue = horizontal lines; black = vertical lines superimposed on horizontal lines. If the graphic technique does not allow conventional representation, contouring can be used.

In the case of conventional black and white representation or contouring, the lines marking the contours of the eagle and the outer shield will be twice the width of the other lines inside the coat of arms.

Article 3 – The coloured coat of arms of Romania shall be displayed in the offices of all public authorities, educational institutions, diplomatic missions, consular offices, Romania's commercial representations abroad, as well as on the salons of ships under the Romanian flag.

Article 4 – The coat of arms of Romania shall be reproduced on the seals of public authorities, official documents, printed materials, and signs indicating their buildings, on the national currency and other monetary signs issued by Romania, on the insignia and certain accessories of military uniforms, under the conditions established by the Government of Romania.

Article 5 – The original model of the country's coat of arms is provided in Annex No. 1, which is an integral part of this law.[63]

In 2016, a significant alteration was made to Romania's national coat of arms through the enactment of a new law. This legislative measure reinstated the iconic Steel Crown into the heraldic achievement, thus trying to revert the country's arms to their original design dating back to 1921. This move is pivotal as it reaffirms the historical essence of Romania's heraldic identity, establishing a strong connection with the nation's heritage and traditions. The reintroduction of the Steel Crown serves as a profound symbol, especially since this would have not been possible in early post-communist Romania.

Law No. 102/1992 regarding the country's coat of arms and state seal, published in the Official Gazette of Romania, Part I, No. 236, dated September 24, 1992, is modified as follows:

Article I – Article 1, paragraph 2 is modified and will have the following content:

The large shield, on blue, features a golden eagle facing right, crowned, with red beak and claws, wings spread open, holding a golden Orthodox cross in its beak, a sword in its right claw, and a mace in its left claw.

Annexes No. 1 and 2 are modified and replaced with Annexes No. 1 and 2 of this law.[64]

8. Conclusion

In conclusion, Romania's heraldic evolution has been marked by various changes, with debates continuing to surround the nation's symbolic identity. The arms of Romania from 1921 stand as the bedrock of the country's heraldic heritage, embodying the essence

of national pride and historical continuity. Advocates of preserving this heritage argue that constant alterations risk diluting the profound meaning embedded in these original symbols. The year 2021 witnessed a pivotal moment in this discourse when the Romanian Parliament proposed the reintroduction of the Steel Crown above the shield, a powerful emblem of our nation's independence. This endeavour was a deliberate attempt to honour Romania's legacy and to bridge the gap between past and present.

However, despite these efforts, the proposal to reintroduce the Steel Crown on the shield did not come to fruition, leaving the nation's heraldic identity in a state of flux. Some argue that until Romania reverts back to the 1921 arms, its heraldic identity will remain incomplete. This sentiment underscores the deep connection Romanians have with their historical symbols and suggests that there is a prevailing desire among the people to preserve the integrity and authenticity of their national heritage.

As the debates persist, the significance of historical continuity in Romania's national symbols becomes increasingly apparent. The ongoing discussions serve as a reminder of the delicate balance between honouring the past and embracing the future, shaping the narrative of Romania's identity for generations to come.

Notes

1 Member of the *Comisia Națională de Heraldică, Genealogie și Sigilografie* (The National Committee of Heraldry, Genealogy, and Sigillography), C.N.H.G.S. – The author takes this opportunity to thank Ms Ștefania Blaga (Cluj-Napoca), Ms Carmen Cernat (București), Ms Fabiola Dimitrof (București), Ms Cătălina Macovei (București), Ms Carmen Tănăsoiu (București), Ms Anca Vitan (București), as well as Mr Silviu Andrieș-Tabac (Chișinău), Mr Emil Boboescu (București), Mr Alexandru Daneș (Brașov), and Mr Tudor-Radu Tiron (București), for their tremendous help in the writing of this study.

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13 Mihai Popescu, *Stema Ardealului cerută de Români după 1848*, in "Convorbiri literare", Anul LVIII, Nr. 2 din martie 1926, p. 216–218.

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24 *Muzeul Național de Artă al României*, Cabinetul de desene, nr. inv. 29291/4694.

25 Heraldic crown typical to Romanian heraldry, inspired by the crowns in the frescoes of the Mediaeval Voivodes of Wallachia and Moldavia. This one was inspired by that of Prince Mircea I *the Elder* of Wallachia.

26 Keith Hitchins, *România. 1866–1947*, Ediția a V-a, Traducere din engleză de George G. Potra și Delia Răzdolescu, Editura "Humanitas", București, 2017 (Hitchens 2017), p. 25–66.

27 Ștefan D. Grecianu, *Eraldica română. Actele privitóre la stabilirea armerielor oficiale cu planșe și vocabular*, Institutul de Arte Grafice "Carol Göbl", Bucuresci, 1900 (Grecianu 1900), p. 1–79.

28 Grecianu 1900, Anexa la pag. 4, fig. 1–2; Anexa la pag. 39, fig. 3–4; Anexa la pag. 47, fig. 5–6; Anexa la pag. 48, fig. 7–8; Anexa la pag. 49, fig. 9.

29 Personification of the ancient Province of Dacia under the Roman Empire; first appeared on the project of arms for the United Principalities from 1859.

30 The classic supporters of the shield of the Principality of Moldavia; first appeared on the project of arms for the United Principalities from 1863.

31 See note 24. This one was inspired by that of Saint Prince Stephen III *the Great* of Moldavia.

32 Personification of the Danube River.

33 The classic supporters for the shield of the Principality of Wallachia.

34 See fig. 4a.

35 Cernovodeanu 2005, p. 403–404.

36 *Lege pentru fixarea și stabilirea armelor României*, published in "Monitorul Oficial", Nr. 75 din 1867.

37 See fig. 4i.

38 *Lege pentru modificarea armelor țării*, published in "Monitorul Oficial", Nr. 57 din 23 martie 1872.

39 The crown of the Kings of Romania, made out of the steel of a captured Ottoman cannon from the War of Independence.

40 Cernovodeanu 2005, p. 407–410.

41 Hitchens 2017, p. 59–60.

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44 Silviu Andrieș-Tabac, *Heraldica teritorială a Basarabiei și Transnistriei*, Editura "Museum", Chișinău, 1998 (Andrieș-Tabac 1998), p. 98, fig. 224–227.

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46 See fig. 5b.

47 *Arhivele Naționale ale României*, Serviciul Arhivelor Naționale Istorice Centrale, Fond Comisia Consultativă Heraldică – I 1066.

48 *Lege pentru fixarea stemei Regatului României, întregit cu țările surori unite*, published in "Monitorul Oficial", Nr. 92 din 29 iulie 1921, p. 3569–3573.

49 Reminiscent of Deputee A. Holban's 1867 proposal, where the eagle only supported the shield with the Moldavian coat of arms. See fig. 4b.

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51 *Decretul nr. 3 privind fixarea atribuțiunilor Prezidiumului Republicii Populare Române*, published in "Monitorul Oficial", Nr. 7 din 9 ianuarie 1948, p. 154.

52 *Album de Banderas y Escudos de todo el Mundo*, Cromos FHER, Bilbao, 1950; *Albo per Figurine Stemmi e Bandiere di tutto il mondo*, Collezioni Lampo, Milano, 1951.

53 See fig. 8a.

54 *Constituția Republicii Populare Române*, pub-

lished in "Monitorul Oficial", Nr. 87 bis din 13 aprilie 1948.

55 Cernovodeanu 2005, p. 430.

56 See fig. 8b.

57 *Constituția Republicii Populare Române*, published in "Buletinul Oficial", Nr. 1 din 27 septembrie 1925.

58 See fig. 8c.

59 *Constituția Republicii Socialiste România*, published in "Buletinul Oficial", Nr. 65 din 29 octombrie 1986.

60 See fig. 8d.

61 *Decretul nr. 972 din 23 octombrie 1968 privind însemnele Republicii Socialiste România*, published in "Buletinul Oficial", Nr. 141 din 5 noiembrie 1968.

62 Vasile Moiș, *De la Aquila heliaca la Stema României*, Editura "Modvest 6", București, 1997, p. 46–62, fig. 7–15.

63 *Legea nr. 102/1992 privind stema țării și sigiliul statului*, published in "Monitorul Oficial", Nr. 236 din 24 septembrie 1992.

64 *Legea nr. 146 din 12 iulie 2016 pentru modificarea Legii nr. 102/1992 privind stema țării și sigiliul statului*, published in "Monitorul Oficial", Nr. 542 din 19 iulie 2016.

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Blazons in Legislation

Four Cases and their Implications

By Davor Zovko, a.i.h., State Herald of Sweden [1]

Abstract: The aim of the study is to analyze how the Coats of Arms of States are described in the legislation in some selected countries, and to examine some implications of such descriptions of Arms in legislation. The sample consists of four countries: Republic of Croatia, Federal Republic of Germany, Kingdom of Norway and Kingdom of Sweden.

The Croatian Arms are regulated by the Act on State Arms, State Flag and National Anthem of the Republic of Croatia, with an acceptable but not perfect Blazon. The Blazon suffers however from several problems, ambiguities, unnecessarities and heraldic irregularities, which can not be accepted in a legal text. The Act also prescribes that no design of the Arms is allowed to deviate fom the Original drawing, kept in the Parliament. That means that no artistic interpretations of the Arms exist. It is also unclear if designs that actualy differ from the Original are considered as the Arms of the State and, as such, are protected by Law.

The Arms of Germany is regulated by the Proclamation of President Heuss from 1950. The proclamation contains a Blazon, specifies that the eagle has the same color and position when standing without the shield (except the orientation of the wings), and stipulates that the original drawing of the Coat of Arms, kept in the Ministry of the Interior, is authoritative for a heraldic display, but free artistic designs are allowed for each special purpose of the Arms. This legislation results in many beautiful interpretations of the Arms, used even in official contexts.

The Arms of Norway are regulated by the Royal Resolution on the National Arms from 1937. A separate bylaw emphasizes that the Arms have a constant content, while each design could be customized to material, size, context and style. Although the document explicitly emphasizes that the content of the Arms is permanent while the form is free, there are quite few free interpretations of the Arms. A possible explanation is that few artists took a freedom in their interpretation of the Arms. Other possible explanations are lack of knowledge about the stipulated freedom of interpretation or simply the State's need of a uniform graphic profile in official contexts.

The Arms of Sweden are regulated by the National Coat of Arms Act from 1982 that stipulates who has the right to bear the National Arms, contains the proper heraldic Blazon of the Arms, and regulates that the three crowns without a shield, also are considered to be the National Arms. This legislation results in many beautiful interpretations of the Arms, used even in official contexts. In fact, the variation in depicting the Arms of the State is sometimes maybe a little too wide, and as such it causes a need of a wider protection of the Arms

of the State. Namely, according to the Paris Convention and the Swedish law, it is forbidden to use symbols that are interchangeable with the Arms of the State or other official symbols. Since the symbol of the Three Crowns is such a powerful, well-known and popular symbol in Sweden, it is easy to understand that many symbols that in some way resemble three crowns, are also perceived as the Three Crowns of Sweden. Hence the need of protection.

One of the conclusions is that free artistic expressions do not threaten the integrity of state Arms, they rather enable good artistical interpretations and thereby promote patriotic feelings. A further conclusion is that legislation should always protect the Blazon (only), not any single picture of State Arms. Finally, legislative processes of regulating heraldic matters require time, proper procedure as well as support of heraldic expertise.

Résumé : L'objectif de cette étude est d'analyser la manière dont les armoiries des États sont décrites dans la législation de certains pays sélectionnés et d'examiner certaines implications de ces descriptions d'armoiries dans la législation. L'échantillon est composé de quatre pays : République de Croatie, République fédérale d'Allemagne, Royaume de Norvège et Royaume de Suède.

Les armoiries croates sont régies par la loi sur les armoiries d'État, le drapeau d'État et l'hymne national de la République de Croatie, avec un blasonnement acceptable mais pas parfait. Le blason souffre cependant de plusieurs problèmes, ambiguïtés, inutilités et irrégularités héraldiques, qui ne peuvent être acceptés dans un texte juridique. La loi prévoit également qu'aucun dessin des armoiries ne peut s'écarter du dessin original, conservé au Parlement. Cela signifie dès lors qu'il ne peut exister aucune interprétation artistique des armoiries. On ne sait pas non plus si les dessins qui diffèrent réellement de l'original sont considérés comme les armoiries de l'État et, à ce titre, protégés par la loi.

Les armoiries de l'Allemagne sont régies par la proclamation du président Heuss de 1950. La proclamation contient un blasonnement, précise que l'aigle a la même couleur et la même position lorsqu'il se tient sans l'écu (à l'exception de l'orientation des ailes) et dispose que le dessin original des armoiries, conservé au ministère de l'intérieur, fait autorité pour une présentation héraldique, mais que des dessins artistiques libres sont autorisés pour chaque usage spécial des armoiries. Cette législation a donné lieu à de nombreuses interprétations magnifiques des armoiries, utilisées même dans des contextes officiels.

Les armoiries de la Norvège sont régies par la résolution royale sur les armoiries nationales de 1937. Un règlement séparé souligne que les armoiries ont un contenu constant, tandis que chaque dessin peut être personnalisé en fonction du matériau, de la taille, du contexte et du style. Bien que le document souligne explicitement que le contenu des armoiries est permanent alors que la forme est libre, il y a très peu d'interprétations libres des armoiries. Une explication possible est que peu d'artistes ont pris une liberté dans leur interprétation des armoiries. D'autres explications possibles sont le manque de connaissance de la liberté d'interprétation stipulée ou simplement le besoin de l'État d'avoir un profil graphique uniforme dans les contextes officiels.

Les armoiries de la Suède sont régies par la loi sur les armoiries nationales de 1982, qui dispose du droit de porter les armoiries nationales. Cette loi contient le blasonnement héraldique approprié des armoiries et dispose que les trois couronnes sans écu sont également considérées comme les armoiries nationales. Cette législation a donné lieu à de nombreuses et magnifiques interprétations des armoiries, utilisées même dans des contextes

officiels. En fait, la variation dans la représentation des armoiries de l'État est parfois un peu trop importante, ce qui rend nécessaire une protection plus large des armoiries de l'État. En effet, selon la Convention de Paris et la loi suédoise, il est interdit d'utiliser des symboles interchangeables avec les armoiries de l'État ou d'autres symboles officiels. Le symbole des trois couronnes étant un symbole puissant, bien connu et populaire en Suède, il est facile de comprendre que de nombreux symboles qui ressemblent d'une manière ou d'une autre à trois couronnes sont également perçus comme les trois couronnes de la Suède. D'où la nécessité de les protéger.

L'une des conclusions est que les expressions artistiques libres ne menacent pas l'intégrité des armoiries de l'État mais qu'elles permettent plutôt de bonnes interprétations artistiques et favorisent ainsi les sentiments patriotiques. Une autre conclusion est que la législation devrait toujours protéger le blasonnement (uniquement), et non une image unique des armoiries d'État. Enfin, les processus législatifs visant à réglementer les questions héraldiques nécessitent du temps, une procédure appropriée ainsi que le soutien d'experts en héraldique.

1. Introduction

It is hardly necessary to mention how important symbols are in practically all human activities and life situations, regardless of whether we talk about single individuals, states, or human society as a whole. Symbols are sometimes perceived as a quite marginal phenomenon, but sometimes as the most important issue on the political agenda. Not infrequently, debates that deal with symbols become much more heated and infected than debates that deal, for example, with healthcare, economy, defense or any other issue. Sweden's recent history has noted two famous feuds that specifically touched heraldry. One was about Gothenburg's lion, which in heraldic circles is considered as "wrong-facing" (i.e. turned towards the sinister) and the other feud was about the visible genitalia on heraldic animals, which in non-heraldic circles few years ago was considered as not compatible with gender equality. Two apparently trivial issues have been lively debated for a long time and have, despite all debates, not yet received a final solution that would satisfy all parties involved. The explanation for such heated debates around such small issues lies, at least partly, in the nature of heraldry: heraldry strives to symbolize as much as possible with as few symbols and as few colors as possible. Then it's no wonder that small changes mean a lot. Particularly strong discussions arise when positively perceived symbols are misused or when negatively perceived symbols are even shown.

The great importance of symbols is also shown in the fact that practically all countries carefully regulate their symbols in legislation. This is certainly done with the aim of protecting the state symbols against incorrect use, misuse, and abuse, but also to clearly delineate, determine and explain how the state authority interprets its symbols and how everyone is expected to depict and use them. Regulation of state symbols is both fast and powerful. Countries that have recently become sovereign states, for example the Republic of Croatia, regulated their state

symbols practically as soon as the country was established as such. The Act on State Arms, State Flag and National Anthem was enacted on 21 December 1990, long before the country was recognized as sovereign.[2] Of course, Croatia is not alone in protecting its symbols. The Paris Convention[3] (which, by the way, was signed long before Croatia became a sovereign state), shows that many (other) countries are equally keen to protect their symbols.[4]

As earlier mentioned, regulations are mostly about protection, but a good definition or description of the Arms of the State is an important prerequisite for protection: the State must define what it protects. At the same time, the rules of heraldry can affect the State's possibilities to protect its own Arms. In this study, the descriptions of the Arms of the States, given in legislation, are examined. The idea for such a study arose already in 2009, when my publisher expressed a desire to attach an article on the Arms of the Republic of Croatia, to my book on rights in heraldry.[5] After having read the Law on the Arms, Flag and National Anthem of the Republic of Croatia,[6] I was quite critical about the Blazon and some other regulations. After some time of working as responsible for the Swedish public heraldry, I realized that my old study potentially has much more nuances than criticism of the Croatian Arms, nuances that are worth to mention and to analyze little bit closer.

The study does not examine every aspect of the utilization of Arms, it focuses on the descriptions of the Arms in legal texts and regulations regarding interpretations of the given descriptions.

2. Aim and questions

2.1 Aim of the study

The aim of the study is to analyze how the Coats of Arms of States are described in the legislation in some selected countries, and to examine some implications of such descriptions of Arms in legislation.

2.2 Research questions

The research questions are:

- How are the Coats of Arms described (blazoned) in the legislation?
- How does the legislation regulate the interpretations of the Blazon?
- Which consequences of such regulation can be observed in praxis?

3. Methods and sample

The sample consists of chosen legislation in four countries: Republic of Croatia, Federal Republic of Germany, Kingdom of Norway, and Kingdom of Sweden.

The sample has been chosen strategically: a sample in a qualitative study is expected to include the sources that offer the broadest and deepest explanation of the phenomenon under investigation.[7] For that reason the sample consists of two monarchies and two republics.

Another condition that qualifies a country as a sample in this heraldic study, is that the country uses a real heraldic Coat of Arms. In this respect it can be ascertained that all the chosen countries have in common a rich

heraldic tradition. However, the historical development of their heraldry was quite different, and that, of course, affects the results. Legal texts have been read and analyzed through following criteria:

– Have the Arms been described with a real heraldic Blazon or in another way?
– Is interpretation of the Blazon/description regulated in any way, and if so, how?

Official (and other) use of the Arms of the State in various situations has been observed, and the observed situations have been put in relation to the aforementioned regulations. The purpose was to analyze how the aforementioned legal regulation affects the use of the Arms of the State in various practical situations.

4. Results and Analysis

4.1 Legal provisions on the Blazon and its interpretation, in legislation of the Republic of Croatia

The Coat of Arms of the Republic of Croatia is regulated by the Act on State Arms, State Flag and National Anthem of the Republic of Croatia and the flag and ribbon of the President of the Republic, proclamed in the Decree of President Franjo Tuđman of December 21, 1990, after the Parliament's decision of the same day, to adopt the Law.[8] Generally speaking, the law has not been changed since its adoption until today (i.e. April 2024).

Article 7 of the Law describes the Arms as "…twice divided horizontally and vertically in twenty-five red and white (silver) *fields. so* (sic!) that the first field is in the *upper left corner of the shield of red colour*. Above the shield is *a crown with five spikes*, which in a slight arch connects with the left and right upper part of the shield. Five smaller shields with historical Croatian Coats of Arms *are placed in the crown*, and they are arranged from left to right side of the shield in in this order: the oldest known Coat of Arms of Croatia, the Coats of Arms of the Republic of Dubrovnik, Dalmatia, Istria and Slavonia. […] The Slavonic Coat of Arms contains in the shield on a blue field two transverse white (silver) fesses, and between the fesses is a red field on which a marten steps lightly to the left. In the upper blue field is a yellow (golden) six-pointed star. *The Coat of Arms* is bordered with a red line."

The good news is that this description indeed is (an attempt to write) a real Blazon. This Blazon suffers however from several problems, ambiguities, unnecessarities and severe heraldic irregularities. All those have been extensively criticised in my earlier analysis of this legal text,[9] however, the ambiguities deserve some deeper analysis, especially those parts which haven't been mentioned in my earlier analysis.

The first one lies in the words: "[…] in the upper left corner of the shield of red colour" (Croatian: *u gornjem lijevom kutu* štita *crvene boje*). The legislator's intention to regulate that the first of 25 fields should be of red colour must be solved better here. The legal text, as it is now, means (also) that the first field is placed in the upper left corner of the red shield.

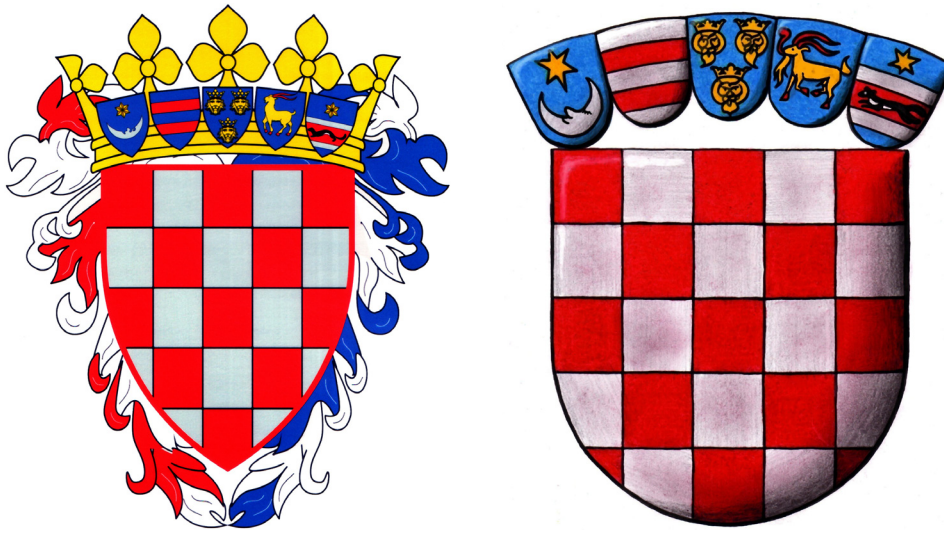


Fig. 1. Two artistic interpretations of the Coat of Arms of the Republic of Croatia. a) The painting is a result of literary application of the legal text: "Above the shield is a crown with five spikes, which in a slight arch connects with the left and right upper part of the shield. Five smaller shields with historical Croatian Coats of Arms are placed in the crown[…]". The artist thus painted exactly what the legal text regulates (Heimer, Ž. (2008). Grb i zastava Republike Hrvatske. Zagreb: Leykam International). b) In another painting, the artist adopted the external form to the rules of heraldry, but the content of the Coat of Arms (Blazon) has been retained (Zovko, D. (2009). Obiteljski Grb. Zagreb: Laurana).

The second ambiguity is: "Above the shield is a crown with five spikes […]. Five smaller shields […] are placed in the crown". The actual figure that this text aims to describe is: "Above the shield is a palisade of five shields". It can be mentioned that the palisade is rather well-known figure in heraldry, found for example in the Arms of Baden-Württemberg.[10] The legal text, as it is now, leaves some space for different interpretations. One of them could be seen in *fig. 1,* where the artist interpreted the legal text literally (and still correctly).

Next ambiguity is "The Coat of Arms is bordered with a red line." It is namely not specified (and therefore either not clear) if those words refer to the Arms of Slavonia only (since they are attached directly to the description of the Arms of Slavonia) or the whole Coat of Arms of the State. The formulation is anyway wrong in both cases, because, according to the official drawing of the Arms, both the shield and the palisade are (separately) bordered with (their own) red lines.

Next ambiguity lies in the fact that the legislator reversed the sides of the Arms. What the viewer perceives as left is, in heraldry, actually right, which the legislator does not appear to have considered.

The last ambiguity named here (but earliest in the legal text, i.e. already in the Ar-

ticle 4), is the regulation that "Nothing can be changed in the Coat of Arms of the Republic of Croatia". Later (in the Article 9) it is regulated that "the original Arms of the Republic of Croatia is kept in the Parliament of the Republic of Croatia, and the Coats of Arms are designed according to it". This ambiguity openes several questions.

First, protecting a Blazon of a Coat of Arms is much more effective than protecting an individual artistic interpretation of the Coat of Arms. A law that protects the Blazon of a Coat of Arms protects the Arms in all possible artistic versions and visual interpretations, while a law that protects only one specific image of any Arms, protects only that single image.

Second, this regulation is also against the rules of heraldry. Namely, the freedom to change, variate, and play with different charges, within the frames of the Blazon, is the cornerstone of heraldry.

Third, is it even possible to effect this regulation and actually multiply the picture of the Arms without changing it? In most cases, even the best copies differ in valeurs, nuances and other small details. It seems that the Law prescribes and demands an impossible undertaking.

Fourth, if the original kept in the Parliament is the only Coat of Arms of the Republic of Croatia, in which nothing can be changed, does that mean that a Coat of Arms with minor artistic (and unavoidable technical) changes is no longer the Coat of Arms of the Republic of Croatia and that the law does not protect it? Probably, because according to the legal text, nothing (at all) can be changed in the Arms of the State. As stated earlier, all copies of the original are *de facto* in some way imperfect, which practically means that they are all illegal!

Does this mean that specific interpretations of Coats of Arms are unnecessary and useless? By no means! Specific pictures are inevitable when the State intents to establish a serious, professional and unique graphic profile for, for example, state bodies and institutions, other larger organizations, or official documents. It is important for such institutions to appear in public with permanent and for citizens easily recognizable symbols, among those even specific versions of the Arms of the State. For example, the customs services of other countries cannot be expected to organize training courses for their employees every time a foreign country changes the images or designs of its Arms used in passports. That is why we will find a unique graphic profile of state institutions on important documents such as certificates, passports, etc.

Outside the official context however, artists must still be given a wide space for artistic freedom and creativity, even when they paint official Coats of Arms. Frozen logotypes become obsolete when the stylistic era in which they were created ends. Coats of Arms never go out of date because they constantly change form (and at the same time their content, Blazon, remains unchanged). And not only that. When a law forbids free artistic interpretations of the Arms of the State, the Coats of Arms, previously painted in countless beautiful and dignified variants, suddenly become frozen. Is any country ready to accept that no artist can ever again portray a personal artistic experience of so

beloved Coats of Arms? Should any country forbid artists to express their patriotism through their own, subjective painting of the Arms of their homeland? If artists are allowed to paint only one single, precisely described variant of the Coat of Arms, then we cannot speak of artistic creation but of simple mechanical copying (which is, as earlier stated, technically impossible to achieve perfectly). That's why it would be advisable to specify in the legal text instead, that nothing can be changed in the Blazon of the Coat of Arms.

I also hope that article 9, which says that Coats of Arms are fashioned according to the original kept in Parliament, can be interpreted so that the original is considered the authoritative model, and not the only existing original that can only be copied. The most important thing is that not a single person will experience artistic interpretations of the Croatian Coat of Arms as less relevant than a precisely constructed Coat of Arms. What arouses the emotions of all Croats, is not the technical correctness of a picture of the Coat of Arms, nor its similarity to any original, but the fact that the picture shows the Coat of Arms of the Croats, i.e. checky of five in red and argent. This is precisely where the power of heraldic symbols lies. This is exactly what makes traditional heraldry and its solutions fascinating and irreplaceable.

Indeed, some of the named ambiuities could be solved (i.e. be understood correctly by a reader) by reading the whole context. But, in my opinion, a legal text should not rely on reader's ability to make conclusions from the context, a legal text must be clear, precise and free from ambiguities.

It seems that some of the named ambiguities are results of pure linguistic shortcomings. Speaking of linguistic shortcomings, there is an obvious error in the legal text (Article 7): "[…] twenty-five red and white (silver) fields. so that the first field is […]. It is obvious that the legislator's intention was to use a comma in this place, not a fullstop. Even if this does not cause any ambiguity, leaving an obvious error in a legal text is problematic and should be solved. Is it time to update the legal text? More than three decades after Croatia's liberation from the communist regime, there are many good heraldic experts in Croatia, that can offer very good assistance to the legislator.

A better, although not perfect, Blazon can be found in the Constitution,[11] where the Arms are described as "25 alternating red and white (silver) fields" (Article 11). This Blazon is much closer to the Blazon that really describes the Coat of Arms of Croatia, which is: *Checky of five, red and argent*.

4.2 Legal provisions on the emblazonment of the Coat of Arms of the Federal Republic of Germany

The Coat of Arms of the Federal Republic of Germany was regulated by the Proclamation of President Heuss from 1950, on the Federal Coat of Arms and the Federal Eagle.[12] The proclamation consists of three shorter paragraphs. The first paragraph contains a description (Blazon) of the Coat of Arms. The field is described as "golden yellow", and the eagle is described as "one-headed" and "black". The second paragraph specifies that the eagle has the same color and position

Fig. 2. The German "Bundesadler" is rather freely interpreted by different artists, thanks to the German legislation that explicitly allows artists to adapt the interpretation of the Blazon of the Arms of the State to the purpose of the specific depiction of the Coat of Arms. a) The official image of the German eagle made according to the original established by the German government in 1950 and 1952. Edited by Davor Zovko. b) Reverse of a German Euro coin with a modern relief of the federal eagle. The image is adjusted to a round shape, so its deviation from the original can be considered natural. The designers are spouses Heinz Hoyer and Sneschana Russewa-Hoyer. Photo: Davor Zovko. c) Aluminium sculpture of the federal eagle (Bundesadler) in the plenary hall of the Bundestag. The powerful sculpture, the work of Ludwig Gies, deviates significantly from the original. Photo: Thomas Trutschel Photothek (Detail D.Z.). By courtesy of Deutscher Bundestag.

when standing without the shield, except that the tips of the feathers on the wings face outwards (and not downwards as in the shield). The third paragraph says that the original drawing of the Coat of Arms, which is kept in the Ministry of the Interior, is authoritative for its heraldic display, and that the possibility of (different) artistic design is preserved for each special purpose of the Coat of Arms.

The original Coat of Arms (with a golden field) established by the German government on June 24 1952, is also included in the attachment of the (very short) Proclamation on painting the federal Coat of Arms, published on july 4 1952 by the Minister of the Interior, Dr. Lehr.[13]

Regulations determining the appearance and depiction of the Coat of Arms of the Federal Republic of Germany rest on a real

Fig. 3. The Coat of Arms of the Kingdom of Norway is regulated by the Royal Resolution from March 19, 1937. a) In occasion of the proclamation of this resolution, Norwegian archivist Hallvard Trætteberg painted his own interpretation of the Arms. This interpretation was widely used by the State Agencies over several decades. This version of the Arms was renewed in 1992, by the Norwegian Artist Sverre Morken (Bratberg, T. (2023). Norges Riksvåpen. Store Norske Leksikon. Downloaded 2023 from https://snl.no/Norges_riksv%C3%A5pen). b) In 2016, the Norwegian Parliament assumed a new, noticeably changed interpretation of the Arms. The new interpretation may be used in different combinations of colours, depending on the context and utilization of the Arms. c) Since this interpretation of the Arms is always used in official contexts, the Parliament issued instructions regarding colours to be used in different situations (Stortinget (2022). Riksvåpen med skjold og krone. Downloaded 2023 from https://www.stortinget.no/no/Stortinget-og-demokratiet/stortingets-designhandbok/stortingets-riksvapen/riksvapen-med-skjold-og-krone/).

(and rather short) Blazon. Most importantly, these regulations explicitly allow artists to adapt the interpretation of the Blazon to the purpose of the specific depiction of the Coat of Arms. This is an example of good regulation that conforms to heraldic rules and traditions.

The well-known German Federal Eagle was in different occasions depicted by different artists, of course in different ways. An interesting artistic interpretation of this well-known heraldic charge can be found on the German Euro coin, and yet another very interesting interpretation decorates the

Plenary Hall of the Bundestag. Although these versions have an official purpose, the eagle deviates significantly from the original (but of course not from the Blazon).

To draw a parallel with the Croatian Coat of Arms – Germans do not see the eagle as their symbol because it resembles a drawing established by the Government, but because it is an eagle. That is the power of heraldry!

4.3 Legal provisions on the emblazonment of the Coat of Arms of the Kingdom of Norway

The Coat of Arms of the Kingdom of Norway was regulated by the Royal Resolution on the Norwegian State Coat of Arms, from 1937.[14] The resolution contains five articles. The first article contains the Blazon of the Coat of Arms. The second article says that the Coat of Arms will usually be in the form of a shield and will usually be crowned by a royal crown. The third article specifies that all drawings of the Coat of Arms for official use must be approved by the Ministry of the Interior, if they have not been set by the King. The fourth article determines that the Coat of Arms in the seal will be with a shield and a royal crown. The fifth article repeals the Royal Resolution from 1905.

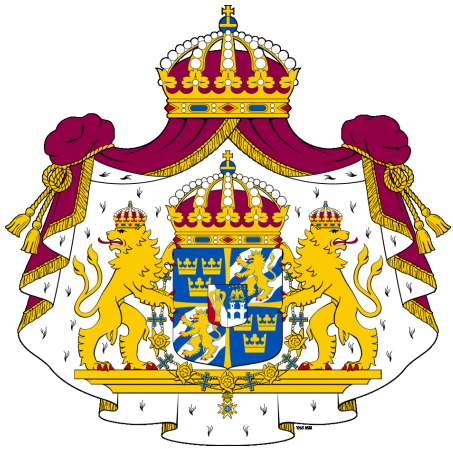
The Ministry for Foreign Affairs has published a special policy document that gives detailed instructions on the use and painting of the Coat of Arms for official purposes. The document emphasizes that the Coat of Arms of the Kingdom has a constant content, but its design is adapted to the material, size, environment and prevailing (artistic) style. At the same time, artistic freedom should be weighed against the administration's need for permanence.[15] These provisions show that the legislator was well versed in heraldry and that the heraldic traditions seem to be considered as important in Norway.

It is interesting that in Norway, where the secondary legal document explicitly emphasizes that the content of the Coat of Arms is permanent and the form is free, we will find a relatively small number of images of the national Coat of Arms that deviate from the original published in the same document. The reason could simply be the fact that there are few artists who have taken freedom in the interpretation of that Coat of Arms. Another possible explanation could be that it is not widely known that rules allow such a freedom. But this could also be a simple consequence of the State's need of a uniform graphic profile in official contexts (wich is by no means unique in the World).

This however does not mean that the variations of the Coat of Arms of the State are absent. Recently (in 2016), the Norwegian Parliament (Stortinget) assumed a new interpretation of the Coat of Arms of the Kingdom (*fig. 3*).[16] This interpretation, made for utilization in very official contexts, deviates to a large extent from the interpretation made in 1937 (renewed in 1992). This is another example of a good approach to heraldry.

4.4 Legal provisions on the emblazonment of the Coat of Arms of the Kingdom of Sweden

The Coat of Arms of the Kingdom of Sweden is regulated by the Swedish National

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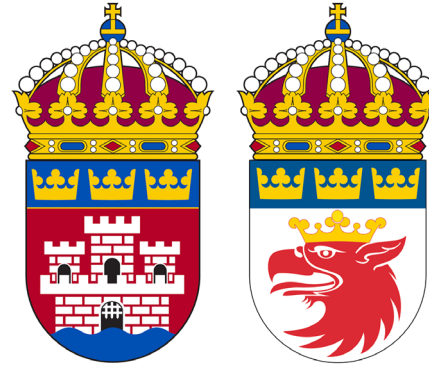


RIKSGÄLDEN
SWEDISH NATIONAL DEBT OFFICE
SVERIGES
RIKSBANK
Statens
haverikommission

Fig. 4. a) The Greater and the Lesser Coat of Arms of the Kingdom of Sweden, issued by the Office of the State Herald, for official use. Usually, the image of the official Coat of Arms changes (at least slightly) every time the Office of the State Herald gets a new artist. Drawings by Vladimir A. Sagerlund, heraldic artist at the Office of the State Herald. b) When the plenary hall of the Swedish Parliament (Riksdag) was renovated in 2007, a new rendition of the Greater Coat of Arms of the Realm was ordered to decorate the lectern. The new relief was made by Per Sundberg and based on the original made by the designer Ingegerd Råman. It noticeably deviates from the official drawings of the Coat of Arms, but the Blazon is completely retained. According to the law, the mantle, the supporters (with the compartment) as well as the Insignia of the Order of Seraphim, may be excluded when the Greater Coat of Arms is used in different situations. Photo: Carlbom, M. (2006). Ombyggnaden av Plenisalen klar. Dagens Nyheter 29. 9. 2006. Stockholm: Dagens Nyheter. c) The Swedish government uses the Lesser Arms in a special version made for the Government Only (Regeringen (1999). Grafisk manual för Regeringskansliet. Stockholm: Regeringskansliet). The royal crown is simplified, and the base of the shield has an accentuated peak. d) Case law has shown that Arms with three crowns are in Sweden considered – and protected – as the symbol of the State, even when the crowns are not arranged two above one. The Arms of Counties of Jönköping and Malmöhus are examples of such arrangements. e) Despite (or thanks to) the fact that neither depicting of the Arms of the Realm nor intepreting the Blazon of the Arms are regulated, the variations of the forms of the Three Crowns are both numerous and stilistically broad (sometimes maybe too broad). This naturally requires broader protection of the Arms of the Realm and even broader view on which pictures should be considered as interchangeable with the official symbols. The Three Crowns are easy to recognize even when they are heavily stylized, but the fact that many people see the Three Crowns of Sweden when they look at three laundry tubs, shows the real magnitude of the need of protection.

Coat of Arms Act of 1982.[17] This Law consists of (only) three articles, regulating the Greater and Lesser Coats of Arms of the Realm. Article 1 stipulates that the right to bear the Greater Coat of Arms is held by the Head of State, Parliament, Government, Foreign Representation and Armed Forces. Other state institutions are allowed to use the Greater Arms only in extraordinary occasions, and members of the Royal House are allowed to use the Greater Arms (with appropriate differencing) with permission from H. M. the King. Article 2 consists of the proper heraldic Blazon of the Greater Coat of Arms (full Coat of Arms with supporters and mantle). It also stipulates that the mantle, the supporters (and the compartment) as well as the Insignia of the Order of Sefaphim, may be excluded when the Geater Arms is used in different situations. Article 3 contains the Blazon of the Lesser Coat of Arms (azure, three crowns or, the shield crowned with a royal crown) and stipulates that the Lesser Coat of Arms can be surrounded by the collar of the Order of Seraphim, as well as that the three crowns or, placed two above one, are to be considered as the Lesser Coat of Arms of the Realm, even when depicted without the shield and the royal crown.

The law stipulates that the Coats of Arms (both the Greater and the Lesser) are used as symbols for the Swedish State but it contains no regulations regarding forms of the Arms or its parts, nor regarding interpretation of the Blazon.

Indeed, the picture of three crowns placed two above one are the ancient, worldwide-known and deeply beloved symbol of the Swedish nation, regardless of their form. Just like the Germans love their Bundesadler in

all possible forms, the Swedes love the Three Crowns in all possible forms, simply because they are the Three Crowns of Sweden. Moreover, the sole idea (or syntagma) of "three crowns" leads all the thoughts always to this national symbol. For that reason, the Swedish Three Crowns can be displayed without the shield, which also is regulated by the law.[18] For the same reason even the German Federal Eagle can be displayed without the shield, which also is regulated in the Proclamation of the President Heuss.

It is a norm (or a dogm) in heraldry to not to state anything about the position of the three charges in a field, since the position two above one is to be considered as "default".[19] It can be asked whether the Swedish clarification "two above one" is justified anyway, since three crowns, not arranged in such a way, normally are not considered to be a state symbol. Case law has however shown that three crowns actually are considered to be the protected state symbol, even when they are not placed two above one (which of course raises the question of whether it really is absolutely necessary to emphasize the arrangement of the crowns in the Blazon).[20] In fact, several Arms with three crowns arranged in fess are actually protected.

As already mentioned, there is no regulation in Sweden regarding the interpretation of the Blazon of the Greater or the Lesser Coat of Arms or even of the Three Crowns, which means that free interpretation of the Blazon is not prohibited (as in Croatia) nor allowed (as in Germany and Norway). The variation in depicting the Arms is (therefore?) wide. Well, sometimes maybe a little too wide, and as such it causes need of a wider protection of the Arms of the State. Namely, according to the Paris Convention[21] and the Swedish law,[22] it is forbidden to use symbols that are interchangeable with the Arms of the Realm or other official symbols. Since the symbol of the Three Crowns is such a powerful, well-known and popular symbol in Sweden, it is easy to understand that many symbols that in some way resemble three crowns, are also perceived as the Three Crowns of Sweden. Hence the need of protection.

5. Consequences of the historical heritage

It has already been mentioned that all the countries in the sample utilize real heraldic Coats of Arms and that they all have a rich heraldic tradition. However, the historical development of their heraldry was quite different, and that, of course, affects their heraldic rules of today. For example, in Croatia the heraldry was completely surpressed during the communist era, and it survived only thanks to very few enthusiasts like Vlasta Brajković[23] and Bartol Zmajić.[24] The communists tried to annihilate all tracks of what they called "class enemies". Knowledge about heraldry was one of the cultural and historical victims. The communist state symbols were designed with symbols of Soviet Union as a model.[25] Some authors[26] call this model "Soviet heraldic model". I prefer to call it "Soviet non-heraldic model" or rather, "Soviet anti-heraldic model". The old Croatian heraldic tradition however, from the Middle Ages and from the era of Habsburg monarchy, underwent a real renaissance after

the first free elections in Croatia, in 1990. While the Blazon of the Arms of State suffers from several problems, one cannot miss the serious ambition of the Government to preserve and respect rules and traditions of heraldry. For example, three provisions of the Regulation on granting Arms and flags to local self-government units[27] show that the Government has good approach to heraldry. According to these provisions, new Coats of Arms must be made according to the rules of heraldry (Article 2), the local self-government unit should at the first place take over its already existing historical Coat of Arms (Article 2), and proposals for Coats of Arms must be formulated as Blazons (article 5). These provisions simply ensure good heraldry and good preservation of historical heritage. They also show that legal rules can be very effective, even if they regulate heraldic matters only in general. In addition, it is stipulated that the committee for giving opinions in the process of approving Coats of Arms shall have one member who is a heraldist(!) (Article 6).

Sweden on the other hand, has an uninterrupted heraldic tradition as well as access to many experts both in public service and within private organizations. Therefore, it is natural that Swedish artists dare to take liberties when interpreting the Blazon.

6. Summarizing thoughts and conclusions

In all four countries of the sample, the legal documents governing the State Coats of Arms describe the Arms with heraldic Blazons. In Germany, Norway and Sweden, the legislation allows artistic freedom. In Norway and Germany this is explicitly stated, in Norway in a by-law document, and in Germany in the Presidential Proclamation itself. Some conclusions can be drawn from the cases analyzed in this study.

Fig. 5. During the Communist era in Croatia (1945–1990) the state symbols were designed with symbols of the Soviet Union as a model. Some authors call this model "Soviet heraldic model". I prefer to call it "Soviet non-heraldic model" or rather, "Soviet anti-heraldic model": Communist symbol of Croatia (Zovko, D. (2009). Obiteljski grb. Zagreb: Laurana). Note that this model could not annihilate the real Coat of Arms of Croats: Checky of five, red and argent.

Using the heraldic Blazon alone is completely sufficient for description of the Official Coats of Arms.

Greater artistic freedom in the depiction and interpretation of the Coats of Arms of the States did not cause any deviation from the Blazon of Arms in any of the three countries. Artists who paint the Official Arms should therefore be given full freedom in interpretation of the Arms, as long as they follow the Blazons and do not threaten the dignity and reputation of the values that the Arms symbolize. Freedom of interpretation of the emblazonment does not weaken the symbolism either. At the same time, such

freedom encourages artists to express their patriotism through their own interpretations of the Arms of the State, i.e. through their own artistical expression.

Legislation should always protect the Blazon (only), not any single picture. It is therefore fully justified to ask wether it even is necessary to mention that nothing can be changed in (the) Coat of Arms (of the Republic of Croatia). Such a provision is not even compatible with the philosophy of Blazon nor with heraldic tradition. National Coats of Arms should be given the space to work through their symbolisms, not through any specific detail. That's the power of Heraldry!

In this context, another interesting example, that was not examined in the study, deserves to be mentioned: Finland. In the Act on Finland's Arms of 1978, which consists of four Articles (only), the Coat of Arms of the State is described thorugh a proper Blazon (Article 1). Article 3 prescribes a punishment by a fine for depicting the Arms in a way that "significantly deviates" from the Blazon(!) given in the Article 1. In other words, the Finnish law follows the good examples presented in tis study.

Legislative processes of regulating heraldic matters require time, proper procedure as well as support of heraldic expertise. Good examples mentioned in this study are results of a profound knowledge of heraldry, its rules and traditions. As mentioned, Croatian heraldry survived the communism thanks to very few enthusiasts. Today however, there are many experts that are able to contribute to heraldic legislation that would be much more precise and correct, and as such, much more useful.

Notes

1 All legal texts are translated to English by the Author, who also italicized some parts of these texts.

2 Narodne Novine (1990). Zakon o grbu, zastavi i himni Republike Hrvatske te zastavi i lenti predsjednika Republike Hrvatske. *Narodne Novine*, 55/1990 (21.12.1990.).

3 Bodenhausen, G. H. C. (1967). *Guide to the Application of the Paris Convention for the Protection of Industrial Property*. Stockholm: BIRPI.

4 Sunnqvist, M. (2023). Heraldisk efterbildning och förväxlingsrisk i det rättsliga skyddet för statsvapen och statsemblem. *Heraldisk tidsskrift*, 13(127), 447–460.

5 Zovko, D. (2009). *Obiteljski grb. Pravo na grb, nošenje grba, usvajanje grba*. Zagreb: Laurana.

6 Narodne Novine, 1990.

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8 Narodne Novine, 1990.

9 Zovko, 2009.

10 Cf. Pinterović, A. (1996). O hrvatskom grboslovlju. *Hrvatska revija*, December 1996. Zagreb.

11 Zakon.hr (2023). Ustav Republike Hrvatske – pročišćeni tekst. NN 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14. Downloaded 2023 from https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske.

12 Bundesministerium des Innern (2008). Bekanntmachung betreffend das Bundeswappen und den Bundesadler. Downloaded 2008 from http://www.bund.de.

13 Gemeinsames Ministerialblatt (1952). *Gemeinsames Ministerialblatt des Bundesministers des Innern*, 18/1952.

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15 Utenriksdepartementet (2008). Riksvåpenet. Downloaded 2008 from http://www.regjeringen.no

16 Bratberg, T. (2023). Norges Riksvåpen. Store

Norske Leksikon. Downloaded 2023 from https://snl.no/Norges_riksv%C3%A5pen.

17 SFS (1982:268). Lag om Sveriges riksvapen. Downloaded 2023 from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1982268-om-sveriges-riksvapen_sfs-1982-268/.

18 SFS, 1982:268, Art. 3.

19 Zovko, D. (2003): Det normala i blasoneringen. Downloaded 2003 from http://www.heraldiska.org; Wasling, J., & Zovko, D. (2010). Det normala i blasoneringen. *Vapenbilden*, 83, 14-18.

20 Svea hovrätt, Patent- och Marknadsöverdomstolen (Svea Court of Appeal, Patent and Market Division), decision 31 Janauri 2020, cases no PMÖÄ 2020-19, 2024-19, 2026-19, 2027-19 and 2029-19.

21 Bodenhausen, G. H. C. (1967). *Guide to the Application of the Paris Convention for the Protection of Industrial Property*. Stockholm: BIRPI.

22 SFS (1970:498). Lag om skydd för vapen och vissa andra officiella beteckningar. Downloaded 2023 from https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-1970498-om-skydd-for-vapen-och-vissa-_sfs-1970-498/.

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26 For example Banac, I. (1991). *Grbovi, biljezi identiteta*. Zagreb: Grafički zavod Hrvatske.

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The welcoming ceremony. Dean of the Law Faculty Professor Dr. Eva Ryrstedt speaking. Photo: Selma Rosenfeld.

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Académie Internationale d'Héraldique

The Heraldry of Spanish America in the 16th Century: Legal Process and Implications

By Dr. Luis Fernando Herrera Valdez[1]

Abstract: The heraldry of Spanish America has received academic attention in recent years, especially regarding its iconography, but the process behind an armorial assumption and its legal implications have not been considered. In few cases, however, attention has been paid to the legal process and the implications of these images, especially "civic" coat of arms (the coat of arms of a City Council). Therefore, in the following lines, I intend to explain the process that regulated heraldic assumption in 16th-century Spanish America and the legal scope of these arms.

Résumé : L'héraldique de l'Amérique espagnole a fait l'objet d'une attention académique ces dernières années, en particulier en ce qui concerne son iconographie, mais le processus qui sous-tend une hypothèse armoriale et ses implications juridiques n'ont pas été pris en compte. Dans quelques cas, cependant, l'attention a été portée sur le processus juridique et les implications de ces images, en particulier les armoiries « civiques » (les armoiries d'un conseil municipal). C'est pourquoi, dans les lignes qui suivent, j'ai l'intention d'expliquer le processus qui a réglementé la prise en charge héraldique dans l'Amérique espagnole du XVIe siècle et la portée juridique de ces armoiries.

1. Introduction

During the late 15th and early 16th centuries, the Council of Castile began to receive requests for heraldic assumption from those who had ventured into the "empresa de las Indias". These men sought to leave a memory of their deeds in the New World in the form of a coat of arms, which their descendants would assume over time. While there were no specific laws regulating heraldic assumption in Castile, it was recognized that the King of Castile had the authority to endorse the personal assumptions. In other words, any Castilian could have a coat of arms, but the arms were more valuable if they were endorsed by the King.

But it was not only the adventurers who sent their requests for arms to be endorsed by the monarch, some corporations also did so, seeking to be recognized as local governments authorized by the King. In this case, the coat of arms did not have so much a function of remembering warrior feats but

as a symbol of royal endorsement to administer justice and govern locally in the name of the Monarch. One of the first cases of a coat of arms for a City Council is that of Ronda, located south of the Iberian Peninsula, between Seville and the Strait of Gibraltar, authorized by the Catholic Monarchs in 1485.[2] In the American context, the first arms for government corporations were authorized in 1508 for the fifteen Spanish "villas" established on the island Española (today Dominican Republic and Haiti).[3] These requests were no longer handled by the Council of Castile, but by the newly created Council of the Indias, a type of court that resolved, among other things, reimbursement of expenses for works and materials in favor of the interests of the Crown in the New World, or authorizations to explore new territories, build ports or shipyards, endorse government positions, and regulate the transit of people to American territories.

Fig. 1. Coat of arms of Hernan Cortes, 1525. Library of Congress, Harkness Collection, Manuscript Division.

2. *The heraldic process*

Anyone who sought to obtain a coat of arms validated by the King, whether a person or corporation, had to hire the services of a procurator, an agent specialized in presenting requests and records to the King's court. On some occasions, the applicant was lucky enough to know a member of the nobility with access to the court, who acted as a procurator without receiving payment for it. Less frequently, the applicant would directly submit their application and supporting documentation. This might have been the case with Christopher Columbus, who personally had to present his merits and services for the Catholic Monarchs to authorize him to use new arms related to his discoveries in the "Mar Oceano".[4] In the case of corporations, an exceptional case was that of the indigenous nobility of Tlaxcala (located about 30 miles east of Mexico City), who sent three of their most important members to Spain in 1534. In the court of Charles V, the indigenous nobles presented their merits and services to the Council of the Indies, which in 1535 authorized them to govern under the model of a Castilian municipality, but composed solely of indigenous men, and with a coat of arms as a symbol of such legal status. The documentation on this case also informs us that the Crown financed the stay

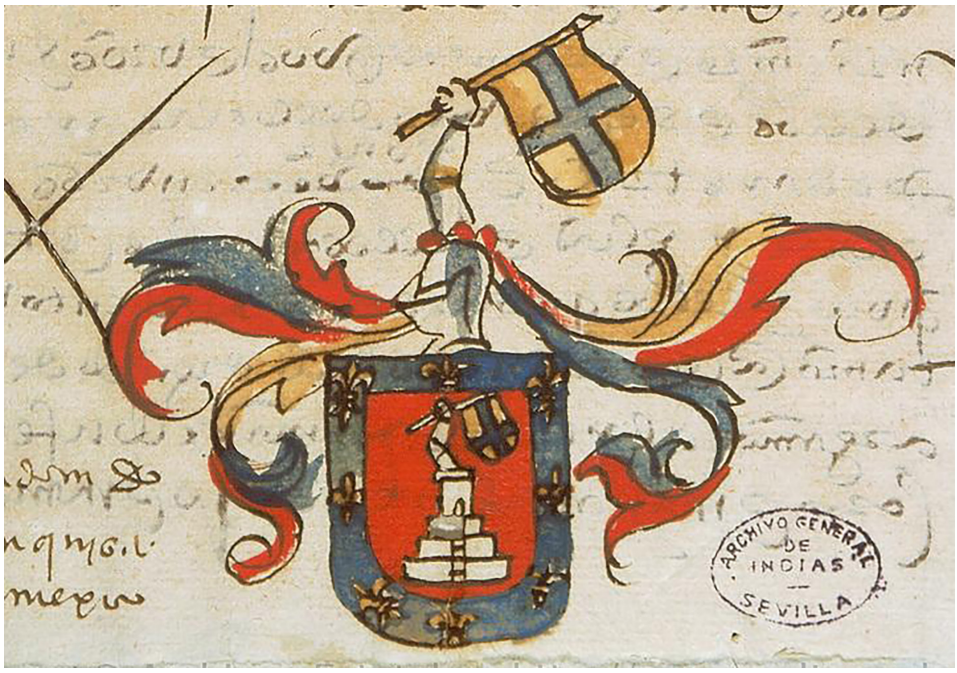

Fig. 2. Coat of arms of Francisco de Montano, 1540. Archivo General de Indias, MP-Escudos, 70.

of the indigenous nobles in Spain, meaning that the transportation, lodging, food, and clothing in the Spanish style of the visitors were paid for from the royal coffers.[5]

When the Council of the Indias addressed requests, the procurator submitted the record of their client (or clients, as it was not uncommon for them to handle several cases simultaneously) and a heraldic design, which was reviewed by the councilors, who had to determine whether the applicant had sufficient merits to assume a coat of arms authorized by the King. In most cases, the merits presented were linked to war and the expansion of Emperor Charles V's dominions in America. War exploits included, for example, capturing an indigenous warrior or ruler, seizing a building, or planting the royal standard at the top of an indigenous temple. These deeds were displayed in the field of the coat of arms, where chained heads of indigenous people could appear (as in the arms of Hernan Cortes) (*fig. 1*), or pyramids with a flag at the top (as in the shield of Francisco de Montano) (*fig. 2*). But not only acts of war were rewarded, for example, there was the case of a soldier, Garcia del Pilar, who also presented as a merit being an interpreter, as he had quickly learned the language of the indigenous people.[6]

In applications for arms for individuals, the process could be resolved quickly, as heraldic assumption did not imply the ennoblement of the applicant, that is, along


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with the coat of arms, no title was granted, such as that of marquis, for example. However, possessing a coat of arms did offer social advantages as it was evidence of participation in the Conquest of the Indias, and this collaboration was rewarded with "encomiendas",[7] a better social position, better government positions, and in the ecclesiastical hierarchy compared to those who had not risked resources and even their lives in the first decades of Spanish America. Over time, the sons and grandsons of the conquerors displayed the coat of arms of their ancestors in their homes, churches built with their sponsorship, and tombs, claiming their symbolic foundational place in the context of the new colonial reality.

In the case of City Councils, the process was more complicated. The counselors had to assess the appropriateness of creating a new corporation, a "Ciudad", that would govern and administer justice on behalf of the King at a local level. Thus, when requests for the creation of City Councils were submitted, the Council of the Indias often took time to reach a verdict. Sometimes, the Council requested a report and the opinion of the viceroy, who had to be better informed about local situations. Among the things that were evaluated was the geographical situation, that is, where a municipality was intended to be created, there was no existing one because if there was, it had to be about two miles away to avoid jurisdictional problems. What could exist was a "villa", which then became subordinate to the City Council with the title of "Ciudad" and coat of arms. In the case of New Spain, the first City Council recognized with the title of "Ciudad" arms was Mexico. In 1523, the Crown endorsed the creation of the City Council of Mexico, to which it also granted a coat of arms as a symbol of its legal status.[8] At the same time, the operation of four "villas" (Veracruz, Medellin, Segura de la Frontera, and Espiritu Santo), local government corporations that had a legal status inferior to a City Council, was recognized. While they were recognized as "villas", these four corporations received a coat of arms. The coat of arms of the City Councils was placed in the council buildings, the seat of local political power; in the chapel where the councilors attended mass, in the banners for funeral ceremonies and proclamation of Spain's kings in the viceroyalties or to receive the viceroys.

3. The "real provision"

In the Hispanic context, the document authorizing a heraldic assumption was the "real provision", consisting of several clauses.[9] The first of these is the titling clause, that is, a list of the titles of the entity from which the content of the document emanates, that is, the King. The second common clause of the provisions is the expositive, in which the applicants and a summary of their merits and services to the Crown are recorded. The identity of the procurator also frequently appears. The third clause is the dispositive, which records the requested coat of arms. Normally, the blazon accompanies the coat of arms in its graphic representation (*fig. 3*). It is important to note that the 16th-century blazons

Fig. 3. Real provision for the City Council Puebla de los Angeles in the New Spain, 1538. Archive of the City Council of Puebla, Mexico.

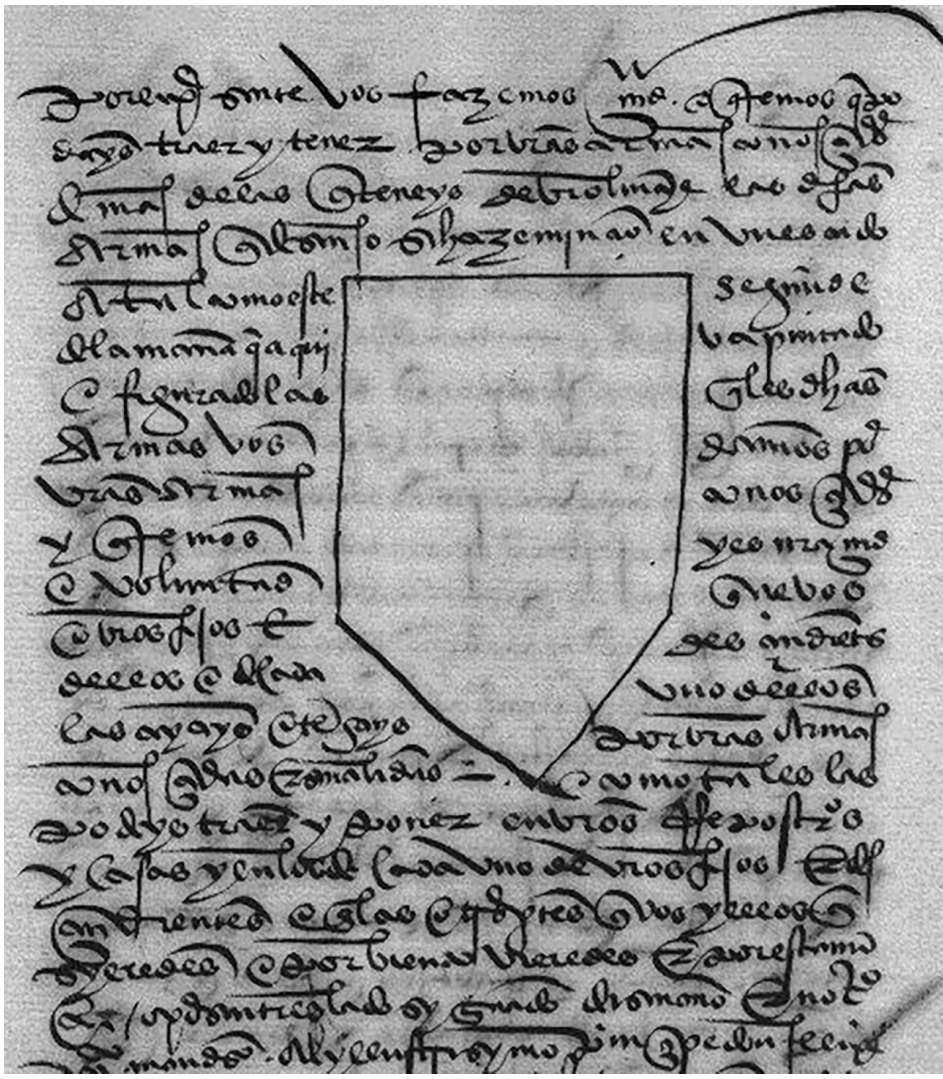

Fig. 4. Blazon without coat of arms in the real provision for Nuno de Benavides, 1532. Archivo General de Indias, Mexico, 1088, L. 2, 57v.

were drafted in a common language, that is, the terms azure, gules, sable, and vert were not used for blue, red, black, and green. The final clauses are called penal and preceptive. The first establishes fees against those who opposed the content of the provision or who intentionally disregarded it. Meanwhile, the preceptive clause orders compliance with the provision by the nobility, including the heir apparent, and all the king's officials who go-

verned and administered the royal justice in his domains on his behalf. Finally, the provision records the place and date of its validation and bears the signatures of the members of the Council of the Indias, the king's secretary, and the King himself.

During the reign of Charles V, who often was not at court but at the forefront of war facing Suleiman the Magnificent, it was not uncommon for the queen consort, Empress Isabella of Portugal, to sign in his place. For greater solemnity, the provision bore the king's seal, but in most cases, it has disappeared. To this day, few original provisions made on vellum or parchment have survived, distinguished by detailed miniature work, undoubtedly an influence of Flemish court customs that were introduced in Spain since the time of Philip I of Castile and were strengthened with the rise of his son, Charles of Ghent, to the Spanish throne. There is almost no record of the identity of who made these provisions, and so far, only the author of the provision for Tlaxcala, Diego Rodríguez de Narvaez, is known, whom the Crown itself paid three gold ducats.[10]

It is possible that in the case of other American City Councils, the Crown took charge of paying for the illuminated provision, although the costs of preparing an expedient, sending it to court, having a procurator, and sending the document from Spain to America must have been borne by the applicant. After the councilors and the Queen's or the King's signature, the provision was sent to the applicant on the nearest fleet set to sail to America, while the transcription of the provision remained in the records of the Council of the Indies. It was common for

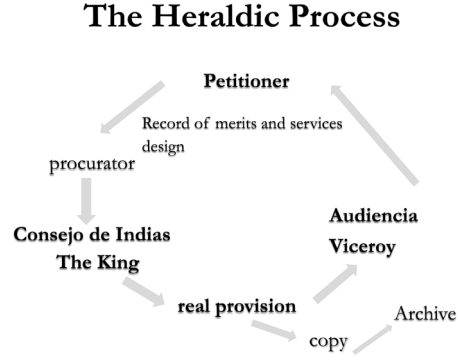

Fig. 5. The heraldic process in the Spanish America.

the transcription not to include the graphic representation of the shield, only the blazon, for example, the copy of the heraldic provision for Nuno de Benavides (*fig. 4*).[11]

After a long journey across the ocean, the provision was not delivered directly to its recipient because, being a document that contained the will of the King, its content had to be known and obeyed by the King's representatives in America: the viceroys and the Audiencias, who, after a special ceremony, signed the back of the provision, and then the document was finally delivered to its recipient. In the case of the City Council, upon receiving the provision, it was kept in a chest with several keys, guarded by different councilors. In this way, the container could only be opened when the key holders gathered and used them simultaneously (*fig. 5*).

4. Conclusions

The heraldic assumption in America, both of men and City Councils with the title of "Ciudad", was a power that the Crown had

arrogated to itself, and it resolved the requests through the Council of the Indias. In this sense, the documentation of the Archive of the Indies does not show the intervention of the King of Arms of Castile or the creation of a King of Arms for the Indias. The functions of the Castilian king of arms were limited precisely to his Spanish jurisdiction and to handling cases of the nobility, which included, for example, the issuance of proofs of nobility.[12] Thus, without being given such a name, the Council of the Indias functioned as a virtual King of Arms of the Indias.

Notes

1 Researcher at Fundación Cultural Antonio Haghenbeck y de la Lama IAP, Mexico.
2 J. Rodriguez, "Sobre el escudo heráldico de Ronda", *Isla de Arrarian* 22 (2003).
3 E. Rodriguez, "Blasones de la isla Española", *Boletin del Archivo General de la Nacion*, 1–1 (1938), pp. 39–40.
4 A. Paz y Melia, *Nobiliario de conquistadores de Indias* (Madrid, 1892), pp. 2–3.
5 L. Herrera, *Escudo de armas de Tlaxcala* (Tlaxcala, 2018), pp. 31–33.
6 Archivo General de Indias, Patronato, 169, N. 1, A. 1530, R4.
7 The "encomienda" was an exploitation system in which the "encomendero" was not the owner of the land, nor were the indigenous people his slaves, but he could demand the production of a specific territory and use the local indigenous people for any work required. In exchange, the "encomendero" had to ensure that the indigenous people under his charge received the Catholic doctrine by providing all the necessary means.
8 I. Sanchez (ed.), *Recopilación de las Indias*, Libro VIII, título II; B. Díaz del Castillo, *Historia verdadera de la conquista de la Nueva España*, Chapter XX. Archivo General de Indias, México 1088, L2, fols. 58r–59r; A. de Herrera, *Historia general de los hechos de los castellanos en las islas y tierra firme del mar oceáno* (Madrid, 1726), pp. 195.
9 J.J. Real, *Estudio diplomático del documento indiano* (Sevilla, 1970), pp. 184–217.
10 Herrera, *Escudo de armas*, pp. 32–33.
11 Archivo General de Indias, Mexico, 1088, L.2, F.57v.
12 M. Zabala, "Los reyes de armas en España", *Hidalguía* 372 (2016), p. 488.

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Municipal and Territorial Symbols of Ukraine: Problems of Legal Regulation

By Dr. Andriy Grechylo, A.I.H. [1]

Abstract: After the collapse of the USSR, Ukraine inherited the old administrative-territorial division and more than 100 non-heraldic municipal emblems approved by local councils during the 1960s–1980s. Since 1990 the Ukrainian Heraldry Society has actively conducted research in heraldry and vexillology. In a relatively short span of time a great deal of work has been conducted in archives, a lot of heretofore unknown materials has been discovered, and Ukrainian and foreign heraldry (mainly that of neighbouring countries) has been studied. On this basis the main principles and rules of modern Ukrainian municipal heraldry and vexillology have been developed. Wide-ranging discussions on these issues were held at annual heraldic conferences and, as a result, the methodology and basic principles of modern heraldic art have been elaborated. The results of theoretical studies are being implemented gradually by providing free consultations to local authorities, expert evaluations, or preparing designs to order. Through the efforts of society members it was possible to both renew old symbols and to create new emblems and flags for more than 2000 cities, towns, villages, districts and regions in Ukraine.

Ukraine is a unitary state. According to the Constitution of Ukraine, "the system of the administrative and territorial structure of Ukraine is composed of the Autonomous Republic of Crimea, oblasts, raions, cities, districts in city, settlements, and villages". The top level of the administrative division in Ukraine are 24 oblasts (regions or provinces). Raions (districts) are the second level. At the municipal level, there were more than 1,300 cities and settlements (towns) and more than 10,200 village councils, which included more than 28,600 villages. On 17 July 2020, the Verkhovna Rada (Parliament of Ukraine) approved the administrative reform to merge most of the existing 490 raions, resulting in creation of 136 new raions. 1,469 united territorial communities were created instead of over 11,000 local councils. Unfortunately, there is still no state authority in Ukraine that would coordinate local symbols. The Ukrainian Heraldry Society coordinates work in these fields and regularly provides assistance to local authorities.

Résumé : Après la chute de l'URSS, l'Ukraine a hérité de l'ancienne division administrative et territoriale et de plus de 100 emblèmes municipaux non héraldiques approuvés par les conseils locaux dans les années 1960–1980. Depuis 1990, la Société ukrainienne d'héraldique mène activement des recherches en héraldique et en vexillologie. En un laps de temps relativement court, un travail considérable a été effectué dans les archives, de nombreux documents inconnus jusqu'alors ont été découverts et l'héraldique ukrainienne et étrangère (principalement celle

des pays voisins) a été étudiée. C'est sur cette base que les principaux principes et règles de l'héraldique municipale ukrainienne moderne et de la vexillologie ont été élaborés. Des discussions approfondies sur ces questions ont eu lieu lors de conférences annuelles, ce qui a permis d'élaborer la méthodologie et les principes de base de l'art héraldique moderne. Les résultats des études théoriques sont progressivement mis en œuvre par le biais de consultations gratuites pour les autorités locales, d'évaluations d'experts ou de la préparation de dessins sur commande. Grâce aux efforts des membres de la Société, il a été possible de renouveler d'anciens symboles et de créer de nouveaux emblèmes et drapeaux pour plus de 2000 villes, villages, districts et régions d'Ukraine.

L'Ukraine est un État unitaire. Selon la Constitution ukrainienne, "le système de la structure administrative et territoriale de l'Ukraine est composé de la République autonome de Crimée, d'oblasts, de raions, de villes, de districts urbains, d'agglomérations et de villages". Le niveau supérieur de la division administrative en Ukraine est constitué de 24 oblasts (régions ou provinces). Les raions (districts) constituent le deuxième niveau. Au niveau municipal, il y a plus de 1 300 villes et localités (cités) et plus de 10 200 conseils de village, qui comprennent plus de 28 600 villages. Le 17 juillet 2020, la Verkhovna Rada (le Parlement ukrainien) a approuvé la réforme administrative visant à fusionner la plupart des 490 raions existants, ce qui a entraîné la création de 136 nouveaux raions. 1 469 collectivités territoriales unifiées ont été créées à la place de plus de 11 000 conseils locaux. Malheureusement, il n'existe toujours pas en Ukraine d'autorité publique chargée de coordonner les symboles locaux. La Société ukrainienne d'héraldique coordonne les travaux dans ces domaines et fournit régulièrement une assistance aux autorités locales.

1. Introduction

Ukrainian heraldry and vexillology have ancient historical traditions. The appearance of the first territorial and municipal coats of arms in Ukrainian lands dates back to the second half of the 13th to the beginning of the 14th century during the existence of the Ruthenian Kingdom (Galician-Volhynian State).

After the disintegration of the Ruthenian Kingdom in the mid-14th century, symbols of administrative territories primarily emerged based on earlier emblematic representations. Over the following centuries, these symbols underwent slight changes due to shifts in administrative divisions or the incorporation of certain territories into other states.

Municipal symbols were established during the 14th to 18th centuries through the granting of self-governing rights to cities based on the Magdeburg Law (*fig. 1*). While the approval of a city's coat of arms was not mandatory in royal privileges, the selection of these emblems was generally made locally, without formal legal procedures.

The period from the late 18th century to the early 20th century, when Ukrainian territories were divided between the Habsburg Empire and the Russian Empire, saw a decline in local self-governance and an increase in state authority. Attempts to centralize the approval of coats of arms precisely reflected these processes and indicated a shift in the role of municipal symbols, which now became carriers of state ideology (*fig. 2*). Many cities retained their coats of arms, sometimes adding political attributes.

Fig. 1. Seals of the cities of Volodymyr (14th century), Lviv (14th century), Kamianets-Podilskyi (16th century), and Pryluky (18th century).

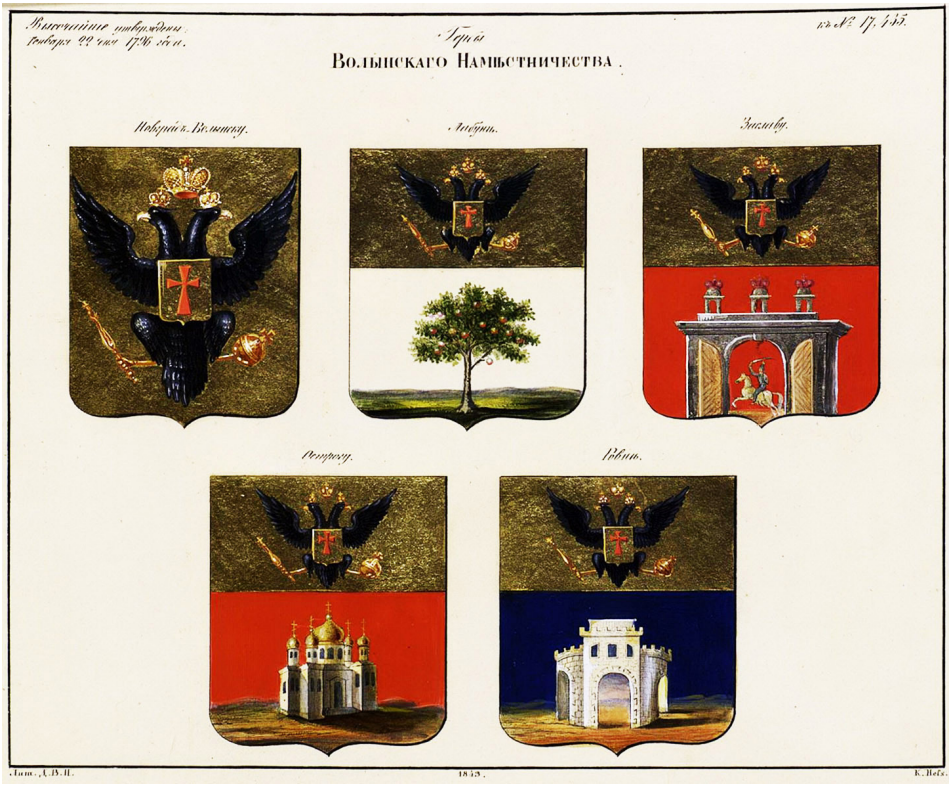

Fig. 2. Coats of arms of the cities in Volyn Governorate, supplemented with Russian eagles in 1796 (Novohrad-Volynskyi, Labun, Zaslavl, Ostroh, Rivne). From: Рисунки гербам городов Российской империи *(Drawings of the coats of arms of cities in the Russian Empire)*, St. Petersburg, 1843.

During Ukraine's incorporation into the USSR, municipal emblems only began to develop in the 1960s. These signs were excessively ideological and uniform, aiming to

Fig. 3. Coats of arms of Ukrainian cities from the Soviet period (Kupiansk, Khmelnytskyi, Bilovodsk, Lviv, Ivano-Frankivsk, Ternopil, Zaporizhzhia, Cherkasy, Lubny).

depict the "achievements of socialism" in economic and political spheres (*fig. 3*).

Following the dissolution of the USSR, Ukraine inherited over 100 non-heraldic municipal emblems approved by local councils between the 1960s and 1980s.

2. Administrative-Territorial Division and the 2020 Reform

Ukraine is a unitary state with three levels of administrative divisions.

First level: There are three types of first-level administrative divisions: 24 oblasts (regions or provinces), 1 autonomous republic and 2 cities with special status (Kyiv and Sevastopol).

Second level: Raions (districts) are smaller territorial units of subdivision in Ukraine. There were 490 raions. Following the December 2019 draft constitutional changes submitted to the Verkhovna Rada (Parliament of Ukraine) by President Volodymyr Zelenskyy, 136 new raions have replaced the former 490 raions of Ukraine.

Third level: This is the municipal level.

Ukraine has two types of settlements: rural and urban. Rural populated areas (in Ukrainian: сільський населений пункт / silskyi naselenyi punkt) can be either a village (село / selo) or a rural settlement (селище / selyshche). Urban populated areas (міський населений пункт / miskyi naselenyi punkt) can be either a city (місто / misto) or an urban-type settlement (селище міського типу / selyshche miskoho typu). For the sake of brevity, urbanized settlements are sometimes classified as towns in the English language.

As of January 1, 2014, prior to the start of Russian aggression, Ukraine had 10,279 village councils, encompassing 28,397 rural settlements, as well as 885 urban-type settlements and 460 cities.

Within the framework of administrative reform that began in 2015, the Government of Ukraine established new territorial communities (or simlply 'hromadas') on June 12, 2020. There are three types of hromadas: 625 rural (сільська громада / silska hromada), 435 settlement (селищна громада / selyshchna hromada) and 409 urban (міська громада / miska hromada). There are 1469 hromadas in total (as of January 1, 2022).

3. Activity of the Ukrainian Heraldry Society and Legislation Regarding Territorial and Municipal Symbols

Since 1990, the Ukrainian Heraldry Society (UHS) has actively conducted research in heraldry and vexillology. In a relatively short time, extensive archival work has been undertaken, numerous previously unknown materials have been discovered, and Ukrainian and foreign heraldry (mainly from neighbouring countries) has been studied. Based on this, fundamental principles and rules for modern Ukrainian municipal heraldry and vexillology have been developed. Annual heraldic conferences have facilitated broad discussions on these matters.

Even in the first issue of the UHS bulletin "Znak" (1993), an article was published stressing the need to establish a Ukrainian Heraldic Service and a draft Charter for it.[2] The tasks of this service were proposed to include implementing state policy in heraldry, creating registers of coats of arms, flags, emblems, and more. These proposals were sent to the Cabinet of Ministers of Ukraine, but yielded no results.

In 1996, we developed the basics of the Ukrainian municipal heraldry system.

The Verkhovna Rada of Ukraine adopted a new Law of Ukraine on Local Self-Government on May 21, 1997.[3] Since 1996, the UHS had submitted proposals to working groups and deputy commissions about incorporating articles related to local symbols and their specific formulations into the law. While many recommendations were considered, not all were included. The following are the most important articles on these matters:

Article 22. Symbols of Territorial Communities of Villages, Towns, Cities, Districts, and Regions

Territorial communities of villages, towns, and cities may have their own symbols (coat of arms, flag, etc.), reflecting their historical, cultural, socioeconomic, and other local peculiarities and traditions.

With regard to proposals from the bodies of local self-government of villages, towns, and cities, district and regional councils may approve symbols for the respective district or region.

The content, description, and usage of symbols for territorial communities of villages, towns, cities, districts, and regions are determined by the respective council in accordance with the law.

Article 26. Exclusive Competence of Village, Town, and City Councils

Exclusively at plenary sessions of village, town, and city councils, the following matters are resolved: ...49) approval in accordance with the law of regulations on the content, description, and usage of the symbols of a territorial community;

Article 43. Matters Resolved Exclusively at Plenary Sessions of District and Regional Councils

Exclusively at plenary sessions of district and regional councils, the following matters are resolved: ... 14) approval in accordance with the law of regulations on the content, description, and usage of the symbols of a district or region.

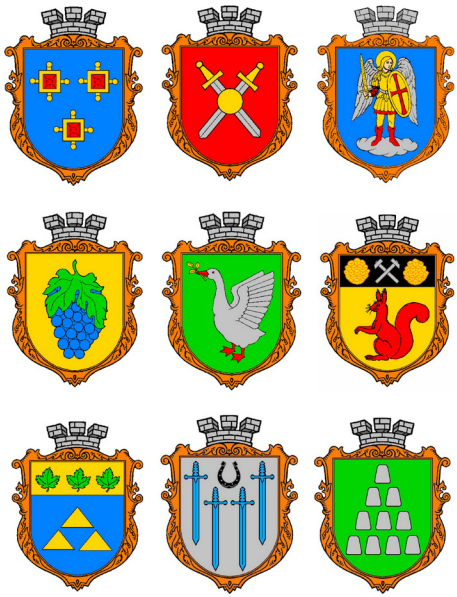

Fig. 4. Modern coats of arms of cities and towns in Ukraine developed on a systematic basis since 1990 (Kamianka-Buzka, Dobromyl, Skole, Vynnyky, Truskavets, Sosnivka, Novoiavorivsk, Liublynets, Deliatyn).

Indeed, the issue of approving local coats of arms and flags falls under the exclusive competence of local councils (Article 26, section 1–49). However, the problem lay in maintaining an appropriate professional standard for the execution of symbols, as no state institution was established to oversee and register these symbols.

Through the efforts of society members, consultations were provided to local councils, and projects for coats of arms and flags were developed systematically for their consideration. Since 1990, we have created new symbols for more than 2,000 settlements and territorial entities in Ukraine.

On May 18, 2000, the President of Ukraine, Leonid Kuchma, signed a decree titled "On the Regulation of Heraldry in Ukraine".[4] This decree, among other things, stipulated that

> *local executive authorities, when addressing matters related to the introduction, approval, or registration of symbolism [...] shall submit proposals to the Commission on State Awards and Heraldry for heraldic expertise and conclusions;*
> *take into account the conclusions of this Commission based on the results of heraldic expertise;*
> *apply methodological recommendations on heraldry developed by the Commission on State Awards and Heraldry.*

The decree also supported the proposal to establish a State Heraldic Register and entrusted the Government of Ukraine to address this matter and determine the body responsible for maintaining the register.

As I had been a member of the Commission on State Awards and Heraldry under the President of Ukraine for a considerable period of time, the task of developing methodological recommendations was assigned to me. I drafted the "Methodical recommendations on heraldry and vexillology of oblasts, raions, raions in cities and territorial communities of cities, settlements and villages (territorial and municipal symbols)".[5] These recommendations included previous developments that had already been approved in practice. They encompassed sections such as "General Methodology of Modern Coat of Arms Creation", "General Require-

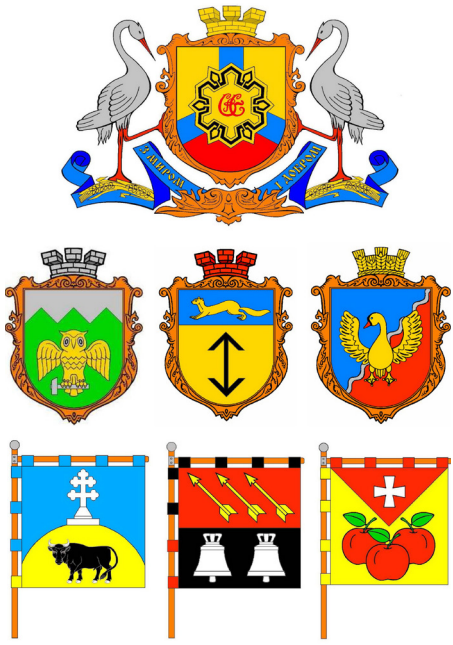

Fig. 5. The major coat of arms of the city (Kropyvnytskyi), coats of arms with urban and rural crowns (Klesiv, Kuniv, Husynka), municipal flags (Bychkivtsi, Skorodyntsi, Spasiv).

ments" (regulating the form of the shield, use of heraldic metals and enamels, etc.), and "Specific Provisions". These "Methodical recommendations" formed a coherent heraldic system. Specifically, they proposed using a silver urban masonry crown in municipal coats of arms for towns and urban-type settlements (*fig. 4*) As an exception, golden masonry crowns were recommended for regional centres, and red ones for villages that had lost ancient urban rights. For other rural settlements, golden crowns with wheat spikes were used (*fig. 5*). Decorative framing of the shield was also permitted.

The positive aspect of the 2000 presidential decree was that the principles approved by the Ukrainian Heraldry Society now acquired the status of official recommendations from the Commission. However, this Commission operated on public principles and did not have the physical capacity to frequently hold meetings and consider a large number of symbol projects. Additionally, the Government did not address the issues related to the State Register.

Therefore, the Ukrainian Heraldry Society continues to carry out expertise and provide consultations to local councils. Due to the absence of proper control, some local councils were approving non-heraldic emblems (*fig. 6*).

During the administrative-territorial reform, unfortunately, no new acts were added to the current legislation that would regulate local heraldry issues. When forming territorial communities, misunderstandings arise regarding local symbols. Specifically, whether it makes sense to create separate symbols for communities, and whether certain towns and villages will not use their own coats of arms and flags; or whether these symbols will operate in parallel and how they will be applied later. As a result, chaos in the creation of new signs has emerged in localities. This issue was addressed by the Commission on State Awards and Heraldry under the President of Ukraine on June 1, 2018. The result of the discussion was the adoption of the "Methodical recommendations" supplement on local heraldry. In order to regulate these matters, specific provisions were specified:

> *For united territorial communities and also for local councils that include more*

Fig. 6. Non-heraldic emblems approved by local communities (Khotyn, Berezivka, Nedilysche, Trybukhivtsi, Bilokurakine, Novodmytrivka).

than one settlement, it is recommended to use the coat of arms and flag of the administrative centre (or titular settlement) as general presentation symbols of the community or local council. Creating separate coats of arms and flags for the community (or local councils) and their administrative centres is inappropriate until this matter is regulated by current legislation. Instead, the use of other types of symbols, such as logos or emblems that do not duplicate coats of arms, is welcomed for communities.[6]

Based on these principles, the symbols of the administrative centre can simultaneously serve as presentation symbols for the entire community. Ultimately, symbols of major cities such as Kyiv, Dnipro, Odesa, Kharkiv, Lviv, and others concurrently fulfil the role of symbols for corresponding urban communities. Coats of arms and flags can also be developed for other settlements that are part of the community. Instead, for the community symbol, the introduction of a logo or emblem that does not duplicate the function of the coat of arms is recommended.

As an example, the community of Zabolotiv (Ivano-Frankivsk Oblast) can be mentioned. It includes the town of Zabolotiv and 19 villages. Coats of arms and flags were developed for all 20 settlements by us, which were approved by the local council[7] (*fig. 7*). Additionally, a separate logo for the community was introduced.

3. Conclusions

The absence of a government heraldic service and a legislative framework do not provide an opportunity to form a fully qualitative heraldic system in Ukraine.

Currently, the main tasks for resolving the issues of municipal and territorial coat of arms and flag creation in Ukraine seem to be as follows:

1. Continue to provide consultation and practical assistance to local councils from the side of the Ukrainian Heraldry Society and ensure the quality level of new coats of arms and flags.
2. Develop proposals for the current legis-

Fig. 7. Municipality logos and coats of arms of villages in the Zabolotiv community (Ivano-Frankivsk oblast).

lation and new draft laws that will regulate the functioning of local symbols.

3. Develop principles for maintaining a heraldic-vexillological register that would function at the state level.

It is much easier to establish a distinct and high-quality system of local symbols at the beginning of the administrative-territorial reform than to later revise unsuccessful emblems and attempt to bring order to chaos. All of this is particularly challenging during times of war. However, there is hope that after the liberation of the territories temporarily occupied by Russia, the restoration of Ukraine's borders to their 1991 state, and the

conclusion of the war, due attention will be given to the legislative regulation of local heraldry and vexillology

Notes

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3 Text of law: https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text (in Ukrainian)

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Académie Internationale d'Héraldique

Zur Situation der regionalen und kommunalen Heraldik in den fünf ostdeutschen Bundesländern

Von Karl-Heinz Steinbruch, a.i.h.

Zusammenfassung: Nachdem die Kommunen der DDR mit dem letzten Gesetz über die Kommunalverfassung vom 17. Mai 1990 das Recht auf eigene Hoheitszeichen erhalten haben, legten sich neben den wiedergegründeten Ländern hunderte Gebietskörperschaften von der regionalen bis zur lokalen Ebene auf dem Gebiet der früheren DDR eigene Wappen zu.

Das Kapitel möchte im Vergleich untersuchen, ob und welche Festlegungen zu den Genehmigungsverfahren in den Ländern Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt und Thüringen getroffen wurden und wie diese im Einzelnen ablaufen.

Das schließt Fragestellungen hinsichtlich der Wappenfähigkeit von Regionen, Städten, Gemeinden und Ortsteilen ein, ebenso Fragen der Beratung der Antragsteller, der Begutachtung der Entwürfe, bis hin zur Verleihung der Wappen, deren Registrierung und deren Rechtsschutzes.

In einem statistischen Teil des Kapitels soll die Anzahl der überarbeiteten, neu geschaffenen und außer Kraft getretenen Wappen im Verhältnis zur Anzahl der wappenfähigen Regionen, Städte, Gemeinden und Ortsteile betrachtet werden.

Abstract: After the municipalities of the German Democratic Republic (GDR) were granted the right to their own emblems with the last law on the municipal constitution of May 17, 1990, hundreds of local authorities from the regional to the local level in the territory of the former GDR, in addition to the re-established states, adopted their own coats of arms.

This chapter aims to examine by comparison whether and which stipulations have been made regarding the approval procedures in the states of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia and how these work in detail.

This includes questions regarding the ability of regions, cities, municipalities and districts to bear coats of arms, as well as questions regarding the advice of applicants, the assessment of designs, the awarding of coats of arms, their registration and their legal protection.

A statistical section of the chapter will examine the number of revised, newly created and repealed coats of arms in relation to the number of regions, cities, municipalities and districts that are eligible to bear coats of arms.

1. Einführung

Mehr als dreißig Jahre nach der Wiedervereinigung Deutschlands möchte ich einen Vergleich hinsichtlich der Situation der regionalen und kommunalen Heraldik in den fünf neuen Ländern wagen. Ausdrücklich ausnehmen aus meiner Betrachtung möchte ich die Wappengestaltung der Ostberliner Stadtbezirke.

Mit der Verabschiedung der Siegelordnung vom 28. Mai 1953 in der DDR hatten Kreise, Städte und Gemeinden nur noch ein Siegel mit dem Hoheitszeichen der DDR zu führen.[2]

Bestehende Stadt- und Gemeindewappen wurden zwar noch gelegentlich gezeigt, waren jedoch keine Hoheitszeichen mehr. Neue Wappen wurden nur von wenigen meist neu entstandenen Städten und Gemeinden angenommen, ohne dass es eine rechtliche Grundlage gab.

Erst mit dem Kommunalverfassungsgesetz vom 17. Mai 1990 erhielten Kreise und Gemeinden wieder das Recht, eigene Wappen zu führen.[3] Bei Gemeinden erstreckte sich die Erlaubnis auch auf Flaggen.

Zahlreiche Städte und Gemeinden nutzten nunmehr ihre historischen Wappen wieder als Hoheitszeichen, während sich viele wappenlose Körperschaften um neue Wappen bemühten. Diese Bemühungen waren in ihrer Intensität regional recht unterschiedlich ausgeprägt. Es entwickelte sich ein deutliches Süd-Nord Gefälle. Das bedeutet, dass der Wunsch nach einem eigenen Wappen im Süden Ostdeutschlands stärker ausgeprägt ist als im Norden. Dies hält bis in die Gegenwart an.

2. Die rechtliche Grundlage in den fünf Ländern

Mit Inkrafttreten des Einigungsvertrages am 3. Oktober 1990 konstituierten sich auch die Länder Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt und Thüringen.

Da kommunale Angelegenheiten in Deutschland in die Zuständigkeit der Länder fallen, verbietet das eine einheitliche, in allen Ländern gleiche Vorgehensweise beim Umgang mit alten und der Genehmigung neuer Wappen. In den Jahren nach 1990 wurden in allen neuen Ländern eigene Verfahren entwickelt und rechtliche Grundlagen geschaffen, die trotz einiger Modifikationen bis heute Bestand haben.

Diese haben in Brandenburg und Sachsen den Status von Verordnungen, wobei die in Sachsen den typisch deutschen Titel „Kommunalverfassungsrechtsdurchführungsverordnung“ trägt. In Mecklenburg-Vorpommern bilden eine Verwaltungsvorschrift des Innenministeriums, in Sachsen-Anhalt ein Runderlass des Innenministeriums und in Thüringen lediglich ein Rundschreiben des Landesverwaltungsamtes die rechtliche Grundlage.

In jedem Falle wurden und werden die Landesarchive eingebunden und in allen Ländern wurden bereits bestehende Wappen im Wesentlichen anerkannt.

In *Brandenburg*, wo auch bereits bestehende Wappen nach Begutachtung durch das Landeshauptarchiv vom Innenministerium bestätigt werden mussten, nutzten die Archivare die wohl kaum jemals wiederkehrende Gelegenheit, heraldische Wappen-

besserungen anzuregen.[4] Vielfach wurde die zu DDR-Zeiten verwendete Industriesymbolik zugunsten historischer und naturnaher Symbolik zurückgedrängt. Nicht immer konnten sich dabei die Fachleute durchsetzen. Die Stadt Brandenburg zum Beispiel trennte sich zwar von ihrem 1947 eingeführten Wappen mit den vier Schornsteinen, bestand aber auf die Wiedereinführung des 1715 verliehenen Doppelwappens von Altstadt und Neustadt. Neben Essen dürfte damit Brandenburg die einzige Stadt Deutschlands mit einem Doppelwappen sein.

In *Mecklenburg-Vorpommern* waren bereits bestehende Wappen zwar genehmigungsfrei, sollten aber mit Abbildung, Blasonierung und historischer Begründung dem Landeshauptarchiv zum Aufbau einer Wappenrolle zur Verfügung gestellt werden.[5] In einigen Fällen mussten auch hier Wappenänderungen vorgenommen werden, wie zum Beispiel bei den Stadtwappen von Neustadt-Glewe und Güstrow. Im letzteren Fall erhielt der Schild auf Vorschlag des Landeshauptarchivs 1999 seine ursprüngliche Farbe Gold zurück.

Bei den wenigen Gemeindewappen des Landes handelte es sich häufig um Produkte, die von im Kulturbund organisierten Heraldikern geschaffen worden waren, ohne dass entsprechende Beschlüsse der Gemeindevertretungen vorlagen. Diese mussten nachträglich erbracht werden.

In *Sachsen* wurden frühere Wappengenehmigungen grundsätzlich anerkannt und bestehende Wappen konnten weitergeführt werden. Vom Hauptstaatsarchiv wurden gegebenenfalls Empfehlungen zur Überarbeitung mangelhafter Wappen ausgesprochen.[6]

In *Sachsen-Anhalt* wurde ausdrücklich festgestellt, dass die Verwendung nicht amtlich genehmigter Wappen rechtswidrig ist. Dieses Verbot schloss auch die von heraldischen Gesellschaften angefertigten und registrierten Wappen ein. Lag für ein Wappen eine amtliche Bestätigung nicht vor, war es durch das Landesarchiv auf heraldische Korrektheit zu überprüfen und bedurfte anschließend der Genehmigung. Auch in Sachsen-Anhalt wurde diese Gelegenheit zu Wappenverbesserungen wahrgenommen.[7]

Thüringen verfuhr mit den historischen Wappen wohl am großzügigsten.[8] Hier durften „historisch überlieferte Wappen“ ohne besondere Genehmigung weitergeführt werden. Damit wollte man den zu Beginn der neunziger Jahre erwarteten Arbeitsanfall etwas regulieren. Es zeigte sich jedoch bald, dass der sehr dehnbare Begriff „historisch überliefert“ zu Missverständnissen führte und heraldisch ungenügende Wappen festschrieb. Zwar wurde das nach wenigen Jahren erkannt und die Aufgabe formuliert, auch die historisch gewachsenen Wappen einer Begutachtung zu unterziehen und den Kommunen Empfehlungen zur Verbesserung ihrer Hoheitszeichen zu geben. Eine konsequente Umsetzung erfolgte jedoch bis heute nicht.

Wesentlich unterschiedlicher gestalteten sich die Genehmigungsverfahren in den einzelnen Ländern. Diese laufen zur Zeit wie folgt ab:

In *Brandenburg* ist beim Landeshauptarchiv der Beschluss, zwei Reinzeichnungen oder eine Bilddatei und die Begründung einzureichen. Das Landeshauptarchiv prüft, ob das Hoheitszeichen den Anforderungen

Abb. 1. Wappenbrief für die Gemeinde Hohen Pritz 2023. Bildquelle: Archiv des Autors.

genügt und genehmigt das Wappen durch sein Gutachten, das zur Zeit von einem externen Heraldiker des HEROLD erstellt wird. Das Ministerium des Innern wird über den Vorgang nur informiert. Wird das Wappen jedoch abgelehnt, hat der Antragsteller das Recht, das Wappen dem Ministerium des Innern zur Genehmigung vorzulegen. Das ist jedoch nur eine theoretische Variante. Auf Anfrage wurde mitgeteilt, dass ein derartiger Fall noch nicht bekannt wurde und man immer einen gelungenen Kompromiss gefunden habe. Das genehmigte Wappen wird auf dem Service-Portal des Landes im Internet publiziert. Eine Wappenrolle wird nicht geführt.

In *Mecklenburg-Vorpommern* haben die Antragsteller den Beschluss, drei Reinzeichnungen, eine verkleinerte Schwarz-Weiß-Abbildung auf Papier zur Darstellung im Dienstsiegel, die Begründung, Blasonierung und Angaben zum Entwurfsverfasser beim Ministerium des Innern einzureichen, das ein Gutachten beim Landesarchiv einholt.

Das Wappen wird durch einen Wappenbrief des Innenministeriums genehmigt und meist in feierlicher Form vom Innenminister selbst oder einem anderen hochrangigen Vertreter der Landesregierung an die Gemeinde übergeben (*Abb. 1*). Oftmals werden dazu Volksfeste genutzt oder extra veranstaltet. Diese Form der Wappengenehmigung und -übergabe ist einzigartig in den neuen Ländern. Eine Wappenrolle wird im Landesarchiv geführt, die Veröffentlichung erfolgt durch eine Pressemitteilung. Leider wird seit einigen Jahren durch das Landesarchiv keine Beratung der Antragsteller mehr angeboten. Mehr noch, wegen Personalmangels – der Gutachter ist kürzlich in den Ruhestand getreten – werden zur Zeit nicht einmal mehr die im Innenministerium eingehenden Anträge vom Landesarchiv bearbeitet. Es ist zu hoffen, dass hier bald eine Lösung zwischen

dem für Wappengenehmigungen zuständigen Innenministerium und dem für das begutachtende Landesarchiv zuständigen Kultusministerium gefunden wird.

In *Sachsen* müssen die Antragsteller wohl den kompliziertesten Weg bis zum eigenen Hoheitszeichen gehen.

Der Wappenentwurf ist mit der Blasonierung, einer Reinzeichnung oder einer Bilddatei und der Begründung vom Antragsteller beim Staatsarchiv einzureichen. Erst danach erfolgt die Beschlussfassung beim Antragsteller, der die Stellungnahme des Archivs beizufügen ist. Der Antragsteller reicht dann die kompletten Unterlagen – Blasonierung, Reinzeichnung oder Bilddatei, Begründung, Stellungnahme des Staatsarchivs und Beschluss – bei der „Rechtsaufsichtsbehörde" ein, das ist bei Gemeinden und Verwaltungsverbänden das Landratsamt, bei Kreisen die Landesdirektion. Die Rechtsaufsichtsbehörde holt wiederum die Zustimmung des Staatsministeriums des Innern ein, erteilt im positiven Fall den Genehmigungsbescheid und informiert abschließend das Staatsministerium des Innern und das Landeshauptarchiv, das die Wappenrolle des Landes führt. Eine geregelte Veröffentlichung neuer Wappen findet nicht statt.

In *Sachsen-Anhalt* gestaltet sich das Genehmigungsverfahren recht einfach: 2007 ging die Kompetenz zur Genehmigung neuer Hoheitszeichen vom Innenministerium auf die Landkreise über. Dem Antrag sind fünf Zeichnungen, die Blasonierung, die historische Begründung, die Stellungnahme des Landeshauptarchivs und ein beglaubigter Beschluss bei der „Genehmigungsbehörde" – Landratsamt bei Gemeinden und Verbandsgemeinden bzw. Landesverwaltungsamt bei Kreisen – einzureichen. Das bedeutet, dass sich Antragsteller vor Einreichung der Unterlagen mit dem Landeshauptarchiv in Verbindung zu setzen haben, das nur eine Stellungnahme abgibt. Die Genehmigung des Wappens erfolgt durch ein Schreiben des Landratsamts bei Gemeinden und Verbandsgemeinden bzw. des Landesverwaltungsamtes bei Kreisen. Eine Bekanntmachung erfolgt in den Amtsblättern. Beim Landeshauptarchiv wird das Wappenregister des Landes geführt.

Bleibt als letztes in alphabetischer Reihenfolge das Land *Thüringen*.

Hier hat der Antragsteller den Beschluss zur Annahme des Wappens, zwei farbige Reinzeichnungen, die Blasonierung und die Begründung in zweifacher Ausfertigung und das Gutachten des Hauptstaatsarchivs beim Thüringer Landesverwaltungsamt einzureichen. Das bedeutet, dass sich auch in Thüringen der Antragsteller oder der von ihm beauftragte Heraldiker – auch das ist hier möglich – schon vor der eigentlichen Antragstellung mit dem Hauptstaatsarchiv in Verbindung zu setzen hat.

Die Genehmigung erfolgt durch Schreiben des Präsidenten des Landesverwaltungsamtes, das im Anschluss eine Zeichnung, die Begründung und einen Abdruck der Genehmigung dem Hauptstaatsarchiv Weimar zur Registrierung in der Wappenrolle des Landes und zur dauernden Aufbewahrung übergibt. Über die Veröffentlichung neuer Wappen liegen keine Informationen vor.

Zusammenfassend kann gesagt werden, dass bei aller Unterschiedlichkeit im Genehmigungsverfahren in allen Ländern – außer in Mecklenburg-Vorpommern – be-

reits im Stadium der Wappenerarbeitung die Gemeinden Kontakt mit dem begutachtenden Staatsarchiv haben.

3. Wappenfähigkeit der kommunalen Gebietskörperschaften

Die Genehmigungsverfahren berühren die wesentliche Frage, welche kommunalen Gebietskörperschaften in den einzelnen Ländern überhaupt wappenfähig sind. Hierzu muss in die Struktur der Länder eingetaucht werden.

Am 3. Oktober 1990 bestanden die Länder Brandenburg aus 44, Mecklenburg-Vorpommern aus 37, Sachsen aus 54, Sachsen-Anhalt und Thüringen aus je 40 Land- und Stadtkreisen. Die Stadtkreise werden auch als kreisfreie Städte bezeichnet. Diese sind meist Städte über 100.000 Einwohner und sind verwaltungsmäßig keinem Landkreis zugeordnet.

Aber durch mehrere Strukturreformen in allen neuen Ländern verringerten sich schrittweise diese Zahlen durch Zusammenlegung von Landkreisen und die Auflösung von Stadtkreisen auf aktuell in Brandenburg 18, Mecklenburg-Vorpommern 8, Sachsen 13, Sachsen-Anhalt 14 und Thüringen 22. Zum Beispiel wurden in Mecklenburg-Vorpommern die kreisfreie Stadt Wismar in den neu gebildeten Landkreis Nordwestmecklenburg und die kreisfreie Stadt Stralsund in den neu gebildeten Landkreis Vorpommern-Rügen eingegliedert. Um eine Größenvorstellung der neuen Landkreise in diesem Bundesland zu erhalten, sei darauf verwiesen, dass der neu geschaffene Landkreis Mecklenburgische Seenplatte mit 5.495 km² doppelt so groß ist wie das Bundesland Saarland.

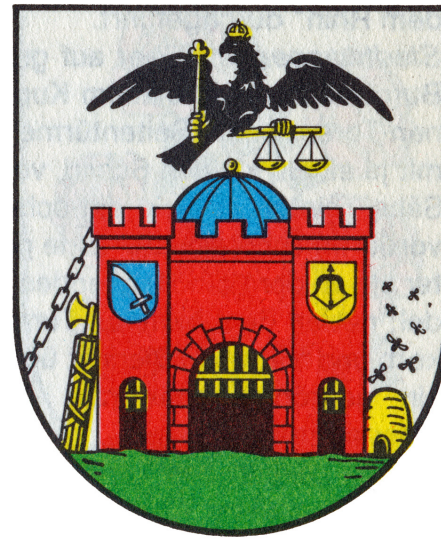

Abb. 2. Stadtwappen Alt-Ruppin bis 1993. Bildquelle: Lexikon Städte und Wappen der Deutschen Demokratischen Republik, Leipzig 1984, S. 17.

Eine ähnliche Entwicklung vollzog sich bei den Gemeinden, worunter Stadt- und Landgemeinden zu verstehen sind, zwischen denen es rechtlich keinen Unterschied (mehr) gibt:

Nach 1990 kam es zu zahlreichen Eingemeindungen oder Fusionen von Gemeinden zu neuen Gemeinden.

In Brandenburg ging die Zahl der Stadt- und Landgemeinden von 1793 auf 413, in Mecklenburg-Vorpommern von 1124 auf 724, in Sachsen von 1626 auf 418, in Sachsen-Anhalt von 1367 auf 218 und in Thüringen von 1710 auf 624 zurück.

Dadurch reduzierte sich drastisch die Anzahl der wappenfähigen Körperschaften. Daraus ergeben sich für die Kommunalheraldik mehrere Konsequenzen:

Abb. 3. Stadtwappen Neuruppin 1928, bestätigt 2003. Bildquelle: https://service.brandenburg.de/service/de/adressen/kommunalverzeichnis/wappen/~wappen-stadt-neuruppin-336828# – Zugriff am 22. Oktober 2023.

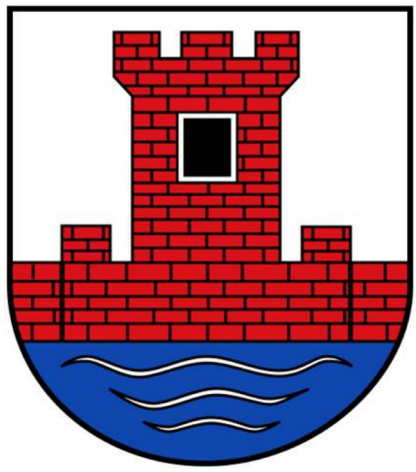

Abb. 4. Wappen der Stadt Feldberg 1928-1999 und Wappen der Gemeinde Feldberger Seenlandschaft seit 2013. Bildquelle: https://de.wikipedia.org/wiki/Feldberger_Seenlandschaft#/media/Datei:-DEU_Feldberger_Seenlandschaft_COA.svg – Zugriff am 22. Oktober 2023.

- Die Wappen der eingemeindeten oder fusionierenden Gemeinden entfallen als Hoheitszeichen.
- Bei Eingemeindungen kann das Wappen der aufnehmenden Gemeinde unangetastet bleiben. Zum Beispiel ging bereits 1993 die Stadt Alt Ruppin in der Stadt Neuruppin auf, wodurch das Wappen von Alt Ruppin hinfällig wurde (*Abb. 2*). Das Stadtwappen von Neuruppin blieb davon unberührt (*Abb. 3*).
- Bei Fusionen können sich die Gemeinden auf ein bestehendes Gemeindewappen einigen. 1999 schlossen sich in Mecklenburg-Vorpommern die Stadt Feldberg und die Gemeinden Conow, Dolgen, Lichtenberg und Lüttenhagen mit insgesamt 27 Orten zu einer neuen Gemeinde zusammen, die den Namen Feldberger Seenlandschaft erhielt. Damit war das Wappen der Stadt Feldberg als Hoheitszeichen hinfällig. Die neue Gemeinde blieb vorerst wappenlos. Erst 2013 wurde das ehemalige Stadtwappen Feldbergs auch für die neue Gemeinde als repräsentativ angesehen und als Hoheitszeichen der Gemeinde Feldberger Seenlandschaft angenommen (*Abb. 4*).
- Die fusionierten Gemeinden schaffen ein neues Wappen oft unter Einbeziehung der Symbolik der bisherigen Gemeindewappen. Zum Beispiel fusionierten in Brandenburg im Jahre 2001 die Städte Uebigau (*Abb. 5*), Wahrenbrück (*Abb. 6*) und 19 weitere Gemeinden zur Stadt Wahrenbrück, die bereits

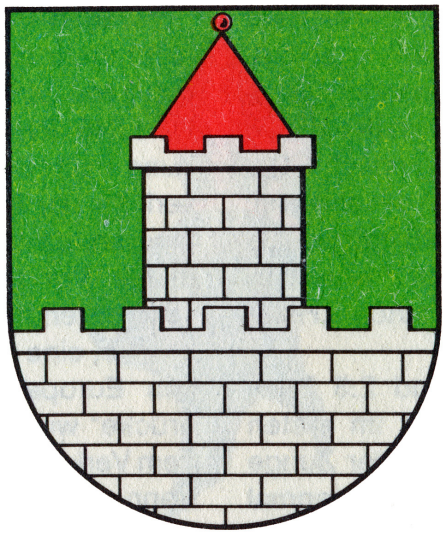

Abb. 5. Wappen der Stadt Uebigau bis 2001. Bildquelle: Lexikon Städte und Wappen der Deutschen Demokratischen Republik, Leipzig 1984, S. 467.

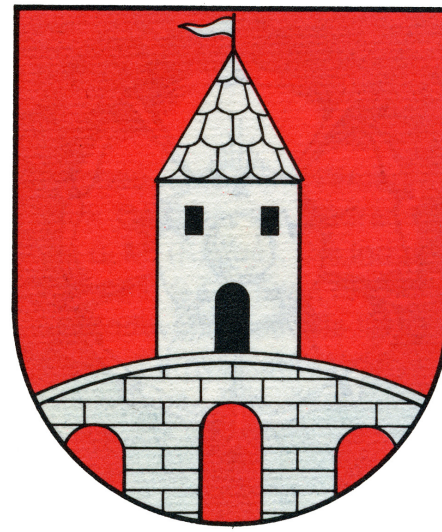

Abb. 6. Wappen der Stadt Wahrenbrück bis 2001. Bildquelle: Lexikon Städte und Wappen der Deutschen Demokratischen Republik, Leipzig 1984, S. 472.

einen Tag später in Stadt Uebigau-Wahrenbrück umbenannt wurde. 2003 wurde das Wappen der neuen Stadt, das die Symbolik beider Stadtwappen aufnahm und für die 19 Gemeinden 19 grüne Blätter zeigt, genehmigt (*Abb. 7*).

– Die neuen Gemeinden verzichten auf eigene Hoheitszeichen. Als sich zum Beispiel die Stadt Bismark in Sachsen-Anhalt 2010 und 18 andere Gemeinden zur neuen Einheitsgemeinde Stadt Bismark zusammenschlossen, entfiel das Wappen der bisherigen Stadt Bismark als Hoheitszeichen (*Abb. 8*). Die neu entstandene Stadt hat bis heute kein eigenes Wappen.

Wieviele Gemeindewappen seit 1990 durch diese zahlreichen Gebietsreformen entfallen sind, lässt sich nicht sagen. In keinem ostdeutschen Bundesland gibt es dazu einen Überblick. Allein in Brandenburg sind es jedoch etwa 140 Gemeindewappen.

Bei den Stadtwappen ist es etwas einfacher: In *Brandenburg* entfielen vier Stadtwappen: Wie bereits erwähnt das von Alt Ruppin, das von Pritzerbe und die Wappen von Uebigau und Wahrenbrück.

In *Mecklenburg-Vorpommern* verschwand 1999 nur das 1928 angenommene Wappen der Stadt Feldberg.

In den anderen drei Bundesländern *Sachsen, Sachsen-Anhalt* und *Thüringen* sind es jeweils mehr als 10 Stadtwappen, die entfallen sind.

Daraus ergibt sich folgendes aktuelle Bild:

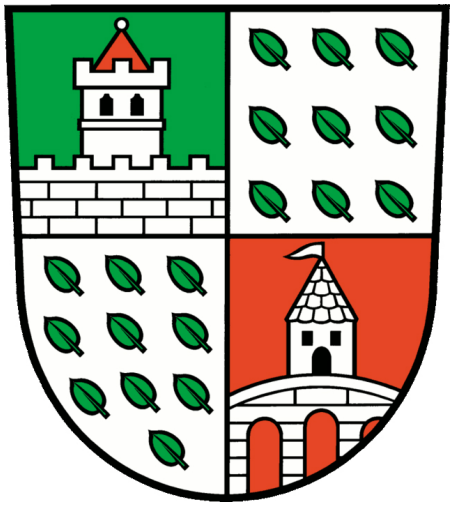

Abb. 7. Wappen der Stadt Uebigau-Wahrenbrück seit 2003. Bildquelle: https://de.wikipedia.org/wiki/datei:wappen_uebigau-wahrenbrueck.png – Zugriff am 22. Oktober 2023.

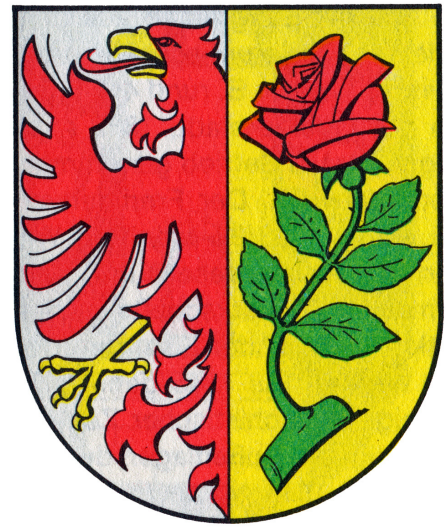

Abb. 8. Wappen der Stadt Bismark bis 2009. Bildquelle: Lexikon Städte und Wappen der Deutschen Demokratischen Republik, Leipzig 1984, S. 55.

– Landkreise und kreisfreie Städte:
Heute haben alle Landkreise in Ostdeutschland wieder eigene Wappen, ebenso alle noch bestehenden 17 kreisfreien Städte.

– Kreisangehörige Städte:
In *Brandenburg* haben 112 von 113 Städten eigene Wappen. Ohne Wappen ist nur die 2002 aus der Stadt Pritzerbe und drei Gemeinden gebildete Stadt Havelsee.

In *Mecklenburg-Vorpommern* haben alle 84 Städte ein eigenes Wappen.

In *Sachsen* haben 168 der 169 Städte eigene Wappen. Ausnahme ist nur die 2011 durch Zusammenlegung der Stadt Schirgiswalde mit zwei Gemeinden gegründete Stadt Schirgiswalde-Kirschau.

In *Sachsen-Anhalt* haben 99 der 104 Städte eigene Wappen. Ausnahmen sind die fünf Städte Aken (Ersterwähnung 1162), Arnstein (gegründet 2010), Bismark (gegründet 2010), Landsberg (Stadt seit 1346) und Südliches Anhalt (gegründet 2009 aus 51 [!] Orten).

Und in *Thüringen* haben 117 der 120 Städte ein Wappen. Die drei Ausnahmen sind die erst in den letzten 20 Jahren gegründeten Städte Nottertal-Heilinger Höhen (gegründet 2019), Saalburg-Ebersdorf (gegründet 2003) und Werra-Suhl-Tal (gegründet 2019).

– Landgemeinden:
Wieviele der in Ostdeutschland noch amtlich bestehenden 1807 Landgemeinden inzwischen eigene Wappen haben, lässt sich

nicht mit letzter Sicherheit sagen. Die Landesarchive haben zwar einen Überblick über die bestätigten Wappen, bekommen jedoch keine Informationen, wenn ein Gemeindewappen infolge von Eingemeindung oder Fusion hinfällig geworden ist. Deshalb sind die hier gemeldeten Zahlen der Gemeinden mit eigenem Wappen nicht ganz korrekt und geringfügige Toleranzen möglich. Gleichwohl ist bemerkenswert, dass der Prozentsatz der Gemeinden mit eigenem Wappen in den Ländern Sachsen, Sachsen-Anhalt und Thüringen etwa gleich groß ist, während die Länder Brandenburg und vor allem Mecklenburg-Vorpommern deutlich dahinter abfallen. Konkret haben in *Brandenburg* etwa 144 von 300 Gemeinden (48 %) eigene Wappen, in *Mecklenburg-Vorpommern* etwa 260 von 640 Gemeinden (40 %), in *Sachsen* etwa 190 von 249 Gemeinden (76 %), in *Sachsen-Anhalt* 87 von 114 Gemeinden (76 %) und in *Thüringen* etwa 394 von 504 Gemeinden (78 %).

Neben den Kreisen und Gemeinden gibt es eine dritte Verwaltungsebene, die zwischen beiden angesiedelt ist. Die Behörden dieser Ebene wurden geschaffen, damit die Verwaltungsgeschäfte der Gemeinden, die meist von ehrenamtlichen Bürgermeistern geführt werden, gesetzeskonform, professionell, ökonomisch und dennoch bürgernah erledigt werden können.

Die Behörden dieser Ebene haben je nach Bundesland unterschiedliche Bezeichnungen und sind je nach Rechtslage wappenfähig oder nicht:

In *Brandenburg* sind es 50 wappenfähige „Ämter", von denen 23 ein eigenes Wappen haben oder eine wappenführende „Verbandsgemeinde", in *Mecklenburg-Vorpommern* 76 nicht wappenfähige „Ämter", in *Sachsen* 64 nicht wappenfähige „Verwaltungsgemeinschaften" und wappenfähige „Verwaltungsverbände". Letztere stellen allerdings ein Auslaufmodell dar, da es von einmal sechs nur noch einen derartigen Verband gibt, der allerdings ein Wappen führt. In *Sachsen-Anhalt* wird diese Ebene von 18 wappenfähigen „Verbandsgemeinden", von denen bereits 15 ein eigenes Wappen führen, und in *Thüringen* von 39 nicht wappenfähigen „erfüllenden Gemeinden" und ebenfalls nicht wappenfähigen 43 „Verwaltungsgemeinschaften" repräsentiert. Dessen ungeachtet führt die Verwaltungsgemeinschaft Lindenberg/Eichsfeld in Thüringen ein eigenes Wappen. Es erscheint auf der Webseite der Verwaltung und wird im Schriftverkehr genutzt.

4. Wappen als Zeichen regionaler Identifikation und örtlicher Selbstdarstellung

Nicht nur in Ostdeutschland haben die Strukturreformen zu einer deutlichen Reduzierung der wappenfähigen Körperschaften geführt. Immer mehr traditionsreiche Orte sinken zu nicht selbständigen Teilen größerer Verwaltungseinheiten herab. Ihre Wappen verlieren ihre Eigenschaft als Hoheitszeichen und drohen auch als Kulturgut in Vergessenheit zu geraten. Die Bewohner dieser Orte wollen aber oftmals ihre historisch gewachsene Identität innerhalb der größer gewordenen Gemeinschaft mit ihrem überlieferten Wappen weiterhin zum Ausdruck bringen oder sich sogar ein neues Wappen zulegen. Derartige Wappen können und sollen keine

Hoheitszeichen sein, sind aber wichtige Zeichen regionaler Identifikation und örtlicher Selbstdarstellung und werden auf privatrechtlicher Grundlage geführt. Ihre Stifter sind zumeist Ortschaftsvertretungen, örtliche Vereine oder Verbände.

Während Wappenfähigkeit, Verleihung und Verwendung von Wappen der Landkreise, der selbstständigen Städte, Gemeinden und der Verwaltungseinheiten zwischen Kreisen und Gemeinden auf gesetzlicher Grundlage rechtlich geregelt sind, fehlen derartige Regelungen für Orte. In keinem der untersuchten Bundesländer spielen Orte und deren Wappen in den Rechtsgrundlagen eine Rolle. Da entsprechende rechtliche Regelungen fehlen, werden diese Ortswappen von den Behörden der Länder nicht begutachtet, nicht genehmigt, nicht registriert und genießen daher keinen Schutz.

Alle Länder weisen darauf hin, dass hinfällig gewordene Wappen keine Hoheitszeichen mehr darstellen, aber im örtlichen Leben weiterverwendet werden können. Während *Brandenburg, Mecklenburg-Vorpommern* und *Thüringen* allen Neuschöpfungen eine Absage erteilen und höchstens auf die Möglichkeit verweisen, derartige Wappen als Logo oder Signet zu führen, warnt *Sachsen* vor einer Neueinführung von Ortswappen wegen der Verwechselungsgefahr mit Hoheitszeichen. Nur *Sachsen-Anhalt* bietet zumindest Beratung an und verweist ansonsten als einziges Land auf die Deutsche Ortswappenrolle des HEROLD.

Diese Ortswappenrolle wurde schon 2011 vom HEROLD als Antwort auf die genannte Problematik ins Leben gerufen. Der HEROLD berät und begutachtet von Orten eingereichte Wappenentwürfe und registriert schließlich diese neuen oder auch überlieferten Wappen: Er stellt einen Wappenbrief aus, der den Wappenstifter, das Wappenbild und die Festlegung dokumentiert, welcher Personenkreis Führungsrecht an diesem Wappen haben soll. Damit ist ein Schutz gegen irrtümliche oder missbräuchliche Verwendung des Wappenbildes durch Dritte gegeben. Bisher wurden aus den fünf ostdeutschen Bundesländern 50 Ortswappen in diese Wappenrolle eingetragen, wobei die Mehrzahl allerdings Wappen nicht mehr selbstständiger Körperschaften und damit keine Neuschöpfungen betrifft.

Noten

1 Für die freundliche Unterstützung bedanke ich mich bei Herrn Alexander Hoffmann (HEROLD), Herrn Dr. André Stellmacher (Brandenburgisches Landeshauptarchiv), Frau Sarah Brüning (Ministerium für Inneres, Bau und Digitalisierung Mecklenburg-Vorpommern), Herrn Dr. Eckhart Leisering (Hauptstaatsarchiv Dresden), Herrn Dr. Hermann Kinne (Landesarchiv Sachsen-Anhalt, Abteilung Dessau), Frau Anett Böhme (Thüringisches Landesverwaltungsamt), Herrn Volker Graupner (Hauptstaatsarchiv Weimar) und für ihre Mithilfe und Geduld bei meiner Frau Brigitta.

2 Gesetzblatt der DDR 1953 S. 830.

3 Gesetzblatt der DDR 1990 S. 255.

4 Gebhard Falk, „Kommunalwappen im Land Brandenburg". In: *Herold-Jahrbuch.* N. F. 1. Band. Berlin 1996, S. 185 ff.

5 Hans-Heinz Schütt, „Beratungs- und Gutachtertätigkeit des Mecklenburgischen Landeshauptarchivs bei der Gestaltung kommunaler Hoheitszeichen". In: *Herold-Jahrbuch.* N. F. 1. Band. Berlin 1996, S. 197 ff.

6 Eckhard Leisering, „Die Genehmigungsverfahren für kommunale Wappen und Bildsiegel in Sachsen seit dem 19. Jahrhundert". In:

Herold-Jahrbuch. N. F. 1. Band. Berlin 1996, S. 201 ff.

7 Herbert Papendieck, „Kommunales Wappenwesen in Sachsen-Anhalt". In: *Herold-Jahrbuch.* N. F. 1. Band. Berlin 1996, S. 194 ff.

8 Dagmar Blaha, „Zum Stand der kommunalen Wappenentwicklung in Thüringen". In: *Herold-Jahrbuch.* N. F. 1. Band. Berlin 1996, S. 207 ff.

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Pp. 245–251

Recent Changes in the Norwegian Legislation Regarding Civic Arms and Flags

By Lyder Marstrander

Abstract: The chapter describes the political processes in 2017 and 2022 regarding civic coats of arms and flags. The historical background for the previous partial legislation is presented and the role of The National Archives of Norway is discussed. The hearings concerning the new legislation are presented and discussed, as well as how this will influence the heraldry in Norway.

Résumé : Ce chapitre décrit les processus politiques en 2017 et 2022 concernant les armoiries et les drapeaux civiques. Le contexte historique de la législation partielle précédente est présenté et le rôle des Archives nationales de Norvège est discuté. Les auditions concernant la nouvelle législation sont présentées et discutées, ainsi que la manière dont elle influencera l'héraldique en Norvège.

1. Introduction

My paper will not discuss heraldry as such but will describe the political processes that took place in 2017 and 2022, processes that unintentionally resulted in a "new heraldry" in Norway.

The present legislation consists of the following acts:

- The Act on the Flag from 1898[1] decides how the Norwegian flag should look.
- The Act on Flags Used on Official Buildings from 1933.[2] This Act decides the use of flags on official flagpoles, and this is the act that has been changed and where the discussions have been.
- The Act on Administration of Local Governments from 2018[3] contains new regulations but will not be discussed here.

2. The 1933 act

In 1933 the Storting (Norwegian Parliament) adopted an act which decides that on the flagpoles belonging to the local councils or the counties only the Norwegian national flag, and the flag showing the coat of arms of the local councils sanctioned by the King could be used. In 2003 the act was changed on this point, allowing the use of the Sami flag. These flags are shown in *fig. 1*.

The reason for this act was that during the

Fig. 1. Clockwise from top left the Norwegian national flag, the Sami flag, the municipal flag of Oslo since 2000 with the coat of arms, and the municipal flag of Oslo 1924–2000. Photos: Norwegian flag Carsten Berg Høgenhoff, Sami flag Public Domain.

1930s there were some examples where "political" flags were used on official community buildings and flagpoles. This practice was not wanted by the state who maintained that official buildings and flagpoles should not be associated with a specific political party. The Storting agreed on this matter and passed the act.

The act of 1933 also decided that coats of arms for the local councils and the counties should be sanctioned by the King in Council, but the act had no regulations on how this should be done. This process of getting a coat of arms was a rather complicated business. It was based on a long-time tradition starting in 1898.[4] In reality the National Archives was acting as an advisory body for the local councils in connection with a new coat of arms and made a recommendation to the Ministry of Local Councils. Formally this recommendation was not binding, but we have no examples where this recommendation has not been followed. This system, which lasted until 2017, could be summed up like this:

- The local community wants to have a new coat of arms and have a suggestion.
- Consultations with the National Archives to see whether the heraldic rules are used correctly.
- The National Archives sends the suggestion to the Ministry with comments.
- The Ministry sends the suggestion with their recommendation to HM the King in Council.
- It is passed in the Council and the King signs a royal declaration.

Fig. 2. Examples of coats of arms for local communities made during the Trætteberg epoch. Clockwise from top left Nord-Fron, Nissedal, Leka, Steigen, Dønna and Meråker.

Since 1930 and up to recent times the National Archives had a good competence of heraldry, especially when Hallvard Trætteberg (1898–1987) worked there. He set up the principles for Norwegian heraldry: simple forms, one motive, two colours and that the coat of arms could be blazoned. These principles have been the foundations for all recommendations made by the National Archives. It must be said that these principles were stricter than in the other Nordic countries, however, the result was that the coats of arms for Norwegian local communities have been of high quality and good understanding of the heraldic principles. On the other hand, the heraldic milieu in Norway felt that these principles could be softened without losing the heraldic quality.

When a new coat of arms should be decided in the State Council, it was defined by the blazon, not by a drawing. But when the local communities applied for a coat of arms

to the National Archives, a drawing should be enclosed. These drawings still exist in the National Archives.[5]

The aim of the coat of arms is of course to mark the identity of the owner while at the same time it should be easy to recognize and could be used in large formats like signs at the roads or in small formats like letter heads. The Trætteberg principles did function well in that way, as can be seen in *fig. 2,* where there are some examples of coats of arms made during the Trætteberg epoch.

3. The 2017 reform

In 2016 the Ministry of Local Councils and Modernizing sent on hearing a suggestion to simplify the process of sanctioning new coats of arms for the local communities.[6] The Ministry suggested to repeal the Act of 1933, thus enabling the local councils to decide the coats of arms themselves without any royal declaration. The reasons from the Ministry were that this was part of the self-governing powers of the local councils. The Ministry further argued that the self-governing powers of the local communities would give them the competence to decide their own coats of arms.

At the same time the National Archives decided that they would not handle the applications for the coats of arms anymore. So, by 2017, 119 years of the counselling of new coat of arms for the local communities suddenly ended. It is not possible to find any reason for this decision, but probably it was because of the reorganization of the National Archives. The only obligation that is left on the National Archives is that a picture of the new coats of arms decided by the local councils should be published on their home page.

Even though the Ministry gave self-governing of the local communities as a main reason for this change, there is reason to believe there was some bureaucratic assessments behind this. At the same time, there was a reorganization of the local communities which should result in fewer and larger local communities and counties. These new units would need new coats of arms in their identity building, and a rather large number of applications were expected. The Ministry therefore said that a state recognition is a disproportionate resource demanding process and maintained that a more cost-efficient measure is to be used. The only condition put in the Act was that the new coat of arms must be unique and impossible to be mistaken with existing coats of arms or seals. The result of this was that all state consultancy and control were taken away.

However, the Norwegian Heraldic Society did not like this change at all. In the hearing the Society played a dominant part on behalf of five other cultural organizations in Norway. The main arguments from the Society were:

1. There is still a need for the 1933 act. Today there is no illegal flagging which is due to this act.
2. There must be a requirement in the new act that the new coats of arms should be heraldic and could be blazoned.
3. There should be a requirement in the new act that heraldic consultation should be used, because knowledge of heraldry is rare.
4. There should be a registration function

Fig. 3. Examples of municipal coats of arms after 2017 – or municipal *logos* not following heraldic traditions. From left Asker, Lillestrøm and Sandefjord.

and a control function that should be done by the National Archives or other bodies if that was practical.

5. The heraldic principles should be a regulation to the new act.
6. Norwegian Heraldic Society will offer its competence to the local communities.

In the proposition for the Storting,[7] the Ministry accepted the Society´s suggestion of keeping the 1933 act and some of the changes in the act but the rest of the items were not accepted. The Ministry suggested that the local councils could decide their own coats of arms, provided that the new coats of arms must be unique and impossible to be mistaken with existing coat of arms or seals.

This was adopted by the Storting.[8] And this is the result as seen in *fig. 3*.

We have got a heraldry with logos instead of coats of arms. The principles put up by Trætteberg are now broken. We have coats of arms with more than one motive and the colours are not correct anymore. One of the reasons for that is that the consultants for the local governments, usually advertisings firms and architects, do not have any heraldic knowledge.

There is reason to wonder about the role of The National Archives in this process. It seems that they under no circumstances would have anyhing to do with the process of creating new coats of arms for the local communities. The result is that the principles put up by Hallvard Trætteberg now are repealed. The new coats of arms made by the local councils themselves are more like logos even though the Norwegian Heraldic Society has been consulted. The society has tried to sort out the most hilarious examples.

4. The 2022 reform

But more was to come. In 2020 the Ministry sent out a proposition for another change in the acts of flags.[9] This was circulated for comments to 96 institutions, and at the same time private persons could send in an answer.

The following alternatives were suggested from the ministry:

1. The Act should be kept unchanged, but the condition that an event should take place in the building where the flag was, should be taken away.
2. The different sections in the law should be taken away except for the section allowing the King in Council to adopt new regulations.
3. The act should be repealed totally.
4. Continuation of the act without any changes.

During the hearing a rather interesting fifth alternative was suggested by the public: To change the act back to the version before the change in 2017. This was an alternative that the Ministry had not suggested and did not comment. But it says something about the popular feeling on this matter.

The Ministry sent out the hearing to all ministries, all local communities and counties, political parties, newspapers, organizations. In addition, private persons could forward their comments. The Ministry received more than 3000 answers, 2300 of these from private persons. This is an extremely high response, in comparison the changes in 2017 only got 39 responses. 50 local communities out of 367 (13,2 % !) responded and of these 31 agreed with the Ministry. Organizations and local political parties were in favour of alternative 4 (no change in the Act). 2000 of the responses from the private persons were in favour of not changing the Act. It is evident that there has been a mobilization in the public because at the same time the question about the Pride flag used on official buildings was taken up.

One can wonder why the Ministry suggested for the Storting to change the Act despite the little support in the hearing. We must be aware of that the hearings are consultative, and the Ministry is free to follow the hearing or not. It was evidently of great importance for the Ministry to do this change. The discussion in the Storting gave support to the Ministry despite what the local party groups meant during the hearing.

The reasons given by the Ministry for this change was that if the local communities wanted to use the Pride flag or the UN flag or flags of different countries on their respective national days on the public buildings, the present act did not permit this. The Ministry wanted that the exception for this rule should be decided locally as part of the local self-governing powers and not by national rules. The Storting adopted the changes in the Act.[10]

5. So, what now?

There is reason to believe that there will be no radical change, and the local communities will be rather reserved to use this new act in fear of dividing the people in the community. This was also one of the reasons given by a local council in the hearing process.

But the two changes in the acts concerning the flags have ended a tradition that has been going on since 1898 until 2017. We see that decisions in the Storting have changed the heraldry of local communities.

In conclusion, the Flag Acts of 1898 and 1933 have been fundamental in preserving

the historical and cultural significance of heraldry and national symbols. However, the recent changes made in 2017 and 2022 have raised concerns regarding the potential consequences for heraldry and national identity. As society evolves, it is crucial to strike a balance between tradition and adaptation to ensure the continued preservation of these cherished customs. It is through education and awareness that we can foster an appreciation for heraldry and pass down our cultural heritage for generations to come.

This is a challenge that needs to be taken seriously by the Norwegian heraldic milieu. The changes in the Acts, as described above, might result in a renewal of Norwegian heraldry and we might see a "fresher" heraldry with many new "rules" coming up.

Notes

1 Act on Flags 1898. Lov om Norges Flag. https://lovdata.no/NL/lov/1898-12-10-1
2 Act on Flags used on public buildings 1933. https://lovdata.no/NL/lov/1933-06-29-2
3 Act related to municipalities and county authorities 2018. https://lovdata.no/NL/lov//2018-06-22-83
4 See Halvard Trætteberg: "Statens forhold til heraldikken i Norge" in *Meddelanden från Riksheraldikerämbetet,* bind 7, side 18. Stockholm 1938.
5 See https://foto.digitalarkivet.no/FotoWeb/
6 https://www.regjeringen.no/dokumenter/høring---forenkling-av-regelverket-for-kommunevåpen-og-kommuneflagg/id2524016/
7 https://www.regjeringen.no/no/dokumenter/prp.-157-l-2016-2017/id2557810/sec1
8 https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Beslutninger/Lovvedtak/2017-2018/vedtak2017-18-7
9 https://www.regjeringen.no/no/dokumenter/høring---forslag-om-endring-av-lov- om-flagging-på-kommunenes-offentlige-bygninger/
10 https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Beslutninger/Lovvedtak/2020-2021/vedtak202021-120

Bishop Johan Tyrberg speaking at the welcoming ceremony. Photo: Selma Rosenfeld.

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Heraldic Law in French-Speaking Belgium

By Cédric Pauwels, a.i.h.

Abstract: The legal protection of non-noble coats of arms in French-speaking Belgium falls within the competence of the Council of Heraldry and Vexillology of the French-speaking Community of Belgium, an organ of the Ministry of Culture. The Council is competent for non-noble natural persons domiciled on the territory of the Community. An institutional presentation of Belgium is essential to understand the distribution of competences in heraldic matters between the different levels of government as well as the organisation and functioning of the Council of Heraldry.

The matter is governed by two decrees, one for municipalities (1985) and the other for individuals and associations (since 2010). The fundamental issue of this legislation is the legal protection and, specifically for non-noble persons, the type of external ornaments that can be adopted.

Before 2010, the registration of coats of arms was purely private. It was carried out by the royal association Office généalogique et héraldique de Belgique, which had created a commission that ruled on the registration of a shield without any external ornamentation. By limiting the possibility of registration to the shield alone, the Office had taken the strictest view to avoid any ambiguity in relation to the noble coat of arms. The adoption of a shield was published in the association's magazine. This commission functioned from 1974 to 2010, when the French community of Belgium legislated to exercise the competence.

Since 2010, non-nobles may adopt the following elements: the shield, the helmet, the mantling and the wreath, the crest and the motto. The list is strictly limited, and any other noble ornament is prohibited.
The legislation will be examined through the stages of the procedure from the registration of the request to the publication of the ministerial decree in the "Moniteur belge" and the ceremony for the award of the coat of arms diploma, as well as the case law of the Council since its foundation in 1989.

For natural persons, there are two procedures:

– Registration of new coats of arms: examination of conformity with the rules of heraldry

– Recognition of non-noble coats of arms before 1795: which requires the establishment of a genealogical link in direct line with the bearer of the coat of arms before 1795 and the obligation to provide evidence of public bearing of the coat of arms.

Résumé : La protection juridique des armoiries non nobles en Belgique francophone relève de la compétence du Conseil de l'héraldique et de la vexillologie de la Communauté française de Belgique, organe du ministère

de la Culture. Le Conseil est compétent pour les personnes physiques non nobles domiciliées sur le territoire de la Communauté. Une présentation institutionnelle de la Belgique est indispensable pour comprendre la répartition des compétences en matière héraldique entre les différents niveaux de pouvoir ainsi que l'organisation et le fonctionnement du Conseil d'héraldique.

La matière est régie par deux décrets, l'un pour les communes (1985) et l'autre pour les particuliers et les associations (depuis 2010). La question fondamentale de cette législation est la protection juridique et, en particulier pour les personnes non nobles, le type d'ornements extérieurs qui peuvent être adoptés.

Avant 2010, l'enregistrement des armoiries était purement privé. Il était effectué par l'association royale Office généalogique et héraldique de Belgique, qui avait créé une commission statuant sur l'enregistrement d'un écu sans ornements extérieurs. En limitant la possibilité d'enregistrement au seul écu, l'Office avait adopté la position la plus stricte pour éviter toute ambiguïté par rapport aux armoiries nobles. L'adoption d'un écu était publiée dans la revue de l'association. Cette commission a fonctionné de 1974 à 2010, date à laquelle la Communauté française de Belgique a légiféré pour exercer cette compétence.

Depuis 2010, les non-nobles peuvent adopter les éléments suivants : l'écu, le casque, les lambrequins et le bourrelet, le cimier et la devise. La liste est strictement limitée et tout ornement noble est interdit.

La législation sera examinée à travers les étapes de la procédure, de l'enregistrement de la demande à la publication de l'arrêté ministériel au Moniteur belge et à la cérémonie de remise du diplôme d'armoiries, ainsi que la jurisprudence du Conseil depuis sa création en 1989.

1. Introduction

The purpose of this paper is to analyse the rules of heraldic law applicable to individuals and organisations in French-speaking Belgium. This enquiry begins with the authorities which manage heraldry, and looks at the rules applicable to individuals. A clear distinction will be made between the situation of nobles and that of non-nobles, and the rules which are applicable to citizens under public and private law will be considered.

2. State bodies responsible for the legal protection of coats of arms

In Belgium, the legal protection of coats of arms is partly a matter for the federal state and partly for the designated heraldic authorities.

In order to understand the division of powers between the different levels of government, without having to give a whole course in constitutional law, a diagram (*fig. 1*) is provided to show the relationship between the government bodies responsible for heraldry and vexillology.

The Federal State is responsible for nobility.

The communities are responsible for non-noble matters and the heraldry of communes and other associations.

We will begin with an analysis of these powers and how they are exercised in practice.

2.1 The Nobility Council

The Kingdom of Belgium is a federal state made up of entities organised according to

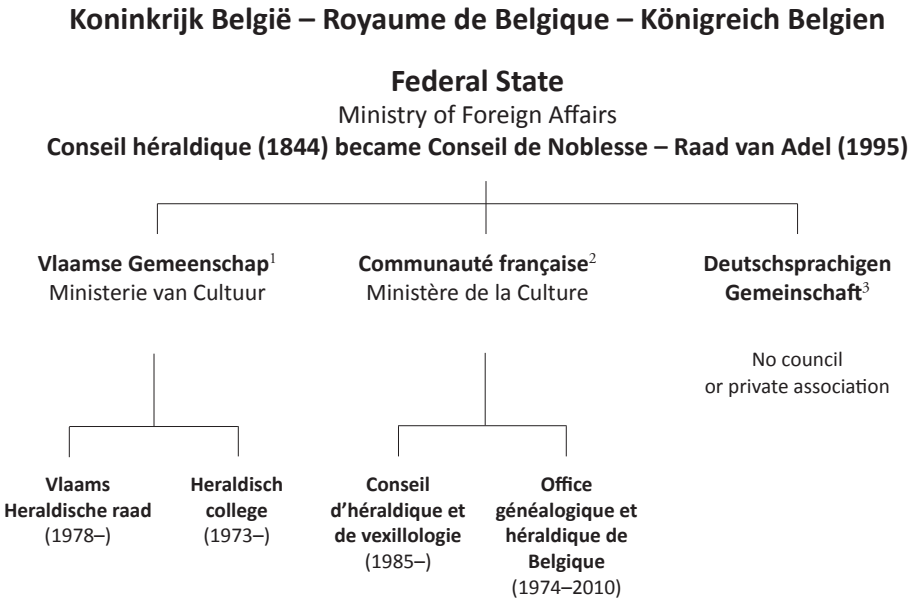

Fig. 1. Diagram of the government bodies and private associations responsible for heraldry and vexillology.

the use of the three national languages: French, Dutch and German.

Successive constitutional reforms led to the creation of three communities in 1970 and three regions in 1988. In the following analysis, I will confine myself to what is essential for an understanding of the institutional distribution of heraldry.

Only the Federal State and the Communities have powers in the field of heraldry and vexillology.

At present, the federal level only deals with the nobility. Previously, it was also responsible for municipal coats of arms.

The King has the right to confer nobility and titles, and their corollaries – coats of arms, orders of knighthood and other honours.

As Belgium is a constitutional monarchy, this power is exercised under article 113 of the Constitution with ministerial countersignature, since no act of the King has any effect unless it is countersigned by a minister. Following the adage, "The King reigns but does not govern", the King is politically irresponsible; it is his ministers who exercise the concrete government of the Kingdom, both at federal and designated heraldic authority level, and bear responsibility for all the King's acts.

The Ministry of Foreign Affairs is responsible for the nobility and national orders. This responsibility covers the entire territory of the Kingdom and its population.

The Belgian nobility is an institution that is constantly renewed. The Kingdom of Bel-

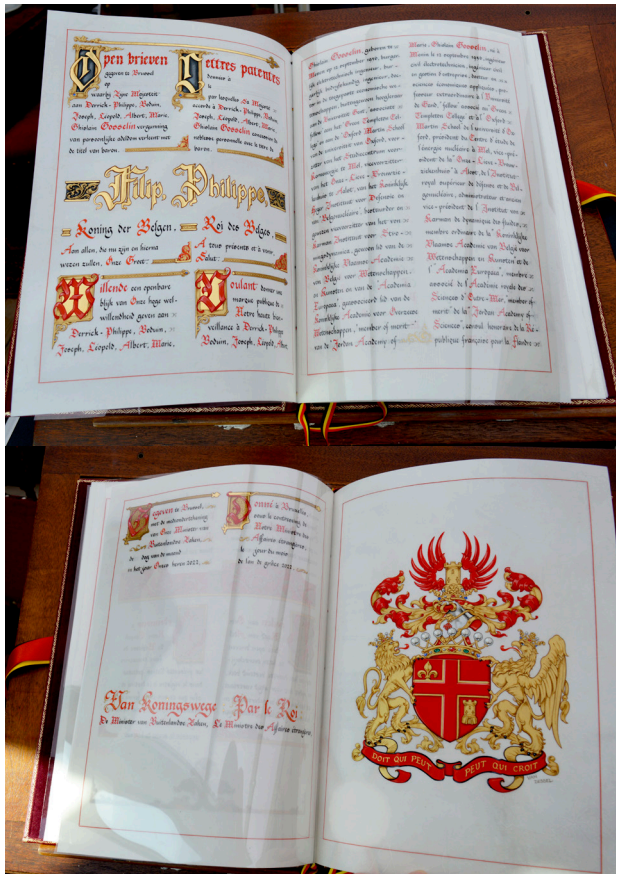

Fig. 2. Letters Patent of Nobility – Baron Gosselin – 2022. Artist: Prisca van Dessel.

gium is one of the few monarchies that still confers nobility and titles almost every year. This is a royal power, and I will demonstrate how it works in practice, from the granting of a title to the adoption of the recipient's coat of arms.

2.1.1 Royal powers

When Belgium became independent in 1830, the Constituent Assembly decided that the country would be a monarchy and that the King would have three powers in matters of nobility and, consequently, heraldry:

1) the right to ennoble;
2) the right to recognise the old nobility (i.e. the nobility before 1795);
3) the right to incorporate noble families of foreign origin into the Belgian nobility.

These powers are still exercised today. Traditionally, in the run-up to two bank holidays: 21 July (which commemorates the accession

to the throne of the first King of the Belgians Leopold I of Saxe-Coburg); and 15 November (which is King's Day) royal decrees conferring nobility are published in the "Moniteur belge", the official gazette in which all laws, royal decrees and other normative texts of the Kingdom and the designated heraldic authorities are published.

The Kingdom of Belgium is one of the few countries in Europe where the nobility enjoys legal status. As such, the public authorities are obliged to attribute to nobles the titles and qualifications to which they are entitled, both in civil status documents (births – marriages – deaths) and in notarial deeds (sales – marriage contracts – successions, etc.).

2.1.2 Granting of nobility

There are two mechanisms for granting a noble favour:

- either motu proprio, i.e. on the personal initiative of the Sovereign (bearing in mind that even in this case, as stated at the beginning of this presentation, ministerial countersignature is required for the royal decree to have full legal effect).
- or on the proposal of the "Conseil d'avis en matière de faveurs nobiliaires", a body created in 1978, and attached to the Ministry of Foreign Affairs, responsible for suggesting the names of persons deserving a noble favour.

In both cases, it is the "Conseil de Noblesse" that deals with the files that will lead to the lifting of the Letters Patent of Nobility, which is essential to make the title definitive. This explains why, if the beneficiary of a noble favour dies between the royal decree and the creation of the Letters Patent, the family is not ennobled and the procedure must, if necessary, be repeated by other members of the family, provided that the favour was not strictly personal. An example of letters patent can be seen in *fig. 2*.

It is also important to note that the Royal Family of Belgium does not belong to the Belgian nobility, but to the German nobility. The founder of the dynasty, Leopold I, was Duke of Saxony and Prince of Saxony-Coburg-Gotha before acceding to the Belgian throne.

2.1.3 Title hierarchy

The hierarchy of titles comprises eight levels, each with its own crown and external ornaments.

1) Squire
2) Knight
3) Baron
4) Viscount
5) Count
6) Marquis
7) Duke
8) Prince

For the two highest ranks, duke and prince, we should mention an inversion of importance. Under the old regime, the title of duke was superior to that of prince. But since Belgium was part of the French Empire, the order of precedence has been reversed.

There are currently only ten families with a ducal or princely title among the Belgian nobility:

1) Arenberg
2) Ligne
3) Croÿ
4) Habsbourg-Lorraine (the branch of the Austrian imperial family descended from Archduke Rodolphe, son of the last Austrian emperor, and Archduke Carl-Christian requested and obtained incorporation into the Belgian nobility with the title of prince and the predicate of Serene Highness).
5) Swiatopelk-Czetwertynski
6) Lobkowicz
7) Ursel
8) Beaufort-Spontin
9) Mérode
10) Chimay

The heads of these houses constituted the "Princes and Dukes of the Blue Drawing Room", because during official receptions at Court, they were grouped together in this drawing room of the Royal Palace in Brussels, which has not been blue for a long time…

Finally, one category of titles follows completely different rules. These are the dynastic titles of Members of the Royal Family, which are not the subject of letters patent, but of royal decrees.

2.1.4 Descent

Nobility may be granted either for life or on an hereditary basis. Titles may be granted either:

a. to an individual for life,
b. transmissible by male primogeniture,
c. to all male descendants; or
d. to all descendants both male and female (it being understood that in the female line, women do not themselves transmit nobility).

The situation has become more complex in terms of inheritance in recent years, with the law allowing parents to determine their children's surnames, either by passing on the name of the father alone, or of the mother alone, or by combining the two names in any order they wish. The only restrictions on parental choice are that all children of the same couple must bear the same name.

On the other hand, the ancient letters patent stipulate that nobility is only transmissible to descendants of legitimate marriage. As a result, children born out of wedlock were no longer noble, even if their father was, and consequently their descendants were no longer noble either. This will cause problems for the drafting of civil status documents (births, marriages, deaths) and notarial deeds, for which public officials will have to ask themselves each time whether the person signing the deed is noble or not, since civil status officials and notaries are required to indicate the predicates and titles of nobility of the persons appearing before them.

It should be noted that for the last three years, the King has only granted personal titles without hereditary nobility. Again this year, there were ten barons, five men and five women, and it remains to be seen whether this trend will continue.

The dynastic titles of the Royal Family are personal and revert to the Crown upon the death of their holder or the accession to the throne of the person concerned.

2.2 National bodies

2.2.1 The Vlaams Heraldische Raad

This council, the "Vlaams Heraldische Raad", was initially responsible for the coats of arms, flags and seals of the Flemish Provinces, Cities and Communes from 1978 onwards, and then its remit was extended to non-noble natural persons domiciled in the Flemish Region and the Brussels-Capital Region and to legal persons under private law from 1998 onwards.

2.2.2 The Council for Heraldry and Vexillology

Like the Flemish Council, the French-speaking Council was initially responsible for the coats of arms, flags and seals of the Provinces, Towns and Municipalities from 1985 onwards and then its competence was extended to non-noble natural persons and legal persons under private law in 2004; however, it was not until the implementing decree of 2010 that competence was actually exercised. The jurisdiction covers persons domiciled in the Walloon Region and the Brussels-Capital Region.

Those paying close attention will have noticed that the Brussels-Capital Region comes under the jurisdiction of both the Flemish Community and the French Community. In practice, residents of the Brussels-Capital Region have the choice of submitting their application either to the "Vlaams heraldische Raad" or to the "Conseil d'héraldique et de vexillologie", depending on the language they speak.

The French speaking Council is made up of nine members: a president, a secretary (from the administration of the French community), a vice-president, a legal expert, two experts in history and three experts in heraldry.

It meets approximately every two months, depending on the number of cases to be dealt with. On average, it decides on around ten cases a year.

2.2.3 The Deutschsprachigen Gemeinschaft – Ost-Belgien

The German-speaking community does not have a heraldic council.

On the one hand, the nine communes of Ost-Belgien all have official coats of arms. On the other hand, the number of German-speaking inhabitants (around 60,000) likely to request a coat of arms is small.

Belgium's institutional complexity can sometimes be a good thing. Whereas one might have feared a legal vacuum, German-speakers can apply to the "Conseil d'Héraldique de la Communauté française" (Heraldry Council of the French-speaking Community), given that its jurisdiction *ratione loci* extends to the whole of the Walloon region, which fully encompasses the German-speaking community.

We will now move from the rules governing institutional powers to consider the practical implications for heraldry.

3. Rules applicable to individuals

We will begin by examining the rules applicable to nobles.

3.1 Nobles

Nobles use crowns to indicate their rank, bearing in mind that certain sovereigns have granted augmentations of arms by allowing certain nobles to wear a crown of a higher rank without bearing the title. The matter is governed by the Royal Decree of 12 December 1838 determining the marks of honour attached to titles, the order of nobles among themselves and the form of crowns.

From the rank of baron upwards, all may use supporters.

1) **Ecuyer** (who makes up what is known as non-titled nobility), wears a helmet, mantling, a coronet or crown of nobility, and a motto. I will come back to the coronet when I discuss the external ornamentation of non-noble coats of arms.
2) **Knight**: a specific crown in addition to the ornaments for squires.
3) **Baron**: a crown (there is also an Ancien Régime crown specific to Belgium, the "Brabant baron crown") worn by some families. The ornaments of the squires are supplemented by supporters.
4) **Viscount**: specific crown, external ornaments of any noble and supporters.
5) **Count**: specific crown, external ornaments of any noble and supporters.
6) **Marquis**: specific crown, external ornaments of all nobles and supporters and often mantle.
7) **Duke**: specific crown, exterior ornaments for all nobles, supporters and mantle.
8) **Prince**: specific crown, exterior ornaments for all nobles, supporters and mantle.

Both under the Ancien Régime (i.e. before the French Revolution) and afterwards, certain families were granted the right to wear a crown of a higher rank than the title they bore (a marquis could in some cases wear a ducal crown, for example). It is therefore not possible to deduce from the presence of a crown on a coat of arms the actual title to which the holder is entitled.

To make matters more complex, some noble families before the French Revolution were able to maintain the use of crowns in force before 1795.

Certain ornaments such as banners, mantles and battle cries were not reserved for a specific title, but were granted or recognised, sometimes to the lowest ranks of the nobility. Only in rare cases was the mantle granted below the title of marquis, and never below that of baron.

3.2 Non-nobles

Until the transfer of heraldic jurisdiction to the communities, non-nobles did not benefit from state legal protection. It was private law associations that publicised the wearing of coats of arms.

Since 2010, the designated heraldic authorities have registered the coats of arms of non-noble families in the form of a ministerial decree published in the "Moniteur belge" (the official gazette of the laws and regulations of the Kingdom).

It should be noted that there are no specific provisions for ecclesiastical heraldry. Church office holders use specific external ornaments, without any heraldic authority intervening either in Belgium or at the Va-

tican (for the Catholic hierarchy). However, on the Flemish side only, there are a few cases of ecclesiastical coats of arms being registered. The restrictive enumeration of external ornaments, as we shall see later, would also pose a problem.

3.2.1 Procedure

The applicant submits a file to the administration of the Ministry of Culture of the French Community.

To facilitate the examination of applications, two types of form have been designed by the Council:

- One for the registration of a new coat of arms
- The other for the recognition of old coats of arms (i.e. from before 1795).

Applicants must submit the following documents with their application:

- A drawing of the proposed coat of arms.
- A blazon of the proposed coat of arms
- The reasons for the partitions, charges and choice of tinctures.
- If external ornaments are desired, the applicant must specify which ones. In the French Community, applicants have the choice of requesting all possible ornaments (helm, mantling, crest, motto, etc.) or only one of them or some of them, such as a crest.
- The descent they wish: either personal arms without descent, or devolution to their descendants bearing the name, or to descendants of an ancestor common to all the beneficiaries.

3.2.2 The constituent elements of coats of arms

What can non-noble individuals bear?

Even before the establishment of the Community Councils, there were differences in the jurisprudence of private bodies.

In Flanders, it was already possible to have coats of arms published with external ornamentation. In Wallonia, on the other hand, the "Office généalogique et héraldique" (genealogical and heraldic office) only registered shields, taking a restrictive view and considering that all external ornamentation was reserved for the nobility.

When Community legislation was adopted, different options were taken between Flanders and Wallonia.

In Flanders, the rule is that all external ornaments are possible and permitted, with the exception of those reserved for the nobility.

In Wallonia, the list of permitted external ornaments is strictly limited: helmet, mantling, crest, motto. No other ornamentation is permitted.

As for the ban on nobiliary ornaments, the communities considered that the crest, which was a sign of nobility under the Ancien Régime, could be accepted for non-nobles, so that there is no difference between the arms of nobles who only had the crest and not the crown of nobility, placed on the helmet, and a non-noble family, which can legally wear a crest since 2010. Some noble families who did not have a crowned helmet asked the King for permission to replace the coronet with the "crown of nobility" on their helmets from 1959.

3.2.3 How the Board operates
§ 1 Examination of files

On receipt of a file, the administration carries out an initial examination of the file to determine whether it contains all the required documents and whether the application form is complete, in order to avoid presenting files that are obviously incomplete and cluttering up the Board's agenda.

When the application is complete, it is sent to the members some time before the Board meeting and then examined at the meeting.

The council checks that, to its knowledge, there is no usurpation of a coat of arms. If necessary, it asks the applicant to revise his project, often for reasons of simplification if there are too many elements or if the coat of arms is too similar to an existing coat of arms. Sometimes it is also necessary to clarify how the arms are to descend.

§ 2 Case law

In the course of its work, the Council has established a body of case law on recurring issues. The case law covers the period from 1989 (when the Council was founded) to the present day. This body of case law is regularly updated, especially on issues that have been the subject of debate within the Council, to avoid the temptation for some to go back over and over again to decisions of principle. This avoids useless debates on subjects that have already been decided and for which there is no new information likely to change the case law.

One example among many is the concordance in blazoning between the outside and inside of the mantling and the alternating twists of the beading.

Until 1996, the "Conseil Héraldique", now the "Conseil de Noblesse", first blazoned the inside of the mantling and then the outside, and then it was the other way round. The "Conseil d'Héraldique et de vexillologie" followed this new way of blazoning in the interests of unity of jurisprudence and supplemented this decision by stating that the first twist of the bead must be of the tincture on the outside of the mantling.

§ 3 Approval

Once the application has been approved, the applicant must provide a definitive design for his coat of arms, which will be included in the ministerial approval order and in the coat of arms diploma that he will subsequently receive. The file is then submitted to the Minister of Culture for approval, who then issues a ministerial decree that is published in the official gazette, the "Moniteur belge – Belgisch Staatsblad".

§ 4 Coat of arms graduation ceremony

The ceremony usually takes place in Brussels, at the "Palais des Académies", next to the "Palais Royal", in the presence of the Community's Minister of Culture, if he is available, or the Director General of Culture.

The ceremony begins with an address by the Minister, followed by a speech by the President of the Council. The diplomas are then presented to the recipients, while a

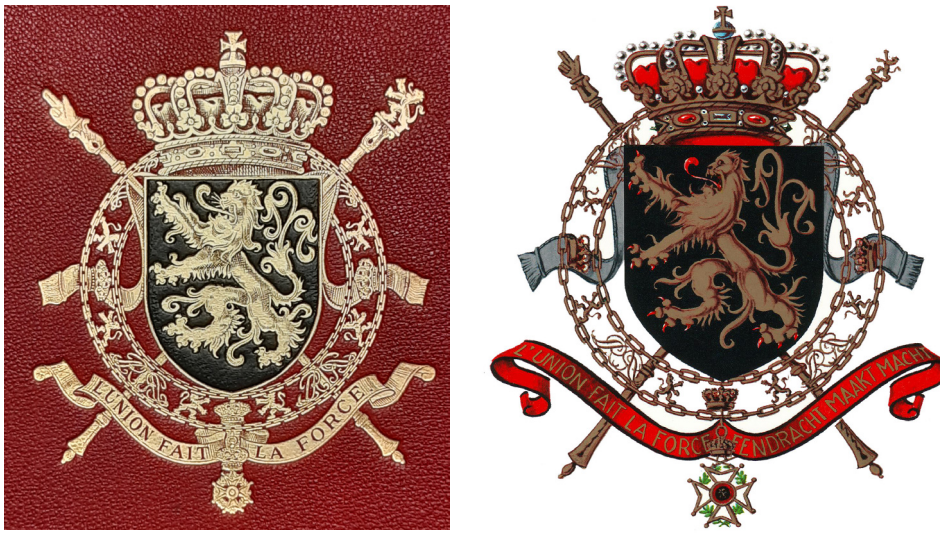

Fig. 3. Small Seal of the State.

power point gradually displays the drawings of the granted coats of arms. The ceremony ends with a reception.

4. Rules applicable to legal entities

4.1 Legal persons governed by public law

4.1.1 The Kingdom – federal state

The Kingdom has had a coat of arms since a Royal Decree of 17 March 1837. There is a large coat of arms and a small coat of arms, officially known as the "Great Seal of the State" and the "Small Seal of the State". Initially with a unilingual motto in French, "L'union fait la force", mottoes in Dutch and German were later added so that all three national languages have their own version of the Great and Small State Seals (*fig. 3*).

4.1.2 Designated heraldic authorities

§ 1 The Communities and Regions

The French Community, which is increasingly referred to as the "Wallonia-Brussels Federation" despite the fact that this name is unconstitutional, bears by decree of 1991 the coat of arms Or a bold cockerel Gules created in 1913 by Pierre Paulus de Chatelet at the request of the "Walonne assembly", a group which had no constitutional existence (*fig. 4*). It was only after the creation of the cultural communities in 1971, which became the French community in 1980, that a coat of arms was officially adopted. It was therefore the community body itself that adopted it.

The Walloon region adopted the same coat of arms by decree in 1988, so it is always necessary to mention under the coat of arms whether it refers to the community or the region.



Fig. 4–6. The coats of arms of the French, Flemish and German communities.

A similar process of adopting a coat of arms took place in Flanders. In this case, however, the coat of arms of the former county of Flanders was chosen: Or, a lion Sable armed and langued Gules, even though only two of the five Flemish provinces that make up the Flemish Community-Region were historically part of this former county (*fig. 5*). A flag bearing the arms of the County of Flanders was first adopted by ministerial decree in 1985, followed by the coat of arms in 1988, which was modified several times before arriving at the current coat of arms in 1991.

The arms of the communities and regions have no external ornamentation.

§ 2 The provinces

Each of the ten provinces has its own coat of arms, a direct or partial inheritance from the former duchies, principalities and counties that make up the majority of Belgium's current territory and indicate the former feudal allegiances. One Belgian feature is immediately obvious. Of the 10 provinces, only one does not have a lion on its coat of arms, that of Antwerp, which was an imperial marquisate and bears the double-headed imperial eagle.

As a remnant of the fact that the provinces arose from former feudal territories, their coats of arms are all surmounted by a crown corresponding to the status of the former feudal territory to which they are heirs.

There is a difference between Flanders and Wallonia. The Flemish provinces use supporters and have fairly original terraces. The Walloon provinces only use the ducal, princely and comital crowns of the corresponding former territories.

§ 3 Towns and communes

Towns and communes sometimes have official arms that predate the independence of Belgium, a sign that the Belgian legislator continued to consider that the provisions made by the former sovereigns remained valid insofar as they had not been formally repealed. Consequently, the coats of arms that predate the French Revolution have been formally repealed. However, the coats of arms granted when Belgium was part of

the French Empire (from 1804 to 1815) and then those granted under the Kingdom of the Netherlands, after the Battle of Waterloo in 1815, until Belgium's independence in 1830, were maintained.

In 1976, the number of communes merged, reducing their number from 2,500 to 589.

The legislator rightly considered that this change entailed a change of coat of arms, or at the very least a new act by the public authority to continue to use the coat of arms, for example, of the main entity.

As far as the external ornamentation of the municipal coat of arms is concerned, there is a great deal of disparity.

Some communes bear a single shield. The content of this shield is either a historical emblem of the town or commune, or the coat of arms of the eponymous seigniorial family, or of the last seigniorial family before 1795, or that which retained the principal seigniory of the commune for the longest historical period.

The same applies to external ornamentation. Some communes use the patron saint of the main parish, others the ornaments of the seigniorial family (sometimes including the noble crown (although the inhabitants are not dukes or counts!). Some communes even have the collar of the Golden Fleece, or even the imperial crown of the Holy Roman Empire. A remarkable case in point is the commune of Florenville, whose seigneury at the end of the Ancien Régime had reverted to the Imperial Crown and whose last lord was François II, the last Holy Roman Emperor. When the municipality of Florenville adopted a coat of arms, it asked to be granted that of its last lord with the imperial crown and the collar of the Golden Fleece (*fig. 7*).

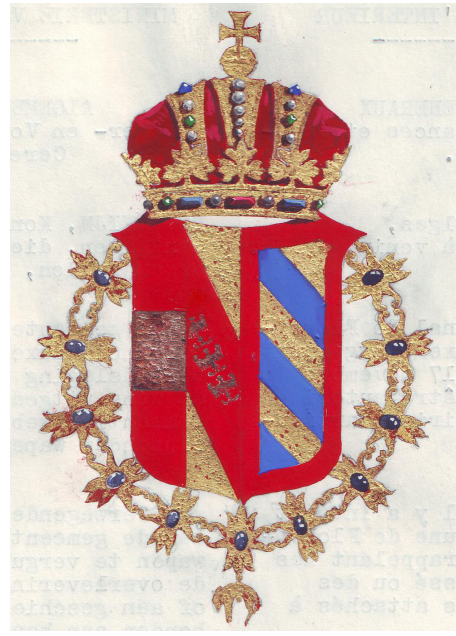

Fig. 7. City of Florenville – Royal decree 19/08/1977.

All this was also done with the explicit consent of His Imperial and Royal Highness, Archduke Otto of Austria. This is interesting from a legal point of view, because at the same time there is Belgian state intervention and the representative of a former sovereign House with historical links to the arms concerned. This really is maximum respect for the rights of third parties, even though one of the legal orders concerned, in this case the Austro-Hungarian Empire, has not been recognised internationally since 1918. However, as the last emperor Charles I had not formally abdicated, his heir retained his legitimacy. But, as with the other formerly reigning monarchies, their

status depends on the recognition that the current states are willing to give them. This is, however, another legal debate that goes beyond the scope of the subject at hand.

4.2 Legal entities governed by private law

As far as legal persons under private law are concerned, only associations bear coats of arms that can be formally distinguished from a commercial logo. Companies in Belgium do not require a coat of arms.

5. Conclusions

The legal protection offered by both the Federal State and the designated heraldic authorities of the Kingdom of Belgium is an undeniable advantage. The public authorities are fulfilling their mission of protecting the heraldic rights of citizens, especially those who are not nobility. This is an important step forward in the recognition of heraldry as a cultural subject deserving of specific legal protection.

Notes

1 Decreet VI Executieve 07.11.1990, B.S. 06.12. 1990.
2 Arrêté de l'Exécutif du à 03.07.1991, Mon. B, 15.11.1991.
3 Dekret 01.10.1990, Mon. B, 15.11.1990.

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In the Absence of Heraldic Law

Scandinavian Examples of How Registration of Commoner Arms Has Been Organized by Private Initiatives or Associations

By Dr. Henric Åsklund, a.i.h.

Abstract: None of the Nordic countries has a heraldic authority that grants arms to private citizens. The only example of an official state-run register of commoner arms in Scandinavia is the Roll of Arms of the Swedish National Heraldry Office 1934–1936. This was soon discontinued because of lacking legal basis. However, there was a need for registration of commoner coats of arms and a number of initiatives by individuals or associations emerged to fulfill it. In this chapter I will provide an overview and comparison of these registers, with emphasis on how they have dealt with the fact that they are unofficial and not supported by formal heraldic law. The study is limited to registers that are open to self-assumed arms, have some review regarding heraldic quality, that registers the blazons and are not simply member rolls. The conclusion is that societies are best at securing continuity and reasonable fees and that more formally structured registers with proper statutes or publication principles have a better chance of persisting over time. When it comes to the heraldic review, it is an advantage to have many eyes involved to at least comment and provide feedback. A key point is to publish and make the registered arms easily accessible and known, as this will provide protection against accidental infringement by other armigers. There is no legal effect or protection by the registration. In the Nordic countries, this is in the domain of customary law and "Gentleman's agreement" applies.

Résumé : Aucun des pays nordiques ne dispose d'une autorité héraldique qui accorde des armoiries à des citoyens privés. Le seul exemple de registre officiel d'armoiries de roturiers géré par l'État en Scandinavie est l'Armorial de l'Office héraldique national suédois entre 1934 et 1936. Ce registre a rapidement été supprimé en raison de l'absence de base juridique. Cependant, le besoin d'enregistrer les armoiries des roturiers s'est fait sentir et un certain nombre d'initiatives émanant d'individus ou d'associations ont vu le jour pour répondre à ce besoin. Dans ce chapitre, je présenterai une vue d'ensemble et une comparaison de ces registres, en mettant l'accent sur la façon dont ils ont géré le fait qu'ils ne sont pas officiels et qu'ils ne sont pas soutenus par une loi héraldique formelle. L'étude se limite aux registres qui sont ouverts aux armoiries auto-assumées, qui font l'objet d'un examen de la qualité héraldique, qui enregistrent les blasons et qui ne sont pas simplement des listes de membres. La conclusion est que les sociétés sont les mieux à même de garantir la continuité à un coût

raisonnable et que les registres plus formellement structurés, dotés de statuts ou de principes de publication adéquats, ont de meilleures chances de perdurer dans le temps. En ce qui concerne la révision héraldique, il est avantageux d'avoir de nombreux yeux impliqués pour au moins commenter et fournir un retour d'information. Il est essentiel de publier les armoiries enregistrées et de les rendre facilement accessibles et connues, afin de se prémunir contre les infractions accidentelles commises par d'autres armigères. L'enregistrement n'a aucun effet juridique et n'offre aucune protection. Dans les pays nordiques, cela relève du droit coutumier et le « *Gentleman's agreement* » s'applique.

1. Introduction

The only official state-run register of commoner arms in the Nordic countries is the Roll of Arms that the Swedish National Heraldry Office kept 1934–1936.[1] The registration ceased after only 23 commoner arms had been accepted and the main reason for this was the lack of a legal basis. The Heraldic Office realized they could not actually guarantee any legal protection of the arms.

However, the need for some sort of register persisted and in 1950 Arvid Berghman, the driving force behind the official register, privately published "The Commoner Roll of Arms" presenting 100 Swedish commoner arms.[2] Similar initiatives emerged in other parts of Scandinavia. In Denmark, the Danish Society of Heraldry and Sphragistics published a Roll of Arms of 600 armigerous families in Denmark in a series of booklets 1946–1954.[3]

In 1962 the Heraldic Society of Finland launched a register of Finnish arms that is still maintained. They accept family coats of arms (except noble arms) and also arms for associations and companies. The 1356 first arms were published in a book in 2006[4] and today the register collects more than 2000 arms.

The Scandinavian Roll of Arms was launched privately by Jan Raneke and Christer Bökwall in Sweden in 1963. It accepts all kinds of coats of arms. The format is booklets with 6–32 arms, printed annually or every second year, and today the number of registered arms is above 800. Since 2011 it is run by *Societas Heraldica Scandinavica*.[5]

In Norway in 1969 Hans Cappelen published "Norwegian Family Coats of Arms", where 364 arms are presented.[6] The selection criteria were quite restrictive though.

In 2007 the Swedish Heraldry Society, in collaboration with the Swedish National Committee for Genealogy and Heraldry, launched the Swedish Register of Arms.[7] As part of the review and approval process the arms are published twice, as provisionally and finally approved, in a biannual publication.[8] The arms in the register are also published in a series of books.[9] Almost 700 arms have been approved to date.

Please refer to *fig. 1* for a timeline overview of the registers included in this study.

2. Questions

The research question I am trying to highlight is: In the absence of heraldic law and regulation, when no official heraldic authority is responsible, how is then non-govern-

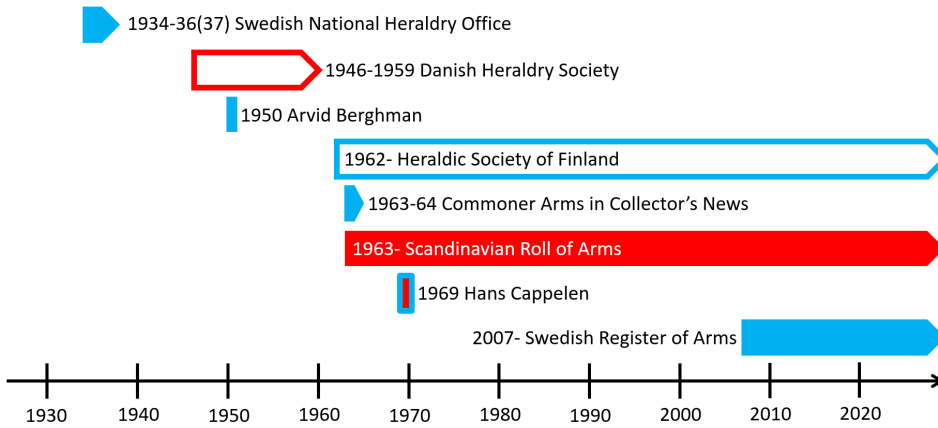


Fig. 1: Timeline overview.
Legend: Blue: Sweden; white with red frame: Denmark; white with blue frame: Finland; red: Scandinavia; red with blue frame: Norway.

mental registration of commoner arms organized? This can be broken down in more detail:

- Who is stepping in to fill the gap?
- How is the registration set up?
- What arms are included?
- Who is reviewing and approving the arms?
- How are the arms published?
- What legal effect or protection does the registration infer?

In this paper I will try to answer these questions for each of the registers included in the survey.

3. Limitations

To limit the scope and focus on the more advanced registers, I have applied the following criteria for a register to be included in the study:

1. The registers are open for new self-assumed arms (this means that armorials of the granted arms of the nobility are not included).
2. Registration is preceded by some level of qualified review regarding heraldic quality (this means that simple collated lists are excluded).
3. The registers must include the blazons.
4. Membership Rolls of Arms are not included.

Not all examples actually fulfill all these criteria to the letter, but I will point out deviations.

4. The Roll of Arms of the Swedish National Heraldry Office 1934–36

- Name: The Roll of Arms of the Swedish National Heraldry Office *(Riksheraldikerämbetets vapenrulla)*
- Run by: The Swedish National Heraldry

Office *(Riksheraldikerämbetet)*
- Category: Official authority
- Years: 1934–1936 (1936–1937 for company arms)
- Geographical Range: Sweden
- Scope of the kind of arms registered: Commoner (companies)
- Number of Arms registered: 23 (5 company arms)
- Format of publication: Certificates issued to the armigers
- Heraldic review: Yes
- Fee (€ in today's value): Probably in the range 300–1700 (for companies the fee was approx. 1100–2500 depending on when they registered)

For just a few years in the mid-1930s the Swedish National Heraldry Office kept a register of submitted and approved commoner arms.[10] This is the only official state-run register of commoner arms that has existed in Scandinavia. The driving force behind the register was Arvid Berghman, assistant/clerk at the Office 1932–1949. Berghman privately made a continuation of the register with his book Commoner Roll of Arms (1950), see section 5 below.

The Swedish National Heraldry Office, *Riksheraldikerämbetet*, existed as an independent body from 1734[11] to 1953, when it became part of the National Archives. It was run by the *Riksheraldiker*, translated as the Herald of the Realm or the National Herald. At the National Archives the title changed to *Statsheraldiker* translated as State Herald. The first to formally hold the position of *Riksheraldiker* was Conrad Ludvig Transkiöld (†1766) who was appointed in 1734, even if the title was not in use from that year.[12] The Office was initially part of the Royal chancellery, but from 1840 it reported to the King through the Ministry of Education.[13] The income of its officers was based on fees.[14] The legal basis and regulations the Office operated by can be summarized thus:

- **11 March 1813:**[15] First formal instruction (a more extensive draft existed already 1774[16]). Almost entirely focused on arms and insignia of rank to be granted to newly created nobility or nobility granted higher rank.
- **14 August 1885:**[17] Additions issued following the new *Riksdag* Act of 1866 abolishing the diet of the four estates, giving the nobility a new and diminishing role in society. This included the rather extensive task to review all arms to be used on official buildings, flags, banners and coins and to help government bodies and the general public with heraldic issues. The document specifies what rates the Office could charge for creating new arms, reviewing existing, and making drawings.
- **22 June 1906:**[18] Law about the Swedish flag.
- **15 May 1908:**[19] Law about the Swedish national arms.
- **23 March 1934:**[20] Law about using official Swedish arms and symbols in trademarks and business.
- **7 June 1934:**[21] Regulation about seeking permission to use "certain Swedish official designations" in trademarks and business, where it was mandatory to have the Office review the proposal.

– **20 March 1936:**[22] Additions, but in effect a new instruction, summing up and clarifying the patchwork of the proceeding regulations when it comes to the involvement of the Office. The Office was to assist with expertise in upholding the laws of 1906, 1908 and 1934. The instruction affirmed the additions of 1885 with some modifications and updated fees. A new task that was added was to assist with new municipal arms.

In the early 1930s Baron Harald Fleetwood was Herald of the Realm and held the position 1931–1953, Johan Kleberg was secretary 1931–1949 and Arvid Berghman held positions as assistant or clerk 1932–1949.[23] The Office already had as one of its tasks to assist the public with new or reworked arms, or to review and comment on proposals for new arms, but in 1934 this was taken one step further. In the 1934 issue of the Announcements of the National Heraldry Office,[24] Berghman wrote an article titled Commoner Family Arms where he proclaimed:

> *To do its part to support and encourage commoner heraldry the National Heraldry Office has instituted a roll of arms, where all arms not registered at the House of Nobility, thus also commoner arms, are accepted for inclusion. In this way, the Office strives to supervise that no one involuntarily adopts arms that are already in use by another family.*[25]

In the introduction to his book in 1950 Berghman mentions the inspiration for the register:

> *During the years 1934–1936 the National Heraldry Office, following the pattern of College of Arms in London, managed the registration of commoner arms.*[26]

Bergman was in contact with the College of Arms and there was some exchange between the Office and the College, e.g. a visit to Stockholm by one of its officers.[27] Berghman was impressed by the heraldry of Great Britain and when writing about a heraldic exhibition in Birmingham 1936 he expressed it thus:

> *… one observes, that Great Britain, having passed through a down period, is now on its way to the top again, and if it could only free itself from the ridiculous rules about helmets as indications of rank, it would soon come as close to perfection as is at all possible for anything human.*[28]

Applications followed a template with name and blazon and always went through Berghman who was the one that signed them.[29] Sometimes a short summary of the genealogy of the applicant was appended, but not always. The applications had a running registration number according to when in the flow of correspondence they were recorded at the Office. The first registration was that of Kleeberg (the elder) on 1 February 1934, followed the very next day by Berghman and Ewerlöf (the elder), e.g. the arms of the secretary of the Office Johan Kleberg, Berghman himself and of the family of Berghman's wife Alice Ewerlöf.[30]

The last registration was dated 2 May 1936

Fig. 2: Examples of commoner arms in the Roll of Arms of the Heraldry Office 1934–1936. Drawings from the copies of the certificates of registration kept at the National Archives. (a) Kleberg (the elder), 1 February 1934, (b) Berghman, 2 February 1934, (c) Grep, 2 May 1936. Photo: National Archives.

and was that of the arms of Brita Grep, who had been doing work as a heraldic artist at the Office since almost 20 years.[31] Her application was the only one lacking a registration number and it can be noted that the registration was dated after the Office received its new instruction from the King 20 March the same year. The Office gave this new instruction as the reason why the registration ceased, but maybe they made an exception for Grep.

There is one more anomaly: The application and registration copy of the Benckert arms are missing in the archive. However, Benckert is listed as registered by Berghman in both the lavish Swedish Commoner Family Arms (1939),[32] collecting the 23 registered arms with copperplate illustrations, and in the Commoner Roll of Arms (1950). Perhaps these papers have been lost or misplaced or possibly this was a special case that was handled outside of the recorded files.

The certificates all have this text:[33]

The National Heraldry Office *hereby makes it known, that the coat of arms below, namely:*

< Blazon of Shield, Helmet, Mantling and Crest >

as it is hereby depicted, is in accordance with the laws of heraldry and not used by any family introduced at the Swedish House of Nobility or any other family, authority, public or private institution known to the Office, wherefore according to current Swedish law there is nothing to prevent

<NN>

to use the said coat of arms.

The coat of arms has on their behalf been entered into the Roll of Arms of the ***National Heraldry Office****, for which this document is proof. Stockholm <date>.*

< Signed by the Herald of the Realm Fleetwood and the secretary Kleberg>

Fig. 3: Certificate of registration for (a) Ewerlöf (the younger) issued 14 September 1934, loose leaf of thin vellum imitation, and (b) Bergman (not Berghman) issued 17 July 1934, bound in hard covers with silk thread secured by the seal of the Heraldry Office. Photo: (a) Göran Mörner, House of Nobility, (b) Linnea Bergman.

The illustrations are done using stencils drawn in 1933 by Friedrich Britze, Copenhagen, one front-facing and one side-facing, except for Berghman and his wife's family where the arms are drawn more elaborate. Please refer to *fig. 2* for examples of registered arms with the different stencils. It appears that the Roll of Arms was handled a bit low key, because the commoner arms registered where not included in the Announcements of the National Heraldry Office, where officially confirmed arms for e.g. districts and cities where regularly presented during these years. It is a bit surprising that the commoner arms are not included in any way, they could at least have been mentioned or listed simply by name. Probably the register was something driven by Berghman that the others at the Office allowed, but where not very enthusiastic about and they likely wanted the register to keep a low profile.

It was undoubtedly a source of income. The arms of Landgren where registered 24 November 1934 and in a letter to the Herald of the Realm dated 16 December the same year he writes "For the registration of my coat of arms free of charge I ask to convey my respectful gratitude".[34] This was not appreciated and across the letter is written in red: "Not to be entered!". However, the certificate had already been issued and Landgren is included in both Swedish Commoner Family Arms (1939) and the Commoner Roll of Arms (1950). I have not found any explicit mention of what the fee for registering a commoner arms was, but according to the instruction issued in 1936 the Office could charge 100–500 kr (≈ €350–1750 in 2024[35]) for new arms, 25–150 kr (≈ €90–525 in 2024) for drawings and comments or confirmations of existing arms. In 1940 there is a note that the fee for a drawing "of the commoner coat of arms, that you have assumed …" and a confirmation that "the Office certifies that the coat of arms is in accordance with the laws of heraldry and is not used by any family known to the Office" was 75 kr (≈ €220 in 2024).[36] Another clue to what the fee could


RIKSHERALDIKERÄMBETET

INTYGAR HÄRMED, ATT NEDANSTÅENDE VAPEN, NÄMLIGEN:

SKÖLD: I BLÅTT FÄLT EN STJÄRNKRONA AV SILVER;

HJÄLM: SLUTEN, MED HJÄLMTÄCKET INVÄNDIGT AV SILVER OCH UTVÄNDIGT BLÅTT, VULST AV SILVER OCH BLÅTT SAMT SOM HJÄLMPRYDNAD EN GENOM EN STJÄRNKRONA AV SILVER STUCKEN BLÅ SPIRA, SOM UPPTILL AVSLUTAS MED EN STJÄRNA AV SILVER;

ALLT SÅSOM DET HÄR BREDVID FINNES AVBILDAT, ÄR ÖVERENSSTÄMMANDE MED HERALDIKENS LAGAR OCH ICKE FÖRES AV NÅGON PÅ SVENSKA RIDDARHUSET INTRODUCERAD ÄTT ELLER ELJEST FÖR ÄMBETET KÄND SLÄKT, OFFICIELL MYNDIGHET, OFFENTLIG ELLER ENSKILD INSTITUTION, VARFÖR ENLIGT GÄLLANDE SVENSK RÄTT INTET HINDER MÖTER FÖR

FÖRSÄKRINGSBOLAGET BORE

— OMSESIDIGT —

ATT FÖRA SAGDA VAPEN.
VAPNET HAR FÖR DESS RÄKNING INFÖRTS I RIKSHERALDIKERÄMBETETS VAPENRULLA, VARFÖR DENNA HANDLING UTGÖR BEVIS. STOCKHOLM DEN 2 JUNI 1937.

RIKSHERALDIKER

SEKRETERARE

Fig. 4: (a) Certificate of registration for the insurance company Bore issued 2 June 1937 and the other four company arms in the Roll of Arms of the Heraldry Office 1936–1937: (b) Norrland, (c) Skandinavien, (d) Viktoria, all three 12 May 1936, (e) Thule, 26 August 1937. Photo: National Archives.

have been comes from a letter regarding the registering of two coats of arms of companies in 1937, where one is to be charged "only 325 kr" (≈ €1100 in 2024) but the other "the current" fee of 725 kr (≈ €2500 in 2024).[37] To conclude, I think the fee was probably in the range from at least €300 for existing arms to perhaps €1700 or more for new. But it would also depend on how exclusive certificates the armiger wanted. In *fig. 3* is shown a simpler certificate of registration for Ewerlöf (the younger) issued 14 September 1934 and a more exclusive bound variant for Bergman (not Berghman) issued 17 July 1934.

In 1936 and 1937 also arms of companies where registered. It was the same application process as for family arms. The certificates were smaller and less exclusive, but had al-

most exactly the same wording as for family arms (*fig. 4*). Only five arms were registered and all of them are for insurance companies. It should be noted that Berghman was since 1924 employed at the fire insurance company Fenix (later Thule group) and this was still his day job at this time.[38]

The registration of commoner arms was discontinued in 1936 after only three years, but this was challenged by an appeal the following year. On 8 September 1937 an application from the artist and heraldist Einar J:son Kedja to have his arms registered was recorded at the Office,[39] but already 11 September the Office rejected his application without any real explanation. Kedja then made an appeal to the King 8 October where he argued:

> *…and I may therefore respectfully request, that the National Heraldry Office be enjoined to execute registration of commoner arms, as well as monitor that the registered arms not be usurped by other families, and to take appropriate measures if that should occur.*[40]

This triggered requests for expert opinions from the Nordic Museum and from the Heraldry Office. Both proposed to reject the appeal. The answer from the Heraldry Office 27 May 1938 was very brief:

> *Since the registration of coats of arms of individuals in the sense referred to by the complainant has no basis in the instruction for the Heraldry Office issued by Your Royal Majesty on 20 March 1936, the Office has not considered itself able to grant such a registration, …*[41]

The board of the Nordic Museum wrote 14 June:

> *In times of old the use of family coats of arms has been very common in Sweden among all social classes, not only among the nobility. However, to our knowledge, there has been no public registration of non-noble arms corresponding to that which has occurred in connection with the granting and introduction of noble arms. Since there can hardly be any real reason for the introduction of official registration of commoner arms, the Nordic Museum's board must humbly decline to approve this application.*[42]

With that, the Ministry of Education 8 September 1938 made the decision to reject the appeal.[43]

In the National Archives there is a rather lengthy and somewhat rambling draft of the expert opinion pronouncement from the Office. In the end, they settled for the short version with reference to the new instruction, but in the draft, there were a number of points they were trying to make to explain why they first chose to register commoner arms and then stopped doing that.[44]

The origin of the registration was requests for help with compositions of arms, following the Office having helped commoner Knights of the Order of the Seraphim and the Grand Cross of the Order of the Dannebrog[45] and having kept copies of these arms to keep track of them.

The instruction from 1813 had not been applicable to the present conditions, why they had not felt restricted by it in helping

also others than the new Knights to assume new arms.

Certificates had then been requested and since everything had been recorded in due order this had:

> *… created the perception, that the Office is running a fully legalised registration of family coats of arms with the associated responsibility to protect these against reiteration.*

The new instruction from 1936 was not considered to forbid the Office to assist the public in heraldic matters but neither to provide the authority to do anything like "*granting of privileges*", and they thus concluded:

> *…the Office has ceased to issue the aforementioned certificates, however, with the exception of companies.*

Also, they are anyway increasingly busy with a growing work load.

This draft is very interesting and I think it reveals the actual reasons for the registrations to cease. Probably, the principal officers Fleetwood and Kleberg got cold feet since there was in fact no legal basis for protecting commoner arms. The extent of protection was only internal, that new arms would not be approved for registration if infringing on the existing, but externally the protection was limited to customary law. With a growing Roll of arms and the "perception" that the Office had the "associated responsibility to protect these", which was exactly what Kedja in his appeal wanted them to be responsible for, they likely felt that they had better put an end to the venture sooner than later.

People kept asking and paying for to have their arms reviewed and kept on file, hoping that the registration would resume, like in this letter from 28 January 1939:

> *…intended to be archived and kept by the National Heraldry Office. In case there should be any change in the instruction concerning the registration of commoner family coats of arms, would you, Baron, be so kind to have me notified.*[46]

As a kind of post scriptum to the Roll of arms of the Office, Berghman published the lavish Swedish Commoner Family Arms (1939), collecting the 23 registered arms with text in Swedish and French and copperplate illustrations by Johannes Britze. This was the first publication where they were listed outside of the Office.

To conclude, the Roll of Commoner Arms of the Swedish National Heraldry Office appears to have been an activity primarily driven by Arvid Berghman. It was gaining popularity and filling a need, but since the legal basis was in principle lacking, it was untenable in the long term. The leading officers at the Office cut it short before it got out of hand.

5. Arvid Berghman's Commoner Roll of Arms 1950

- Name: Commoner Roll of Arms (*Borgerlig vapenrulla*)
- Run by: Arvid Berghman
- Category: Private initiative

- Years: 1950
- Geographical Range: Sweden
- Scope of the kind of arms registered: Commoner
- Number of Arms registered: 100
- Format of publication: Book
- Heraldic review: Yes
- Fee (€ in today's value): -

In the 1940s Arvid Berghman was gradually marginalized at the Swedish National Heraldry Office and left it entirely 1949.[47] He had wanted to succeed Fleetwood as Herald of the Realm, but there were several other contenders to that seat, bitterly arguing and competing. It can be assumed that Berghman had a growing list of candidates for the now discontinued register of the Office and the year after leaving the Office he published Commoner Roll of Arms (1950) with 100 commoner family coats of arms. In correspondence with Jan Raneke he actually writes already in 1944 that the manuscript is ready, but that the illustrations are taking longer time.[48] In the continued correspondence Raneke repeatedly asks when the book will be published.

Berghman included arms of several commoner Knights of the Order of the Seraphim and one or two of the Grand Cross of the Order of the Dannebrog, as well as all 23 arms in the Roll of the Heraldry Office. The blazons were listed alphabetically by surname and there was also an index of mottos as well as a register of categorized ordinaries and charges. The 76 illustrations were drawn by Sven Sköld, who had done work for the Heraldry Office. In the preface Berghman writes:

> *The recent increasing interest in commoner family coats of arms has made it desirable to have the hitherto known stock of such coats of arms published, not least so that when creating a new composition one can avoid annexing coats of arms that are already used by other families or individuals.*[49]

In the introduction he mentions the Roll of Arms of the Heraldry Office and notes, perhaps with a hint of bitterness, that "As this activity was considered by some to be outside the scope of the Office, it ceased in the latter year".[50] In the preface he expresses the intention of a follow-up volume:

> *I will gladly accept notice of additional coats of arms and if it turns out that there is an interest in a continuation of this roll of arms it would be my pleasure to publish them, provided that they are heraldically satisfactory.*[51]

In this sentence he also explicitly states that he will not accept any arms that does not meet his standards, so there is definitely an element of review of heraldic quality. Berghman surely received additional coats of arms, e.g. several from Raneke,[52] but he never published a second volume of the Commoner Roll of Arms and died in 1961.

In conclusion, the Commoner Roll of Arms was an individual initiative with heraldic review that could possibly have developed to a more long-term register, if there had been some succession of governance. It was in any case important as inspiration for future registers of arms where one direct link

goes through Jan Raneke to the founding of the Scandinavian Roll of Arms in 1963.

6. Armorial Families in Denmark 1946–1954

- Name: Armorial Families in Denmark (Roll of Arms of the Danish Heraldry Society) *(Vaabenførende Slægter i Danmark)*
- Run by: The Danish Society for Heraldry and Sphragistics *(Det Danske Selskab for Heraldik og Sfragistik)*
- Category: Private initiative within the context of a society
- Years: 1946–1954
- Geographical Range: Denmark
- Scope of the kind of arms registered: Commoner, nobility
- Number of Arms registered: 600
- Format of publication: 23 booklets, collected in 3 volumes
- Heraldic review: Unclear to what extent and purpose
- Fee (€ in today's value): -

The Danish Society for Heraldry and Sphragistics was originally founded as the rather exclusive *Collegium Heraldicum* in 1941, but already 1943 the name was changed to *Det Danske Selskab for Heraldik og Sfragistik* (*Societas Heraldica Danica*). In 1946 some members left the society and founded the competing *Dansk Heraldisk Samfund*. After more than ten years of parallel and conflicting existence both previous societies where dissolved and became part of the Scandinavian Heraldry Society (*Societas Heraldica Scandinavica*), founded in 1959.[53]

The de facto editor and driving force behind the Armorial Families in Denmark (1946–1954) appears to have been Poul Reitzel, secretary of the Society 1941–1946. He was a colourful man of much energy, but has also been described as a "romantic dreamer" who made claims of a number of fanciful noble titles and initiated a false "order" of Saint John in 1934.[54] He was accused of collaboration with the Germans during the occupation, but he was never prosecuted. After the war he was forced to resign as secretary, but was allowed to remain as a member.[55] Reitzel is not credited as editor of Armorial Families (nor anyone else) and perhaps strangely enough the preface is written by Otto Andrup who was asked to be editor and drew up a plan for the project, but his more ambitious plans could not be carried out and he withdrew from the project. Andrup is nevertheless happy that the Armorial Families has been printed and writes: "Furthermore, manuscripts from heraldically well-trained members of the Society should be able to go to print without a special editor."[56] Nevertheless, Reitzel appears to have been an informal editor for the booklets and he is credited as author of the supplement Danish Herald of Arms (1954) that is part of the third volume collecting the booklets.[57] It is possible that Reitzel had to keep a low profile in this project, considering he had just been forced to resign as secretary when the first booklet was published in 1946. It should be noted that *Heraldisk Forlag*, the Heraldic Publishing House, that is listed on the booklets, was listed on the same address and phone number as Reitzel in 1946, just like the Heraldry Society (and the Bookplate Society he was also involved with).[58]

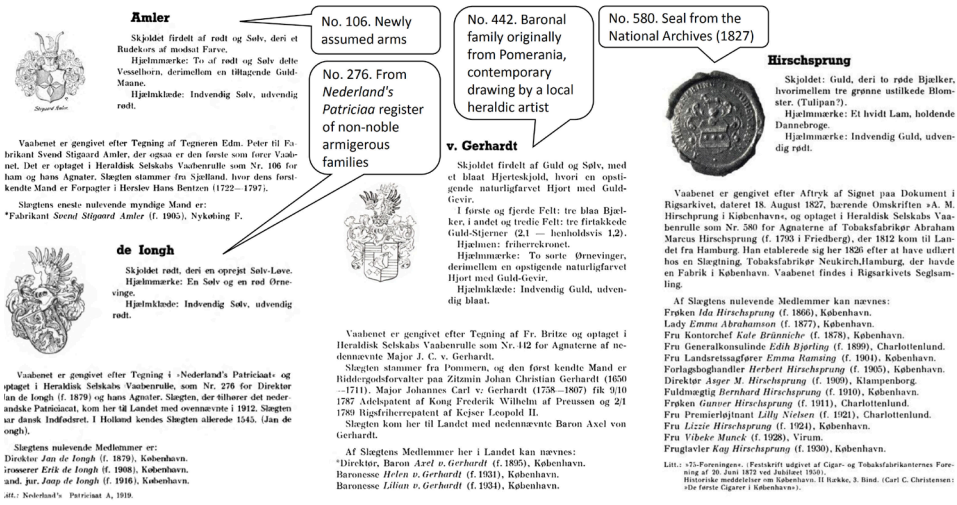


Fig. 5: Examples of arms presented in Armorial Families in Denmark (1946–1954).

The Armorial Families in Denmark comprises 23 booklets that are collected in 3 volumes (with two supplements in the last volume, spanning 6 additional booklets). It presents 600 coats of arms, primarily commoner arms but also arms of nobility, both old and new. There is a mix of old and contemporary pictures, where some are drawings of seals. The arms are presented with name, blazon, illustration, a short description of where the image comes from and who the original armiger was as well as a short list of living members of the family and sometimes literature references (*fig. 5*). If the family had immigrated to Denmark, it is also noted when it came to the country and who was the first to live there.

On the inside of the covers of the booklets there is a text dated Copenhagen March 1946 and signed *Heraldisk Forlag*.[59] It describes the purpose of the publication to "save from oblivion and preserve for posterity what still remained of commoner heraldry", noting that other works had already covered the heraldry of the nobility.[60] Since this text is hard to come by and important for the understanding of the purpose and scope of the work, I venture to quote it at some length:

> *It was thus the Society's task to try to make its contribution to the preservation of commoner heraldry, and when questionnaires were sent out, great interest was shown in the matter. The material poured in, and a working committee within the Society took care of the blazoning of the submitted arms, while the genealogical information was left to the families themselves to provide. The author of the information provided is marked in the work with an asterisk (*). In many cases, the neglect of time and engraving errors had*

> *distorted the arms to unrecognizability, and here the task became to act as a guide to allow the arms to appear in as heraldically correct shape as possible. Every coat of arms that has come to the Society's attention, both those submitted and those known from other sources, has been entered in a so-called "Roll of arms", and the present work will reproduce approx. 1000 of these arms.*[61]

In the presentations there are references to *Heraldisk Selskabs Vaabenrulle*, The Roll of Arms of the Heraldry Society, with numbers up to 811, but not in sequence in the booklets and with many gaps in the number series.[62] If the ambition was to include 1000 arms this fell short my almost half. Especially if you consider the fact that the aim was to document commoner arms, but many arms of the nobility were nonetheless included. It is unclear if further booklets were planned but since the Danish Society for Heraldry and Sfragistics was dissolved and merged into the Scandinavian Heraldry Society in 1959 that project would in that case have had to be transferred over to the new society, or handled independently.

It is unclear to what extent the arms were subjected to any heraldic review, in the sense of only including those of high enough standard. The review appears to have been more focused on creating acceptable blazons in a primarily descriptive collation of known arms, with the ambition to save them from oblivion, thus more looking back in time than forward and perhaps with more limited ambitions to encourage new arms. In this sense Armorial Families perhaps does not fulfill all the limitations I have set up for inclusion in the study. However, at least some of the arms were newly assumed and might have been adjusted in a review process before being finally assumed. It is also possible that some arms were in fact left out because of low heraldic quality.

My conclusion is that the Armorial Families in Denmark was a primarily descriptive collation with a documentation purpose, in the context of a society but likely driven by an individual. It could possibly have developed into a more long-term register with more focus on heraldic review of new arms.

7. Commoner Arms in the Collector's News 1963–64

- Name: Commoner Arms (*Borgerliga vapen*)
- Run by: Rolf Rundström
- Category: Private initiative
- Years: 1963–1964
- Geographical Range: Sweden
- Scope of the kind of arms registered: Commoner
- Number of Arms registered: 19
- Format of publication: Periodical articles in the Collector's News (*Samlarnytt*), the journal of the Collector's Association the North Star (*Samlarförbundet Nordstjärnan*)
- Heraldic review: Yes
- Fee (€ in today's value): -

Samlarförbundet Nordstjärnan, the Collectors' Association the North Star, is an association with local societies all over Sweden, with members either having a membership only in the national Association or also in a

local society (sometimes with an additional member's fee).[63] The North Star originated in 1940 in Gothenburg as an informal group of people who collected matchbox labels and wanted to create a network of collectors to trade labels.[64] They soon realized there were very many people who collected all sorts of things that would benefit from getting connected and already 8 April the next year the North Star was founded in Stockholm. The North Star had the ambition to have a journal already from the start, but it was not until 1947 that they managed to finance their own journal *Samlarnytt*, Collector's News, that they still publish. The journal covers a wide range of collector subjects, with approx. 300 categories of articles.

Rolf Rundström was active in the Association and contributed to the journal. He was a military historian and did some work as a bookplate artist, but his day job was as a nurse.[65] In 1962 he wanted to make his own heraldic bookplate, but he knew nothing about heraldry. He consulted some friends[66] and studied literature and his learning process resulted in an article in August 1962 about heraldry, with a few commoner arms as illustrations.[67] One of them was his own newly assumed coat of arms, based on an older family coat of arms. In the previous issue of the journal, he had advertised his services as a bookplate artist[68] and now he promoted the principle that anyone was free to assume a coat of arms and that arms made excellent basis for bookplates. The article was much appreciated and he received positive feedback, prompting him to get back with another article in June 1963.[69] This was numbered as Commoner Arms (1) and he proclaimed:

> *Going forward, heraldry will become a permanent column in our journal. I have specialized exclusively on commoner arms and the intention of this column is to endeavor to achieve a Swedish commoner roll of arms within the scope of Collector's News.*

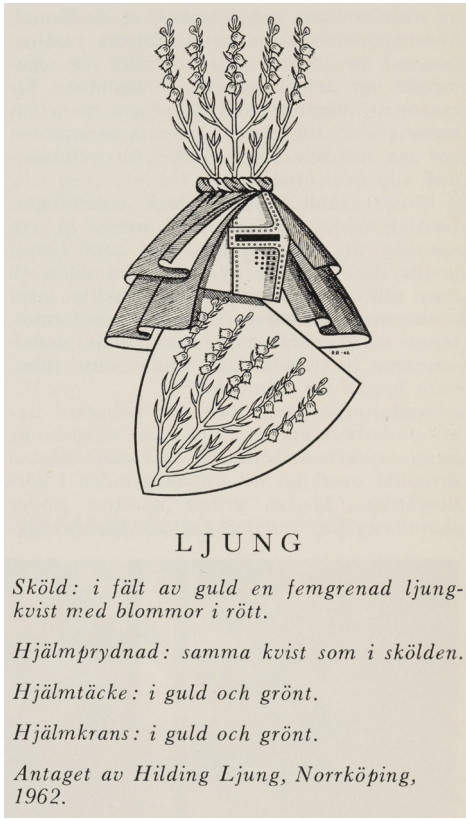
From the start, he makes a clear statement of the scope and a disclaimer of legal protection:

> *The arms I will primarily publish are those that (I believe) have not been previously published. Arms that break established heraldic rules will not be introduced. Obviously, this kind of registration cannot constitute any legal protection for the armiger, instead, 'gentlemans [sic] agreement' applies.*

Furthermore, the series will have multiple purposes:

> *This column is also intended to serve as an advice column, where I, in consultation with other heraldists, will try to answer questions regarding commoner arms. Furthermore, in each issue I will tell you a little about the rules of heraldry.*

He then concludes by urging readers to submit arms for publication. Five more articles follow, the last in June 1964.[70] The two-page articles each present 3–5 arms, except the one numbered (4) that is exclusively dedicated to answering readers' questions. The three coats of arms presented in the very first introductory article in 1962 are all repeated in



LJUNG

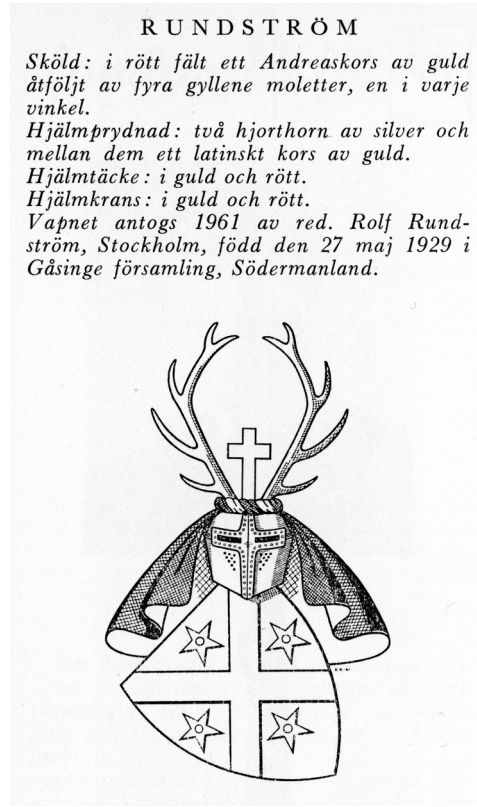
Sköld: i fält av guld en femgrenad ljungkvist med blommor i rött.

Hjälmprydnad: samma kvist som i skölden.

Hjälmtäcke: i guld och grönt.

Hjälmkrans: i guld och grönt.

Antaget av Hilding Ljung, Norrköping, 1962.



RUNDSTRÖM

Sköld: i rött fält ett Andreaskors av guld åtföljt av fyra gyllene moletter, en i varje vinkel.
Hjälmprydnad: två hjorthorn av silver och mellan dem ett latinskt kors av guld.
Hjälmtäcke: i guld och rött.
Hjälmkrans: i guld och rött.
Vapnet antogs 1961 av red. Rolf Rundström, Stockholm, född den 27 maj 1929 i Gåsinge församling, Södermanland.

Fig. 6: Examples of coats of arms presented in the Commoner Arms in the Collector's News 1963–64. (a) No. 4, Ljung, August 1963, (b) No. 14, Rundström, January 1964.

the numbered series and I have therefore chosen to count this commoner roll of arms as the sex numbered articles from June 1963 to June 1964 and have numbered the 19 coats of arms in order of appearance in those issues (*fig. 6*). All except two are drawn by Rolf Rundström himself. The exceptions are nr 11 Möller from *Wappenarchiv Dochtermann* (registered there as nr 8492) and nr 16 Bergkvist where the drawing is from a bookplate created by Jan Raneke in 1960. In issue (5) plans to make an offprint are mentioned, but this was never realized. The series was discontinued due to lack of time and sickness in the family.

Conclusions: The Commoner Arms in the Collector's News 1963–64 was an individual initiative with clear scope and heraldic review that could possibly have developed to a more long-term register, but it was strongly dependent on a single individual and it was initiated in the context of an exceedingly diverse journal with no particular focus on heraldry.

8. Hans Cappelen's Norwegian Family Coats of Arms 1969

- Name: Norwegian Family Coats of Arms (*Norske slektsvåpener*)
- Run by: Hans Cappelen
- Category: Private initiative
- Years: 1969 (2nd edition 1976)
- Geographical Range: Norway
- Scope of the kind of arms registered: Commoner, but also former nobility
- Number of Arms registered: 364
- Format of publication: Book
- Heraldic review: No
- Fee (€ in today's value): -

At first glance Norwegian Family Coats of Arms (1969) can appear to be similar to Berghman's Commoner Arms (1950), but in purpose and scope it has more in common with Armorial Families in Denmark (1946–1954). The selection criteria were fairly exclusive:

> *The families whose coats of arms are included have used the arms for the first time at least 100 years ago. The families have played a certain role in Norwegian society for three or more generations. Members of the families live in Norway today.*[71]

Since this excludes not only newly assumed arms but all arms more recent than 1869 it does not meet the criteria for inclusion I have set up, but I wanted to highlight it nevertheless. With relaxed criteria and a larger scope, it could definitely have qualified.

The collection of arms was based on a card index register Hans Cappelen had created and the initiative to publish came from the printer Didrik Rye Heyerdahl. The strict criteria were set up to limit the scope to a manageable number of arms, focusing on those of greatest interest to the general public.[72] The book includes 364 coats of arms with blazons, short texts about the families and references. There is no recognized nobility in Norway, so the arms are commoner arms, but some have origins in nobility. Every coat of arms is illustrated with a newly drawn picture of the shield only. The illustrations are made by 11 different artists, in modern *flatestil* (flat style) i.e. with silhouette charges without any internal details. There is also a register of charges and an English summary with a subsection titled "Legal Protection of Norwegian Family Arms". Here it is noted that "Family arms are not protected by any particular legislation in Norway today."[73] Furthermore, the premises of the Trade Mark's Act of 1961 referring to the former law of 1910 are quoted thus:

> *… where omission of any reference to family arms was justified by saying that 'unrightful use of family arms is no doubt against the Law, however in our country this question is of little practical interest'.*

There is also a quote saying "In reply to a question the Minister said that in Norway family arms could probably be considered to have the same legal protection as family names",[74] followed by a reasoning that what arms can be assumed and used should be analogous to what is stipulated regarding names in the Personal Name's Act of 1964. Some examples of what kind of analogy is likely to occur are listed:

- It is acceptable to bear the maternal arms if granted the right to assume the mother's maiden name.
- It is not acceptable to assume "historical, extinct or foreign names, which are well-known in this country", nor arms of this type.
- Neither is it acceptable to assume names "spelt in a foreign manner or which give the impression of being foreign", where e.g. arms that are elaborately marshalled should not be acceptable.
- Common names or names so similar in pronunciation that they can be confused with others, should not be granted unless there is a connection to them, and analogously charges should not be too similar to the charges on other arms.

Conclusions: Norwegian Family Coats of Arms was an individual initiative, with a narrow selection of well-established arms without heraldic review, not open to newly assumed arms. If the scope had been broader and a continuation had been made allowing newly assumed arms to be included, this could perhaps have developed into some sort of Norwegian Roll of Commoner Arms.

9. The Register of Arms of the Heraldic Society of Finland 1962–

- Name: The Register of Arms of the Heraldic Society of Finland (*Suomen Heraldisen Seuran vaakunarekisteri*)
- Run by: The Heraldic Society of Finland (*Suomen Heraldinen Seuran*)
- Category: Society
- Years: 1962–
- Geographical Range: Finland
- Scope of the kind of arms registered: Commoner
- Number of Arms registered: 2253 (2024-12-31)
- Format of publication: Certificates, Book (2006), Online (irregular)
- Heraldic review: Yes
- Fee (€ in today's value): 45

Suomen Heraldinen Seuran, the Heraldic Society of Finland, was founded 4 March 1957 and is the oldest still existing Heraldic Society in the Nordic countries. From the very start the Finish Society promoted "pure and proper heraldry"[75], based on the strong Finnish tradition of strict municipal arms of high heraldic quality.[76] The Register of Arms was initiated around 1960 and received its first application that year. It took a couple of years to establish the process and the first 10 arms were registered 1962. The pace of growth was slow with 2–7 arms per year until the 1980s when it took off strongly with an average of 51 new arms annually since 1983.[77]

Only commoner arms are accepted: family arms, societies and companies, but not territorial arms. Any sort of claims of nobility disqualifies arms from registration. Eligible to apply are Finnish citizens or others permanently living in Finland. The application is done by a written form and the fee is currently €45. The heraldic review is performed by a committee appointed by the Society. When the coat of arms is approved and entered into the register a certificate with the blazon, but no picture, is issued to the armiger. Originally, the register was only recorded internally, not published externally, but in

2006 a hardcover (partly three-lingual) book was published with the first 1356 arms presented with blazons (Finnish or Swedish) and new, uniform drawings of the full coats of arms. On and off,[78] the registered arms have also been available online on the Society's web page, at present up until nr 2002 with low resolution pictures (copyright watermarked) and names only,[79] and up until nr 1940 (registered in 2016) with also the blazon in a separate part of the web page, where it is also possible to search the arms alphabetically.[80]

Since the statutes of the register have until now not been published in English, I have included a translation in an appendix to this chapter. The 1st paragraph makes clear that the register is "a private list of coats of arms", i.e. not an official register. In the 5th paragraph there is a clear disclaimer that only register-internal protection is assured and that "No other consequences of the registration arise". The 10th and last paragraph allow for the removal of coats of arms entered on incorrect grounds.

Conclusions: The Register of Arms of the Heraldic Society of Finland is a well-organized register, with clear and thought-through statutes, operating with steady growth for many years and upholding a high heraldic standard. It is run by a Society that appoints the register committee, enabling long term continuation. Until the book published in 2006 the register was largely unknown since it was only recorded internally in the Society. The online presence has boosted knowledge of the register, but issues with the web page has sometimes made it temporarily unavailable. A new book is planned and will hopefully be published in the near future.

10. The Scandinavian Roll of Arms 1963–

- Name: The Scandinavian Roll of Arms (*Skandinavisk vapenrulla*)
- Run by: Individual direction (1963–2010), *Societas Heraldica Scandinavica* (since 2011)
- Category: Individuals (1963–2010), Society (since 2011)
- Years: 1963–
- Geographical Range: Scandinavia (all the Nordic countries)
- Scope of the kind of arms registered: All
- Number of Arms registered: 836 (2024)
- Format of publication: Booklets (Certificates)
- Heraldic review: Yes
- Fee (€ in today's value): 125–440 (1963–2010), 150 (since 2023)

Since I have already presented a talk about the Scandinavian Roll of Arms, comparing it to the Swedish Register of Arms, at the congress in Cambridge in 2022, I will keep the entry here short and focus on the historic development. Please refer to the proceedings from Cambridge[81] for illustrations and also translations into English of the Publication Principles, both the original ones from 1963 and the current ones.

The prehistory of the Scandinavian Roll of Arms points back to the previous chapters about the Armorial Families in Denmark 1946–1954 and Arvid Berghman's Commoner Roll of Arms 1950. The *Societas Heraldica Scandinavica* (SHS), the Scandinavian Heraldic Society, was founded 27 May 1959 and already in the second issue of the Society's

new journal *Heraldisk tidsskrift*, Heraldic Journal, in October 1960 the editor Sven Tito Achen promotes "A Register of Commoner Arms" and writes that "One of the most important tasks of the Heraldic Society is the collection and arrangement of all commoner coats of arms. This is a task that the Heraldic Society will contribute to solve in all Nordic countries".[82] On 4 April the next year the local branch of SHS in the south of Sweden, *Societas Heraldica Scanica*, was founded and a Nordic roll of arms is high on the agenda from the start and listed as the second of the top-three prioritized tasks.[83] Jan Raneke, who was in correspondence with Berghman and urging him to make a continuation of his Commoner Roll of Arms in the 1950s, is one of the driving forces in *Societas Heraldica Scanica*. Already in the autumn of 1961 Jan Raneke and the law student Christer Bökwall made a proposal for statutes of a roll of arms for SHS. They made a test printing of a booklet with the statutes, an introduction and presentations of 12 arms[84] and this was distributed and discussed within parts of SHS. On 22 November 1961 a dedicated meeting with leading figures in SHS was held to discuss the proposal.[85] A general worry was that SHS must not promise more than they can keep and that the Society could not guarantee that the armigers were rightfully using the arms they stated are theirs. The Society could only review the heraldic quality. Also, all members and all Nordic countries needed to be involved if this project was to be realized. It was agreed to send a letter to all members, as well as to appoint a committee with representatives from all Nordic countries. However, in the activity report of *Societas Heraldica Scanica* dated 29 May 1962, it was concluded:

> *This resulted in lots of opinions on what such a roll would look like and the opinions have been strongly divided. For the time being, the Scania branch does not see itself in a position to present, within the framework of the Heraldic Society, a design of such a roll of arms that is acceptable to all. Proposals have been made to publish the roll under individual direction, as there is a great need to collect and publish primarily newly assumed family coats of arms.*[86]

Apparently, it was simply not possible to agree within SHS how to proceed with a roll of arms run by the Society.

The next year, Raneke and Bökwall went ahead with a roll of arms under individual direction and the first issue of the Scandinavian Roll of Arms was published. It should be noted that Raneke and Bökwall chose to not limit the kind of coats of arms that could be registered[87] and over the years mostly commoner arms, but also arms of nobility, societies, companies and even territorial arms and a flag have been published. Registration was by written application, with proof of any claims of nobility. Regarding legal effect, it was clearly stated in the 3rd paragraph of the publication principles:

> *With the publication, the publishers guarantee no legal effect in the form of priority, exclusive right to arms, or any other type of legal protection for the professed armiger.*

> *The publication only means a date for the announcement that a person, according to their own information, is de facto using a certain coat of arms.*[88]

The format was booklets with 8–32 arms, two per page until 1970 and one per page after that, printed annually or every second year (with some exceptions, there are gaps 1971–73, 1980–81). It was mandatory to submit a drawing of the arms, of sufficiently high artistic quality. Before 2006 the images had to have clearly separated fields of uniform colours, but from that year also paintings could be printed. In addition to the blazon and the picture, there was also a text explaining the arms and the family history and sometimes this could become quite lengthy (and even extending beyond the standard format).

Tor Flensmarck joined Raneke and Bökwall in 1983 and became editor 1988. During Flensmarck's time as editor a certificate was also issued to the armigers. The heraldic review was done by the editors but during 1989–2010 a heraldic council of 5–7 "prominent Scandinavian heraldists" was also consulted. In 2002–2010 Martin Sunnqvist and Nils Bartholdy became more closely involved in the editorial work (Bökwall passed away 2002 and Raneke 2007). Flensmarck had his own professionally run publishing house, "Monitorförlaget", and it became increasingly difficult to keep the cost of the Roll of Arms down. Over the years, the fee had grown and by the 2000s more than quadrupled if converted and compared in today's value.[89] In 2010 Flensmarck published his last booklet as editor and the direction of the Roll was handed over to *Societas Heraldica Scandinavica*, as was the original intent.

Conclusions regarding the period 1963–2010: The Scandinavian Roll of Arms 1963–2010 had clear publishing principles and qualified heraldic review. Beautiful booklets that not only registered and published arms but also promoted heraldic art of high quality were produced. However, the Roll was dependent on a few individuals and with time struggling to keep the cost down. Towards the end, a growing number of arms were likely not published because of the cost.

When *Societas Heraldica Scandinavica* took over the Scandinavian Roll of Arms in 2011, Ronny Skov Andersen (Denmark) became editor, succeeded in 2024 by Gaute R. Risholt (Norway), and the heraldic review is now performed by the editor and the editorial committee (at present nine members from Denmark, Sweden, Norway and Finland).[90] The booklets are distributed to all members of the SHS as part of the membership fee. The format is booklets with 6–15 arms, one per page, printed annually or every second year, with an average of 9 arms per year. Editorially, the layout is now stricter and the texts explaining the arms and the family history are considerably shorter than previously. The fee has been lowered to a level higher than but roughly comparable to the original fee from 1963.[91]

When it comes to the legal effect, the 7th paragraph of the current publication principles is similar to the corresponding paragraph in the old principles:

> *The publication of a coat of arms in SVR has no legal effect in terms of legal protec-*

tion of the published coat of arms. The publication only states that, according to his own information, the armiger is using the coat of arms in question.[92]

A register with name and number is available online and since 2020 also a systematic register for the first 159 arms in booklets 1–10 (1963–1970).[93] Recently, the scanned booklets have been made available online in full length.[94]

Conclusions regarding the period since 2011: The Scandinavian Roll of Arms since 2011 has clear publishing principles and qualified heraldic review. Even more beautiful booklets than before are being regularly published with a continuity secured by the Society. The fee has been reduced thanks to more volunteering work and the Roll being part of the Society. Last but not least, the online availability of the Roll and the registered arms has been greatly enhanced.

11. The Swedish Register of Arms 2007–

- Name: The Swedish Register of Arms (*Svenskt Vapenregister*)
- Run by: The Swedish Heraldry Society (*Svenska Heraldiska Föreningen*), in cooperation with the Swedish National Committee for Genealogy and Heraldry (*Svenska Nationalkommittén för Genealogi och Heraldik*)
- Category: Society
- Years: 2007–
- Geographical Range: Sweden
- Scope of the kind of arms registered: Commoner
- Number of Arms registered: 772 (2024)
- Format of publication: Online, Periodical, Certificates, Books (2018, 2022)
- Heraldic review: Yes
- Fee (€ in today's value): 40

Since I have already presented a talk about the Swedish Register of Arms, comparing it to the Scandinavian Roll of Arms, at the congress in Cambridge in 2022, I will keep the entry here short and focus on the recent development. Please refer to the proceedings from Cambridge[95] for illustrations and the original statutes of the Register.

The Swedish Register of Arms was established by *Svenska Heraldiska Föreningen,* the Swedish Heraldry Society, in 2006, when the statutes were approved by both the Society and by *Svenska Nationalkommitteén för genealogi och heraldik,*[96] the Swedish National Committee for Genealogy and Heraldry. Originally, the Register was run with participation from *Heraldiska Samfundet*, but that Society was dissolved and became a part of the Swedish Heraldry Society in 2022.[97] *Svenska Vapenkollegiet*, the Swedish Collegium of Arms, a committee appointed by the Society, is responsible for the administration of the register. The Collegium has 5–7 members, and have co-opted three additional members from Denmark, Norway and Finland. Originally, one of the members in the Collegium was appointed by the now dissolved *Heraldiska Samfundet,* but when the statutes were revised in 2024[98] this was changed and now the National Committee instead appoints one of the members as its representative.[99] The paragraph stipulating that "The Swedish National Committee of Genealogy and Heraldry will have the oppor-

tunity to comment on the arms that the collegium plans to grant a final approval." has been repealed and instead this review function will be served by the representative in the Collegium being part of the entire review process.

The Register opened for applications 1 January 2007 and the first 39 arms were approved and registered in 2008. Since then, an average of 45 new arms have been registered annually. Only Swedish commoner arms are eligible for registration: family arms, societies and companies. Any claims of nobility disqualify arms from registration. The heraldic review and publication are done in several steps, where the guiding principle is: open review and explained rejections. Please refer to *fig. 7* for an illustration of the process. The arms are published online and in *Meddelanden från Svenska Vapenkollegiet*, Announcements of the Swedish Collegium of Arms, with blazons and drawings. Once the arms are finally approved and included in the online register, the blazons in Swedish are with time complemented with English translations. The registered arms are gradually published in bilingual hardback volumes, so far SV 1–200 (2018) and SV 201–400 (2022), with SV 401–600 being planned, where many artistic interpretations of the arms are also included.

The fee has been 300 SEK since 2007, but since the corresponding today's value has gone down with inflation, this was revised to 400 SEK as of 1 January 2025, corresponding to approximately €40.[100]

Regarding legal effect, there is no explicit mentioning of legal effect or the lack thereof in the statutes.

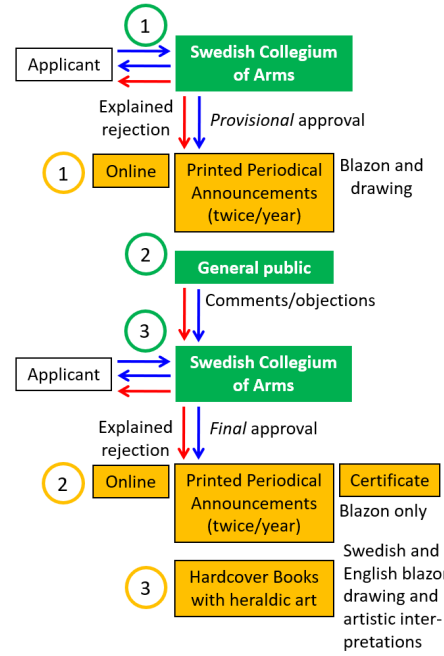


Fig. 7: The review and publication process of the Swedish Register of Arms. Legend: Green: review; orange: publication.

Conclusions: The Swedish Register of Arms has crisp and clear statutes and the Collegium running it operates by a detailed and thought-through working instruction. The focus is on keeping a "low threshold" (low fee) and a very open and broad and iterative review process, allowing the general public to contribute. The process of publication is also broad and generous, with both online and printed communication in several stages, making sure the arms are being made available and known. The register is growing steadily and the Society guarantees long term continuation.

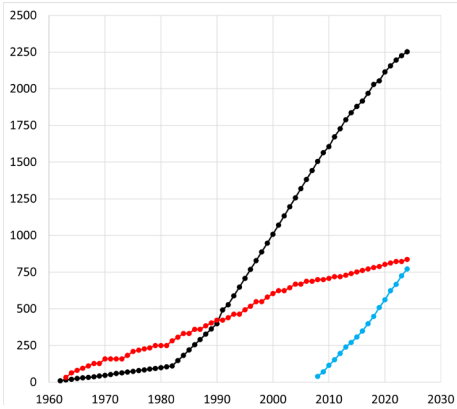


Fig. 8: Growth of the number of arms in the three current registers over the years.
Legend: Black: the Register of Arms of the Heraldic Society of Finland; red: the Scandinavian Roll of Arms; blue: the Swedish Register of Arms.

12. Answers and Conclusions

Now we get back to the original question: In the absence of heraldic law and regulation, when no official heraldic authority is responsible, how is non-governmental registration of commoner arms organized?

Who is stepping in to fill the gap? – Societies or individuals. Societies are best at securing continuity and reasonable fees.

How is the registration set up? – More or less formally and structured, collations or more proper registers. Long term, sound statutes and a well-structured setup will help to maintain the register.

What arms are included? – Commoner arms by definition, but sometimes also arms of nobility or even all sorts of arms. It requires a more qualified review to check claims of nobility and rank, this can be problematic and also attract unwanted applicants.

Who is reviewing and approving the arms? – An individual editor, an extended editorial staff, an appointed committee, even the general public can be involved. There are advantages to having many eyes involved to at least comment and provide feedback.

How are the arms published? – Online, in booklets, periodicals or periodical articles, books, certificates. The important part is to actually publish and make the arms known.

What legal effect or protection does the registration infer? – None, "Gentleman's agreement" applies. In the Nordic countries, this is in the domain of customary law.

Please refer to *fig. 8* for the growth of the number of arms in the three current registers.

APPENDIX: Statutes of the Register of Arms of the Heraldic Society of Finland [101]

The Register of Arms of the Heraldic Society of Finland is a private list of coats of arms, which have been entered there on separate request.

The Register of Arms contains at least the description of each included coat of arms as well as information about the coat of arms' owner and the right to use it.

The arms of Finnish citizens, persons permanently residing in Finland and associations with Finland as their home, which meet the heraldic requirements, are approved for the register. If there are special reasons, the board of the society may also approve for registration the arms of a person with foreign citizenship, residing outside of Finland.

Coats of arms that are confusingly similar to coats of arms, seals or, in some cases, other signs, in use or previously used in Finland, are not included in the register, nor are coats of arms that resemble the arms, flag or sign of a foreign state or international organization in such a way that this could result in confusion or other damage.

With the registration, the Society assures that the register does not contain today, nor will add in the future, the same or any confusingly similar coat of arms, unless it is a question of coats of arms belonging to persons of the same family, on which the members of the family have agreed among themselves. No other consequences of the registration arise.

The Heraldic Society has the right to publish, without compensation, in its publications and at exhibitions arranged by the Society, the description of the registered coat of arms and the image of the coat of arms attached to the registration application, or a new image, drawn according to the description of the coat of arms, and to state the name of the person who designed the coat of arms.

Registration of coats of arms is applied for on a separate form printed by the Society, which states the information to be provided. The form should be accompanied by a colored drawing, color photograph or color copy of the coat of arms on A4 size cardboard. This will be kept in the register.

After approved registration, the applicant will be sent a registration diploma.

A registration fee is charged for registration, the amount of which is determined by the Society's annual meeting.

The Society reserves the right to remove coats of arms entered on incorrect grounds from the register. The Society does not compensate for the damage that may occur through this removal.

Notes

1 National Archives: Riksheraldikerämbetet/ Handlingar rörande borgerliga vapen/1 1925–1944 and /2 1944–1954, Reference code: SE/ RA/420566/FV/1 and /2.

2 Arvidh Berghman, *Borgerlig vapenrulla* (Stockholm, 1950).

3 Det danske selskab for heraldik og sfragistik, *Vaabenførende slægter i Danmark Bd 1* (København, 1946–1948): collects booklets 1–10, Bd 2 (København, 1949–1952): collects booklets 11–20, Bd 3 (København, 1952–1959): collects booklets 21–23, where the last came 1954, but also *Dansk Vaabenherold* by Poul Reitzel, comprising 5 more booklets and Bibliografi over dansk heraldik by Sven Tito Achen in an additional booklet. Thus, the printing period for the booklets that contain the heraldic register is 1946–1954.

4 Topi Railo, Heinz Stürmer, Tapani Talari (editors), Suomen heraldinen seura – Heraldiska sällskapet i Finland, *Suomalaisia vaakunoita* (Hämeenlinna – Tavastehus, 2006).

5 *Skandinavisk Vapenrulla*, 1963–.

6 Hans A. K. T. Cappelen, *Norske slektsvåpen* (Oslo, 1969).

7 *Statuter för Svenskt Vapenregister*, Vapenbilden Nr 68, December 2006, p. 454–455; Martin Sunnqvist, *Svenska Vapenkollegiet – en presentation*, ibid. pp. 451–453; *Arbetsordning för Svenska Vapenkollegiet*, ibid., pp. 455, 458–459, 462.

8 *Meddelanden från Svenska Vapenkollegiet,* in every second issue of Vapenbilden since Nr 71, September 2007. Vapenbilden is the journal of the Swedish Heraldry Society, published since 1976 and currently with four issues per year.

9 Jesper Wasling (editor), *The Swedish Register of Arms Volume 1 SV 1–200*, The Swedish Her-

aldry Society 2018; Henric Åsklund (editor), *The Swedish Register of Arms Volume 2 SV 201–400*, The Swedish Heraldry Society 2022.

10 I gave a talk at the XXXII International Congress of Genealogical and Heraldic Sciences in Glasgow 2016 titled *The Register of Burgher Arms of the Swedish National Heraldry Office 1934–1936 and the Successors it Inspired*, but for various reasons this was unfortunately not included in the proceedings.

11 H. J. S. Kleberg, *Riksheraldikerämbetets uppkomst och utveckling*, Meddelanden från Riksheraldikerämbetet 1933, p. 8–10.

12 Kleberg 1933, p. 9.

13 Since 16 May 1840 (SFS 1840:14), Uno Lindgren, *Heraldik i svenska författningar. En vapenrättslig översikt från medeltiden till våra dagar* (Lund 1951), p. 56.

14 As a general rule. However, Johan Kleberg, secretary 1931–1949, did have a regular salary. Bengt Rur, "Arvid Berghman, heraldikern", *Personhistorisk tidskrift* 1999:1, p. 47.

15 Kongl. Majts nådiga Instruction, hvarefter den tillförordnade Riks Heraldicus hafver sig att rätta; gifven Stockholms Slott den 11 mars 1813, reproduced in Lindgren 1951, p. 104–108.

16 "29 april 1734" and also "Förslaget, som i stor utsträckning avsåg en kodifiering av redan gällande bruk, föredrogs tre gånger för konungen, sista gången den 19 juni 1775, men någon stadfästelse kom aldrig till stånd." [The proposal, which largely aimed at codifying existing customs, was presented to the king three times, the last time on June 19, 1775, but no ratification was ever achieved.], Lindgren 1951, p. 47

17 Kongl. Maj:ts nådiga skrifvelse till Vitterehets- Historie- och Antiqvitetsakademin, angående tillägg till nådiga instruktionen för riksheraldikern den 11 mars 1813, Stockholms slott den 14 augusti 1885 (SFS 1885: 52), reproduced in Lindgren 1951 p. 108–109.

18 Lag angående rikets flagga; gifven Stockholms slott den 22 juni 1906 (SFS 1906:55), reproduced in Lindgren 1951 p. 116–118.

19 Lag om rikets vapen; gifven Stockholms slott den 15 maj 1908 (SFS 1908:65), reproduced in Lindgren 1951 p. 115–116.

20 Lag om skydd för vapen och vissa andra officiella beteckningar; given Stockholms slott den 23 mars 1934 (SFS 1934:63), reproduced in Lindgren 1951 p. 111–113.

21 Kungl. Maj:ts kungörelse angående ordningen för sökande av tillstånd att använda vissa svenska officiella beteckningar i varumärke m. m.; given Stockholms slott den 7 juni 1934 (SFS 1934:250), reproduced in Lindgren 1951 p. 113–114.

22 Kungl. Maj:ts brev till riksheraldikern angående tillägg till instruktionen för riksheraldikern den 11 mars 1813, Stockholms slott den 20 mars 1936 (SFS 1936: 57), reproduced in Lindgren 1951 p. 109–111.

23 Rur 1999, p. 42.

24 Meddelanden från Riksheraldikerämbetet was a series of ten publications launched in 1933 with the final volume in 1945. The following issues where made: (unnumbered) 1933, (unnumbered) 1934, special issue: H. Fleetwood, Till Engelbrektsminnet. Sveriges tre kronor, IV 1935, V 1936, VI 1937, VII 1938, VIII 1939, IX 1940, X 1941–1945.

25 A. Berghman, "Borgerliga släktvapen", *Meddelanden från Riksheraldikerämbetet* 1934, p. 23–31, citation from p. 31. Translated from Swedish by the author.

26 Berghman 1950, p. 22. Translated from Swedish by the author.

27 *Meddelanden från Riksheraldikerämbetet* 1934, p. 8.

28 A. Berghman, "På heraldisk utställning", *Meddelanden från Riksheraldikerämbetet* 1936, p. 33–59, citation from p. 49. Translated from Swedish by the author.

29 The applications as well as copies of the registration certificates and related correspondence are kept in the National Archives: Riksheraldikerämbetet/Handlingar rörande borgerliga vapen/1 1925–1944, Reference code: SE/RA/420566/FV/1.

30 Rur 1999, p. 44–45.

31 Brita Grep was not formally employed by the Office, but did work for them on a regular basis to the extent that she had a position comparable to the regular employees, C. G. U. Scheffer, "Brita Grep in memoriam", Heraldisk Tidsskrift, Bind 2, nr 19, 1969, p. 422.

32 Arvid Berghman, *Svenska borgerliga släktvapen / Armoiries de bourgeois suédois* / graverade av Johannes Britze (Stockholm, 1939).

33 Translated from Swedish by the author.
34 Letter 234/1934 dated Stockholm 16 December 1934. Translated from Swedish by the author.
35 https://www.scb.se/hitta-statistik/sverige-i-siffror/prisomraknaren/ (2025-02-11)
36 Letter 108/1940 dated Stockholm 9 Maj 1940. Translated from Swedish by the author.
37 Letter 32/1937 dated Stockholm 13 February 1937.
38 Rur 1999, p. 43–45.
39 Letter 266/1937 dated Stockholm 6 September 1937.
40 The copy of this letter in the National Archives is numbered 266/1937, same as the original application and dated Stockholm 8 October 1937. Translated from Swedish by the author.
41 Copy of a letter dated Stockholm 27 May 1938, signed by Kleberg as acting Herald of the Realm. Translated from Swedish by the author.
42 Copy of a letter dated Stockholm 14 June 1938. Translated from Swedish by the author.
43 The copy of this letter in the National Archives is numbered 266/1937, same as the original application and dated Stockholm 8 September 1938.
44 Unnumbered and undated draft, with intentional gaps to be filled later and corrections by hand in some places. I have tried to summarize the main points. The quotes are translated from Swedish by the author.
45 In both cases, the new knights have their coats of arms painted on stall plates and if they are not already armigerous they need to assume new arms. For non-Danish Knights of the Grand Cross of the Order of the Dannebrog, this practice was discontinued in 1961 (with very few exceptions).
46 Letter 44/1939 dated Malmö 28 January 1939. Translated from Swedish by the author.
47 Rur 1999, p. 46–47.
48 Letter to Jan Raneke dated 7 July 1944, in Arvid Berghmans heraldiska stiftelses handskriftssamling at the National Library of Sweden (KB), capsule Y 32 (Letters to Arvid Berghman P-Ra), reference code SE S-HS Y.
49 Berghman 1950, p. 5. Translated from Swedish by the author.
50 Berghman 1950, p. 22. Translated from Swedish by the author.
51 Berghman 1950, p. 5. Translated from Swedish by the author.
52 Letters from Jan Raneke dated 20 August 1951, 8 November 1951 and 11 July 1953, in Arvid Berghmans heraldiska stiftelses handskriftssamling.
53 https://heraldik.org/medlem-i-shs/om-shs/ (2025-02-13)
54 Peter Kurrild-Klitgaard, *Knights of Fantasy: Self-styled "Orders" called "of Saint John" or "of Malta" in the Nordic countries* (Frederiksberg, 2012), p. 50–56.
55 Kurrild-Klitgaard 2012, p. 55.
56 *Vaabenførende slægter i Danmark*, 1st booklet, preface dated 1946 (unnumbered).
57 Poul Reitzel, Dansk vaapenherold: Tillæg til »Vaabenførende slægter i Danmark«, preface dated 1954, included in *Vaabenførende slægter i Danmark* Bd 3 (København, 1952–1959).
58 Phone directory for Copenhagen 1946. I am grateful to Ronny Skov Andersen for pointing this out.
59 I am grateful for Ronny Skov Andersen's kind assistance to obtain this text from the copies of *Vaabenførende slægter i Danmark* in the Danish National Archives, since it is not included in the bound collections of the booklets, where the covers of the booklets have been removed.
60 The works mentioned are: V. A. Thiest og P. A. Wittrup, *Nyt Dansk Adelslexikon,* Professor H. Storck, *Dansk Vaabenbog* and *Danmarks Adels Aarbog*.
61 Translated from Danish by the author.
62 This Roll of arms appears to have been a working document where all arms that could be found from whatever sources were included and a selection was then published in Armorial Families.
63 https://www.samlarforbundet.se/bli-medlem/ (2025-02-13).
64 Sture Sjöberg, "Nordstjärnan – de första 30 åren", *Samlarnytt* nr 8, 1991, p. 9–27.
65 Private conversation with Rolf Rundström 2023-08-10.
66 Gunnar Trönnberg, Henning Backmann. In *Samlarnytt* nr 7–8, 1962 August, p. 20.
67 Rolf Rundström, "Borgerliga vapen", *Samlarnytt* nr 7–8, 1962 August, p. 20–21.

68 *Samlarnytt* nr 5–6, 1962 June, p. 42.
69 Rolf Rundström, "Borgerliga vapen (1)", *Samlarnytt* nr 5–6, 1963 June, p. 8–9.
70 The full series is: (1) *Samlarnytt* nr 5–6, 1963 June, p. 8–9 (1. Adamsson, 2. Andersson 3. Barrefors); (2) *Samlarnytt* nr 7–8, 1963 August, p. 10–11 (4. Ljung, 5. Ekeskär, 6. Karlsson, 7. Schenström, 8. Nilsson); (3) *Samlarnytt* nr 9–10, 1963 October, p. 6–7 (9. Holmqvist, 10. Backmann, 11. Möller, 12. Berg); (4) *Samlarnytt* nr 11–12, 1963 December, p. 8–9 (-); (5) *Samlarnytt* nr 1–2, 1964 January, p. 8–9 (13. Gjötterberg, 14. Rundström, 15. Skoglund); (6) *Samlarnytt* nr 5–6, 1963 June, p. 8–9 (16. Bergkvist, 17. Brangstad, 18. Jonsson, 19. Pihl).
71 Cappelen 1969, preface page (unnumbered). Translated from Norwegian by the author.
72 Cappelen 1969, p. 17.
73 Cappelen 1969, p. 273.
74 Cappelen 1969, p. 273. The quote is presented as "According to one Danish periodical of genealogy", but without further information of the original source.
75 Suomen heraldinen seura 2006, p. 16.
76 Acclaimed by e.g. Sven Tito Achen in *Heraldikkens femten glæder* (Copenhagen, 1978, reprinted 2009), p. 106, where he writes "It is heraldry that is in no way inferior to the best from the classical period of heraldry, in the 13th and 14th centuries." Translated from Danish by the author.
77 The data used to generate these statistic has kindly been provided to me by Heinz Stürmer (2023-08-05) and Marja Kyyhkynen (2025-03-02).
78 As far as I have been able to ascertain the register has been available on the https://www.heraldica.fi/fi/ web page since 2007, but in some periods the web page or parts of it has been unavailable due to technical issues.
79 https://www.heraldica.fi/fi/vaakunarekisteri/ (2025-03-02)
80 https://www.heraldica.fi/Etusivut_r/ruotsi.htm (2025-03-02)
81 Henric Åsklund, "The Founding of the Scandinavian Roll of Arms in 1963 and the Swedish Register of Arms in 2007: Comparing Two Revolutions in the Publication of Burgher Arms in Sweden", *Proceedings of the 35th International Congress of Genealogical and Heraldic Sciences, Cambridge 15th–19th August 2022*, Paul A. Fox (editor) (London 2023), p. 72–80. The entire proceedings are available online at https://www.theheraldrysociety.com/congress-proceedings/ (2025-03-10).
82 Sven Tito Achen, "Et Register over Borgerlige Våbener", *Heraldisk Tidsskrift*, Bind 1, nr 2, October 1960, p. 45–52.
83 Minutes of a board meeting 19 April 1961, § 13: "Promoted as one of the local branch's most important tasks: The collection work for the commoner roll of arms (see Heraldisk Tidsskrift no. 2) for Skåne, as well as the "checking" of newly created commoner arms." and § 15: "The following three points were summarized as the local branch's current main tasks: a) municipal heraldry, b) commoner roll of arms, c) heraldic exhibition". The archive of Societas Heraldica Scania. Translated from Swedish by the author.
84 *Vapenrulla utgiven av Heraldisk Selskab – Heraldiska Sällskapet – Heraldisk Selskap*, Häfte 1, Societas Heraldica Scandinavica (Malmö 1961).
85 Minutes of a dedicated meeting to discuss the roll of arms, 22 November 1961. Participants: S.T. Achen, C. Bökwall, O. Kirstein, S. Rambe, J. Raneke, E. Verwohlt. The archive of Societas Heraldica Scania.
86 Activity report of Societas Heraldica Scanica for the period 1 April 1961 to 1 April 1962, Malmö 29 May 1962, signed Jan Raneke, Christer Bökwall, Torsten Moritz. The archive of Societas Heraldica Scania. Translated from Swedish by the author.
87 *Skandinavisk Vapenrulla*, 1963, 1st page of the introduction (unnumbered): "In this new, periodically published Scandinavian Roll of Arms, space will be given to all coats of arms in a heraldic sense, whatever they may be called: coats of arms of orders, nobles or commoners". Translated from Swedish by the author.
88 Åsklund 2023, p. 76.
89 The fee 1963 was 100 SEK, corresponding to 1350 SEK in 2024; in 2003 the fee was 3850 SEK, corresponding to 5750 SEK in 2024, i.e. 4.3 times as much.
90 Except for the former editor Tor Flensmarck,

all the other eight members of the editorial staff and the heraldic council from 2010 are still part of the current editorial staff. SVR 2009–2010 and SVR 2023–2024, backsides of the booklets.

91 The fee 1963 was 100 SEK, corresponding to 1350 SEK in 2024; in 2011 the fee was 1500 SEK, corresponding to 2000 SEK in 2024 and in 2024 the fee was 1100 DKK, equivalent to approximately 1700 SEK.

92 Åsklund 2023, p. 78.

93 https://heraldik.org/publikationer/skandinavisk-vapenrulla/register-svr/ (2025-03-10). The ambition is to expand this systematic register to all arms in the Roll.

94 Courtesy of *Danskernes Historie Online*. The links to each booklet are collected here: https://heraldik.org/samtliga-svr-haften/ (2025-03-10).

95 Åsklund 2023, p. 72–80.

96 Lars Wikström, "Nationalkommittén för genealogi och heraldik – en orientering", Vapenbilden Nr 69, February 2007, p. 474. The committee is under the supervision of the Royal Swedish Academy of Letters, History and Antiquities.

97 Elias Sonnek, "Heraldiska Samfundet 1992–2022", *Vapenbilden* Nr 132, December 2022, p. 24–25.

98 The revised statutes were approved by the Society 5 May 2024 and by the National Committee 5 June 2024.

99 Styrelsen, "Reviderade statuter", *Vapenbilden* Nr 137, September 2024, p. 13. The changes are: § 2: "and in participation with Heraldiska Samfundet" is removed; § 5: "Heraldiska Samfundet" is replaced by "the Swedish National Committee of Genealogy and Heraldry"; § 14: the entire paragraph is repealed; compare with Åsklund 2023, p. 78–79.

100 The fee is part of the work instruction for the Collegium, where the new issue was approved by the Society 8 December 2024 and took effect 1 January 2025. Published in *Meddelanden från Svenska Vapenkollegiet* Nr 36, p. 8–11, in Vapenbilden Nr 141, February 2025.

101 Suomen heraldinen seura 2006, p. 248. Translated from Swedish by the author.

Participants during the visit in the Main University Building. Photo: Selma Rosenfeld.

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The Heraldic Consequences of the Passing of a Law – a Case Study

By Ronny Skov Andersen, A.I.H.

Abstract: In 1776 the Act of Citizenship was introduced in the Danish-Norwegian absolute monarchy. It came after a period where the German-speaking Johann Friedrich Struensee had taken power as the confidant of the mentally fragile Christian VII and the law catered to new ideas of nationalism and patriotism that flourished in the late 18th century. The Act of Citizenship stipulated that in order to obtain employment as an official in the Danish central administration you had to be born in the Danish monarchy – Denmark, Norway or Holstein. This led to a series of naturalizations of foreign officials and in some cases, a family's heraldic identity was affected. This is the case with the officer Jobst Gerhard von Scholten who in 1776 not only sought to be naturalized as a Danish citizen, but also to be ennobled. In his preparations for the application he discovered that the arms he, his father and grandfather had been using were not the same as the family's original coat of arms.

Résumé : En 1776, la loi sur la citoyenneté a été introduite dans la monarchie absolue dano-norvégienne. Cela est arrivé après une période où le germanophone Johann Friedrich Struensee avait pris le pouvoir en tant que favori du roi Christian VII, mentalement fragile, et où la loi répondait aux nouvelles idées de nationalisme et de patriotisme qui fleurissaient à la fin du XVIIIe siècle. La loi sur la citoyenneté disposait que pour obtenir un emploi de fonctionnaire dans l'administration centrale danoise, il fallait être né dans la monarchie danoise – soit en Danemark, au Norvège ou dans le Holstein. Cela a conduit à une série de naturalisations de fonctionnaires étrangers et, dans certains cas, l'identité héraldique d'une famille a été affectée. C'est le cas de l'officier Jobst Gerhard von Scholten qui, en 1776, cherchait non seulement à être naturalisé citoyen danois, mais aussi à être anobli. Lors de la préparation de sa demande, il a découvert que les armes que lui, son père et son grand-père utilisaient n'étaient pas les mêmes que les armoiries originales de la famille.

1. The overture

On the night of January 17th, 1772 Johan Friedrich Struensee (1737–1772), the personal physician to and confidant of the mentally fragile King Christian VII (1749–1808) was arrested along with several others in a political coup led by the King's stepmother, the Dowager Queen Juliane Marie (1729–1796) and her son, the Hereditary Prince Frederick (1753–1805). Struensee had used his influence on the weak king to seize power and was the

de facto ruler of the kingdom. He was also the lover of the Queen, the British-born Caroline Mathilde (1751–1775) and most likely the father of her youngest child, which was common knowledge.

Struensee was influenced by the ideas of Enlightenment, and during his regime from December 1770 to his fall in January 1772, he tried to implement radical changes of the society, which prompted discontent in various circles, especially among those who had lost their political influence. Struensee and his aide Enevold Brandt (1738–1772) were both sentenced to death and executed in the spring of 1772.[1]

Struensee was from Altona, a German city under the Danish Crown, close to Hamburg, and he spoke and wrote German, as did many of the prominent political figures and royal advisers in the 18th century. The fall of Struensee fueled a development towards a more national or patriotic policy which had been stirring since the middle of the 18th century.[2]

There had been a shift in the perception of patriotism in this period, from the idea that the Fatherland is the place where you live as a loyal subject and useful citizen as exemplified by the author Tyge Rothe (1731–1795) in 1759 in his book *Tanker om Kjærlighed til Fædrenelandet (Thoughts on Love to the Fatherland)*, towards a more nationalistic idea of "Danishness".[3]

The latter was promoted from the 1760's by amongst others Professor Ove Høegh-Guldberg (1731–1808), then only Ove Guldberg, who should prove to be a central person in the matter later on. He wrote for example about the Danish language:

"Most of our distinguished classes degrade themselves when they speak it; these people who ought to speak the language, don't speak it; you can be Danish and live in the land and by the land without understanding it".[4]

This tension between Danish and foreign – and that was to say between Danish and German – broke out in full after the fall of Struensee. Ove Høegh-Guldberg had become teacher to the Hereditary Prince Frederick and was a loyal servant to him and his mother, the Dowager Queen. After the coup in January 1772 Ove Høegh-Guldberg became the leading political figure of the new regime and with him, a consistent national Danish policy was laid.[5]

One of the first things to be enforced was the principle of using Danish as the main language in the government and central administration. Danish also became the command language in the army, which until then had been commanded in German. The composition of the State Council also reflected the Danish course as the new members were Danish-born or born in one of the three parts that constituted the Danish realm, the Danish Fatherland – Denmark, Norway and Holstein.[6]

2. *The Act of Citizenship*

The crowning touch of this national Danish Policy was the publication of the Act of Citizenship *(Indfødsretsloven)* on the king's birthday January 29, 1776. The Act of Citizenship stipulated that in order to obtain employment as an official in the Danish central administration you had to be born in the Danish monarchy – Denmark, Norway or Holstein: "The children of the land shall

enjoy the bread of the land" as was stated in the introduction.[7]

The act was particularly splendid with gold lettering in the introduction and an ornate gold embossed letter binding. In the introduction, the law was presented as a fundamental law that could not be changed, and it almost had the same status as the Lex Regia, the constitution of the absolute monarchy.[8]

There is no doubt that The Act of Citizenship was considered to be of enormous importance by its creators. There were ceremonies and festivities throughout the country in its honour, a medal was struck and one of the new battle ships was named after the Act. The motive of the medal was also popularized as a widely distributed statuette and many other artworks were created to celebrate the Act.[9]

For foreigners, as they were now called in the Act, who were already in service to the king and state, exceptions were made. Article 6 of the Act stated that all foreigners that met certain conditions could apply for naturalization within a year and without paying for it.[10]

This resulted in a series of naturalizations in the coming years. Foreign nobles in Danish service were naturalized as Danish nobility – in a few cases obtaining an ennoblement as well. No less than 67 naturalizations of foreign nobility were granted from January 1776 until the fall of 1778, thereafter the numbers dropped again.[11]

From 1766, when Christian VII succeeded to the throne, and until January 1776, only three foreign nobles had been naturalized, so it is clear that the Act had an impact on the increased number of naturalizations.

Among the few ennoblements in the period as a direct consequence of the Act of Citizenship was the ennoblement of Jost Gerhard von Scholten in 1777. It proves to be an interesting case study of a change of arms as well as a glimpse into how von Scholten saw his arms and ancestry and how the process in the chancery worked in these cases. The sources to these cases are regularly scarce, but in this particular case it is possible to reconstruct the whole process through the archives of the chancery.

3. The von Scholten case

Major General Jost Gerhard von Scholten (1723–1786) applied for an ennoblement on February 21 1776.[12] In the application, he stated that he himself, his father and grandfather had enjoyed the privilege to loyally serve the Danish king in 114 years since 1662. His father and grandfather had both been made Knights of the Order of Dannebrog and later Knights of the Order of the Elephant, and he goes on to say that as such they and their descendants were considered to be Danish nobility. Here von Scholten referred to the nobility by rank, which was introduced in the early absolutism to strengthen the loyalty towards the king and monarchy and weaken the traditional nobility.[13]

Von Scholten strengthened his argument by stating that authors of nobiliary works always had included the von Scholten family as Danish nobility. But as he had no "diploma", no nobility patent to show and so many other foreign families were being naturalized, he wished to do so as well and he ended the application with the wish that he

Fig. 1. The arms of Jobst von Scholten in the Armorial of the Order of Dannebrog, 1695. The Chapter of the Royal Orders of Chivalry, Armorial of the Order of Dannebrog vol. I, p. 152, no. 105, http://static-vb.kongehuset.dk/vb/04/html5forpc.html?page=0

Fig. 2. The arms of Jobst von Scholten 1695. The Library of Sorø Academy, Johan von Bülow's Manuscript Collection 8 c, 58. Photo: Ronny Skov Andersen.

Fig. 3. The seal of Jobst von Scholten, 1695. Danish National Archives, Ordenskapitlet, Breve vedr. riddere 1660–1740, Christian V, Dannebrog. Photo: Ronny Skov Andersen.

would be bestowed the nobility patent free of charge.

The application is of course held in subservient terms, but it also shines through that von Scholten considered this as a nuisance and an unnecessary bureaucratic exercise. He thought of himself as part of the Danish nobility and a servant of the Crown. However, it is also clear that he wanted to protect himself and his descendants in the light of the Act of Citizenship and the new concept of what it meant to be Danish.

He was eventually granted the nobility patent free of charge, but had to pay the expenses for the vellum, the calligrapher, the herald painter and the seal case. But he was relieved of the fee to the state for being ennobled.

The family von Scholten had come to Denmark with Jost Gerhard's grandfather and namesake, Jobst von Scholten (1648–1721) who became a Danish officer and excelled as an army engineer and later as commanding general. Jobst von Scholten became a Knight of the Order of Dannebrog in 1695 and in 1710 a Knight of the Order of the Elephant.[14] His son Henrik von Scholten (1677–1750) also had a distinguished military career and became a Knight of the Order of Dannebrog in 1729 and a Knight of the Order of the Elephant in 1749.[15]

Jobst and Henrik von Scholten both bore the same coat of arms, Argent a cross Gules and with two ostrich feathers Argent for a crest (*fig. 1–2*). These arms appear for Jobst and Henrik von Scholten in the armorials of

Fig. 4. The proposed coat of arms of Jost Gerhard von Scholten, 1777. Danish National Archives, Danske Kancelli, indlæg m.m. til grevelige, friherrelige og adelige patenter (1671–1848), A125-1, Christian VII Adelig 1766–1779. Photo: Ronny Skov Andersen.

the Order of Dannebrog and the Order of the Elephant. When Jobst von Scholten on December 24, 1695 sent a depiction of his arms to the secretary of the royal orders, he did not however disclose any of the meaning or history of the arms, but merely stated that he had let it made quite small, as he did not know the required measurements.[16]

The letter bears his seal with the same arms (*fig. 3*).

This coat of arms, but with one ostrich feather Gules and one Argent, is also known as being used by Prussian military offices with the name Scholten in the 18th century.[17]

In 1729 when Henrik von Scholten became a Knight of the Order of Dannebrog and should send in his arms, he wrote to the secretary of the royal orders that the arms of his father could be seen twice in the chapel of the royal orders at Frederiksborg Castle.[18]

Jost Gerhard von Scholten also bore these arms but in connection with the ennoblement, he corresponded with foreign members of the von Scholten family and claimed to have discovered that the original arms of the family was quite different.

In a letter to the Chancery that was handling the case of his ennoblement, Jost Gerhard von Scholten on January 28, 1777 regretted that his proposed coat of arms had come this late, but that it was due to his correspondence with foreign family members on the family coat of arms. He had enclosed a drawing of the arms (*fig. 4*) and also an explanation of the charges in the arms and their symbolism.

According to the family legend, the arms should originally have been granted to one of von Scholten's ancestors by the name of

Fig. 5. The noble arms of von Scholten, 1777. Danish National Archives, Danske Kancelli, Grevelige, friherrelige og adelige patenter (1671–1912), A113, Christian VII Adelig 1766, 1809, no. 13, p. 32–34. Photo: Ronny Skov Andersen.

Christian Shulte in 1599 by king Christian IV. The arms should have been a reward to this ancestor for his efforts in trade with lumber, cattle, grain and fish.

There is no trace of such a grant of arms during the reign of Christian IV, and the story seems to be a heraldic legend, *eine Wappensaga*.

Von Scholten laid out the charges in the arms as follows. In the first quarter is a "dry" tree branch, which is a symbol for the lumber trade. In the second quarter three ox heads stand for the trade with cattle, the full sack of grain in the third quarter is the symbol of

Fig. 6. *The arms of Jost Gerhard von Scholten in the Armorial of the Order of Dannebrog, 1782.* The Chapter of the Royal Orders of Chivalry, Armorial of the Order of Dannebrog vol. III, p. 215, no. 130, http://static-vb.kongehuset.dk/vb/06/html5forpc.html?page=0

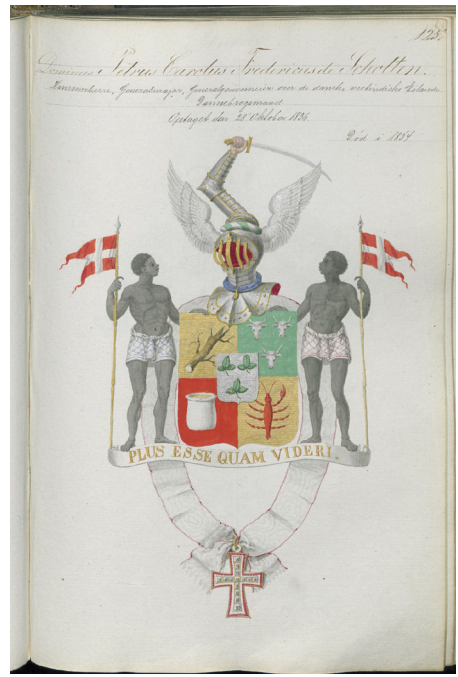

Fig. 7. The arms of Peter von Scholten in the Armorial of the Order of Dannebrog, 1836. The Chapter of the Royal Orders of Chivalry, Armorial of the Order of Dannebrog, vol. IV, p. 125, http://static-vb.kongehuset.dk/vb/07/html5forpc.html?page=0

the trade with grain, and finally the crayfish in the fourth quarter as a symbol of the fishing trade. The inescutcheon bears the three cloverleaves of the ancient arms of von Scholten, which were to be found on several of the family's estates around Europe, according to von Scholten.

The Chancery put forward the coat of arms for the king's approval, which came on March 5, 1777. Subsequently the nobility patent was drawn up and on April 23, 1777, Jost Gerhard von Scholten was ennobled and along with this he was bestowed the new coat of arms (*fig. 5*).[19]

He and his descendants would now be considered as Danish nobility also in the sense of the Act of Citizenship. When Jost Gerhard von Scholten became a Knight of the Order of Dannebrog in 1782 he naturally used his new coat of arms in the armorial. He kept however, the motto of his father and grandfather (*fig. 6*).[20]

Jost Gerhard von Scholten's grandson, Peter von Scholten, is a well-known name in

Danish history. Peter von Scholten was governor general of the Danish West Indies, the Danish colony in the Caribbean and in 1848 during a revolt of the enslaved black population of the islands, he abolished slavery in the Danish West Indies. Twelve years before that event Peter von Scholten was awarded the Grand Cross of the Order of Dannebrog and in the armorial of the order the family arms of 1777 was now embellished with supporters, two members of the black West Indies population each holding the Danish flag Dannebrog. He also chose another motto (*fig. 7*).[21]

4. Conclusion

This case study has shown what must be considered as an unforeseen heraldic consequence of the passing of a law, which in itself had nothing to do with heraldry. Jost Gerhard von Scholten might never had known anything about the coat of arms borne by the foreign family lines, had he not been so keen on getting a nobility patent and not just be naturalized like most did in the years after the Act of Citizenship. Naturalized nobility kept on using the arms they had used all along, and in the naturalization patents there are no mention or depictions of arms.

This case also offers a rare glimpse into the process of the Chancery. The sources to the heraldic work in the Chancery are scarce, but in this case some light can be thrown over it. It would seem that certainly in this case, no heraldic work at all was part of the process in the Chancery; von Scholten sent in a depiction of the coat of arms he wanted to bear, and this was immediately accepted. This was probably the case in most instances. From a heraldic point of view the most interesting in this case study is the interest Jost Gerhard von Scholten himself showed for his coat of arms and his wish to have the original or real coat of arms granted to him. It is difficult to know, whether the coat of arms according to Jost Gerhard von Scholten was actually the more original version, or whether he "improved" the coat of arms in relation to a more original Argent a cross Gules.

The explanation behind the charges in the arms and the heraldic legend attached to this is testament to the common and universal urge for an explanation of the symbolism of heraldic charges, which is a well-known feature of the heraldic interest. "What does it all mean?" is probably the most asked question in heraldry.

Notes

1 *Bech, Claus; Eller, Povl: J.F. Struensee, in Dansk Biografisk Leksikon on www.lex.dk. Retrieved on* 12.09.2023 *from* https://biografiskleksikon.lex.dk/J.F._Struensee

2 Juliane Engelhardt distinguishes between "patriotism" and "nationalism" in her article on patriotic societies, Engelhardt, Juliane: Patriotism, nationalism and modernity: The patriotic societies in the Danish conglomerate state, 1769–1814. *Nations and Nationalism*, 13(2), 2007, p. 205–224. Patriotism in her view is typical of the 18th century and is an ideal of civic virtue and citizenship, while nationalism is a typical feature of the 19th century with a more romantic view of the importance of the descent and national character of the people.

3 This developement is thoroughly analyzed by Ole Feldbæk in Feldbæk, Ole: Fædreland og Indfødsret. 1700-tallets danske identitet, in

Feldbæk, Ole (ed.): *Dansk Identitetshistorie*, vol. 1, 1991, p. 111–230.

4 Quoted in Feldbæk 1991, p. 147, author's translation.

5 Feldbæk 1991, p. 185.

6 Feldbæk 1991, p. 186.

7 Indfødsretsloven *(The Act of Citizenship)* January 15, 1776, *retrieved on* 12.09.2023 *from* https://danmarkshistorien.dk/fileadmin/filer/Billeder/Scanninger_af_kilder/Forordning_om_indfoedsret_for_embedsmaend_15.01.1776/Forordning_om_indfoedsret_for_embedsmaend_15.01.1776.pdf

8 Feldbæk 1991, p.197–200.

9 See Kryger, Karin: Dansk identitet i nyklassicistisk kunst. Nationale tendenser og nationalt særpræg 1750–1800, in Feldbæk, Ole (ed.): *Dansk Identitetshistorie*, vol. 1, 1991, p. 287–301.

10 Indfødsretsloven *(The Act of Citizenship)* January 15, 1776, *retrieved on* 12.09.2023 *from* https://danmarkshistorien.dk/fileadmin/filer/Billeder/Scanninger_af_kilder/Forordning_om_indfoedsret_for_embedsmaend_15.01.1776/Forordning_om_indfoedsret_for_embedsmaend_15.01.1776.pdf

11 Fabritius, Albert: Danmarks Riges Adel. Dens tilgang og afgang 1536–1935, 1946, p. 154–159.

12 Rigsarkivet *(Danish National Archives)*, Danske Kancelli, indlæg m.m. til grevelige, friherrelige og adelige patenter (1671–1848), A125-1, Christian VII Adelig 1766–1779.

13 For more on this, see Bartholdy, Nils G.: Adelsbegrebet under den ældre enevælde. Sammenhængen med privilegier og rang i tiden 1660–1730, in *Historisk Tidsskrift* 12, vol. 5, no. 3, p. 577–649.

14 von Scholten, in *Danmarks Adels Aarbog* 1961, part 2, p. 3–9, Ordenskapitlet (*Chapter of the Royal Orders of Chivalry*), Armorial of the Order of Dannebrog vol. I, p. 152, no. 105, retrieved on 12.9.2023from http://static-vb.kongehuset.dk/vb/04/html5forpc.html?page=0 and Armorial of the Order of the Elephant vol. 1, p. 20, no. 66, retrieved on 12.9.2023 from http://static-vb.kongehuset.dk/vb/01/html5forpc.html?page=0

15 von Scholten, in *Danmarks Adels Aarbog* 1961, part 2, p. 3–9, , Ordenskapitlet (*Chapter of the Royal Orders of Chivalry*), Armorial of the Order of Dannebrog, vol. II, p. 29, no. 28, retrieved on 12.9.2023 from http://static-vb.kongehuset.dk/vb/05/html5forpc.html?page=0, Armorial of the Order of the Elephant, vol. I, p. 5, no. 131, retrieved on 12.9.2023 from http://static-vb.kongehuset.dk/vb/01/html5forpc.html?page=0

16 Rigsarkivet *(Danish National Archives)*, Ordenskapitlet, Breve vedr. riddere 1660–1740, Christian V, Dannebrog.

17 J. Siebmacher's grosses und allgemeines Wappenbuch, Vol. 3, Part 2, Der blühende Adel des Königreichs Preußen, Edelleute M-Z, Nürnberg 1878, p. 363 and Tafel 413.

18 Bartholdy, Nils G.: Tilblivelsen af våbenerne for riddere af Dannebrog i det 17. og begyndelsen af det 18. århundrede, in *Heraldisk Tidsskrift* no. 27, 1973, p. 316.

19 Rigsarkivet *(Danish National Archives)*, Danske Kancelli, Grevelige, friherrelige og adelige patenter (1671–1912), A113, Christian VII Adelig 1766, 1809, no. 13, p. 32–34.

20 Armorial of the Order of Dannebrog vol. III, p. 215, no. 130, retrieved on 12.0.2023 from http://static-vb.kongehuset.dk/vb/06/html5forpc.html?page=0

21 Armorial of the Order of Dannebrog, vol. IV, p.125, retrieved on 12.9.2023 from http://static-vb.kongehuset.dk/vb/07/html5forpc.html?page=0

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Pp. 307–320

Académie Internationale d'Héraldique

Contestations à propos de questions d'armoiries en Flandre lilloise au XVIII[e] siècle

Par Dominique Delgrange, A.I.H.

Résumé : Deux affaires relatives à l'utilisation d'armoiries semblables éclosent à Lille, capitale de la Flandre française, vers le milieu du XVIII[e] siècle. Elles concernent, d'une part, la famille des fameux comtes de Lannoy et de l'autre, celle des héritiers des Massiet, famille noble éteinte dans la voie agnatique. Il n'y avait que deux manières de régler les questions d'usurpation d'armoiries : l'arrangement à l'amiable ou l'action en justice. Les deux cas vont connaître un dénouement différent.

Abstract: Two cases involving the use of similar coats of arms arose in Lille, the capital of French Flanders, around the middle of the 18th century. They concerned, on the one hand, the family of the famous Counts of Lannoy and, on the other, that of the heirs of the Massiet, a noble family extinct in the agnatic way. There were only two ways to settle issues of usurpation of the coat of arms: amicable settlement or legal action. The two cases had different outcomes.

1. Flandre wallonne et Pays-Bas français : un particularisme administratif et héraldique dans le royaume de France

Dans les années 1760, les provinces septentrionales du royaume de France conquises depuis moins d'un siècle, à savoir l'Artois, le Hainaut, Cambrai, une partie de la Flandre maritime et la Flandre wallonne, avec les châtellenies de Lille, Douai et Orchies, jouissent d'un statut particulier. Détachées de l'ensemble formant les anciens Pays-Bas, partie de « l'héritage bourguignon » transmis aux Habsbourg, elles possèdent une organisation territoriale et juridique spécifique, avec des assemblées rassemblant les représentants des trois états de la société (de Flandre wallonne, de Flandre maritime,[1] de Hainaut, de Cambrai et d'Artois) et deux hautes cours de justice : le parlement de Flandre à Douai[2] et le conseil d'Artois à Arras.[3] Ce régime « transitoire » sera définitivement aboli lors de la création des départements français par l'Assemblée constituante le 26 février 1790.

Dans ces provinces jouissant d'un statut particulier, les questions héraldiques, et no-

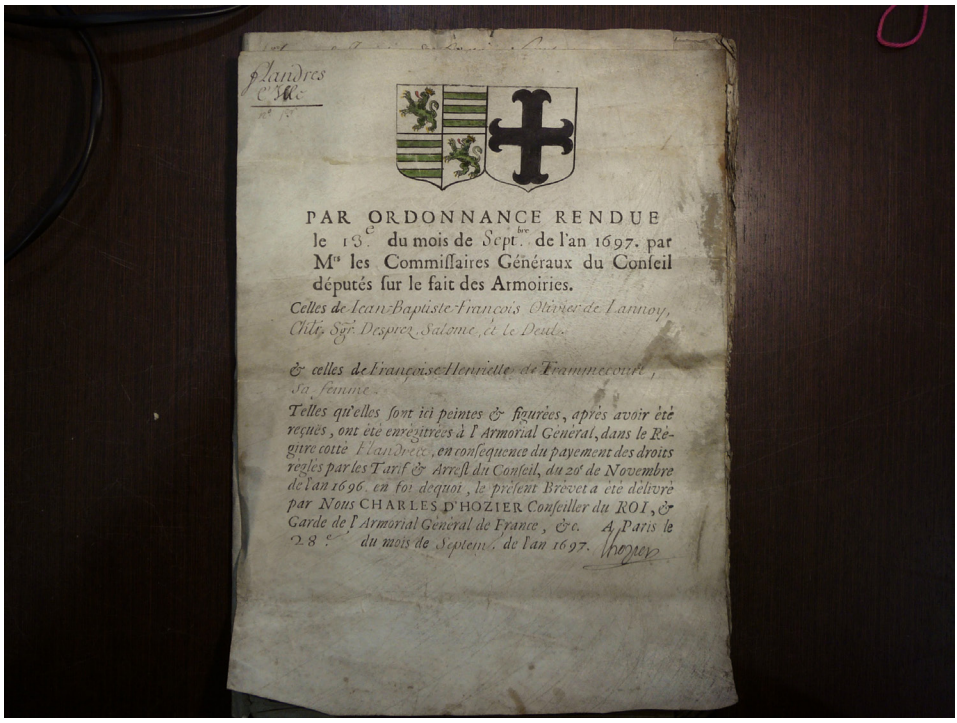
tamment le port et l'utilisation d'armoiries timbrées ou couronnées, sont soumises à deux règlementations distinctes, voire parfois à une absence de réglementation. Dans les pays de l'ancien « héritage bourguignon », Pays-Bas et Franche-Comté de Bourgogne, ce sont deux textes essentiels, les édits promulgués par Philippe II, roi d'Espagne, en 1595 et par les archiducs Albert et Isabelle le 14 décembre 1616[4], qui régissent ces questions, non sans difficultés.[5] En droit français, la situation est différente. Les armoiries sont censées relever de la coutume. Les officiers d'armes sont quasiment inactifs.[6] Quant aux pouvoirs juridictionnels du juge d'armes, office créé en 1618, ils sont surtout théoriques : « *ce juge n'ayant ni greffe, ni greffier, ni siège, ni huissiers, n'avait nulle autorité, nul pouvoir* ».[7]

Le droit héraldique ayant cours dans les provinces des anciens Pays-Bas possède donc plusieurs strates successives. Les usages héraldiques « nobles » sont soumis à la fois aux dispositions de la déclaration du roi de France de 1699[8] et à celles de *l'édit et ordonnance… touchant le port des armoiries…* publié par les Archiducs en 1616. Le passage sous domination française, loin d'annuler les anciennes dispositions, les renforce. En effet, tout en reconnaissant la validité de l'édit de 1616, Louis XIV étend à ses nouvelles conquêtes septentrionales l'application de textes promulgués en France avant la conquête, à savoir la déclaration du roi datée du 12 juin 1664[9] et l'arrêt du Conseil du 22 mars 1666.[10] Au passage, le tarif de l'édit de 1616 exposant les peines prévues contre les usurpateurs de noblesse se trouve alourdi. Cependant, comme il n'existe plus d'autorité héraldique locale[11] capable de procéder aux vérifications, les affaires sont désormais soumises à l'arbitrage des intendants. Les juges d'armes de France, proches de la cour à Versailles, sont trop éloignés de ces provinces périphériques récemment acquises pour pouvoir connaître des questions relatives aux généalogies et aux armoiries nobles.

La grande entreprise que fut l'*Armorial général* instauré par l'édit de 1696[12] aboutit à la constitution d'un vaste catalogue, certes d'importance, avec plus de cent-vingt-mille armoiries,[13] mais rempli d'erreurs et d'approximations. Les registres originaux de cet armorial étant conservés à Paris et les brevets d'enregistrement détenus par les familles, ce fonds ne pouvait pas être d'un grand secours en cas de litige. D'ailleurs, dans la mesure où les enregistrements étaient soumis au versement d'une taxe, le bénéfice fut plus fiscal qu'héraldique. Le but proclamé, à savoir lutter contre les usurpations, éviter les doublons et règlementer les brisures, ne fut pas du tout atteint, faute d'une contrôle efficace, faute de temps, faute de communication entre l'expert détenant la haute autorité, en l'occurrence le Garde de l'*Armorial*, le juge d'armes Charles-René d'Hozier, et ceux qui étaient chargés d'appliquer l'édit localement, les commis des bureaux de l'*Armorial*.

En 1760, il est à nouveau question d'un projet visant à établir des mesures de contrôle et d'enregistrement des armoiries. Mais la mesure sera rejetée par le parlement de Paris, principale juridiction du pays, au motif qu'elle est « contraire aux lois […] du royaume ».[14]

Réglées localement, les deux affaires d'usurpations rapportées ici connaissent des aboutissements différents : dans un cas, un accord


Flandres
C 38 c

PAR ORDONNANCE RENDUE
le 15.e du mois de Sept.bre de l'an 1697. par
M.rs les Commissaires Généraux du Conseil
députés sur le fait des Armoiries.
Celles de Jean Baptiste Francois Olivier de Lannoy,
Chlr, Sgr. Despretz Salome, & le Deulx

& celles de Françoise Henriette de Tramecourt,
Sa femme.

Telles qu'elles sont ici peintes & figurées, après avoir été reçues, ont été enrégistrées à l'Armorial Général, dans le Régistre cotté Flandres, en consequence du payement des droits reglés par le Tarif & Arrest du Conseil, du 20.e de Novembre de l'an 1696. en foi dequoi, le présent Brévet a été délivré par Nous CHARLES D'HOZIER Conseiller du ROI, & Garde de l'Armorial Général de France, &c. A Paris le 28.e du mois de Septem.e de l'an 1697. Hozier

Fig. 1. Brevet de l'*Armorial général* délivré à Jean-Baptiste de Lannoy, seigneur des Pretz et son épouse Henriette de Tramecourt. AD Nord, série E, 28 septembre 1697 (cliché de l'auteur).

amiable passé devant notaire, dans l'autre, une condamnation par le parlement de Flandre.

2. *Lannoy contre Lannoy*

Les comtes de Lannoy figurent parmi les plus anciennes familles de la noblesse flamande. Leurs armes sont *d'argent à trois lions de sinople, couronnés d'or,* souvent *armés et lampassés de gueules.*[15]

Dans la région lilloise, de nombreuses familles roturières non apparentées portent le patronyme Lannoy ou Delannoy, en un ou plusieurs mots.[16] Plusieurs d'entre elles ont cherché à mettre à profit leur homonymie avec la vieille famille comtale pour prétendre en être issue et s'arroger les qualités nobiliaires.[17]

Celle qui nous intéresse ici est issue d'Henri de Lannoy, un roturier « d'une humble condition » établi au début du XVI^e siècle à Cysoing, petite ville située près de Lille. Il figure parmi les échevins en 1534. Pierre, son fils, obtient la bourgeoisie lilloise par achat en 1544.[18] Au siècle suivant, ses descendants parviennent à des charges importantes, telles que celle de *rewart*[19] de Lille en 1613, de commissaire de l'artillerie, ou encore de capitaine de la garde bourgeoise. Fort opportunément, la famille est possessionnée à

Fig. 2. Armoiries de Jean-Baptiste de Lannoy. AG Flandre, mss. fr. 32239, p. 182 (cliché Bibliothèque nationale de France, Paris).

Fig. 3. Armoiries de Daniel de Lannoy – aux lions non couronnés. AG Flandre, mss. fr. 32239, p. 37 (cliché Bibliothèque nationale de France, Paris).

Fig. 4. Armoiries de Michel de Lannoy (+ 1670), présentées par sa veuve. Les armes sont brisées d'une champagne de sinople à peine visible. AG Flandre, mss. fr. 32239, p. 225 (cliché Bibliothèque nationale de France, Paris).

Néchin, à proximité de la localité de Lannoy. Certains membres prennent le titre d'écuyer et de seigneurs des Prés. Jean de Lannoy, seigneur de Plantis, ancien capitaine de la bourgeoisie de la ville de Lille, est anobli par Philippe IV d'Espagne, avec des armoiries

inspirées de celles des comtes de Lannoy, mais de manière suffisamment distante pour entretenir le flou sur une éventuelle parenté entre le vieux lignage noble et ces parvenus : *écartelé, aux 1 et 4 : d'argent au lion de sinople armé, lampassé et couronné de gueules ; aux 2 et 3 : d'argent à trois fasces de sinople.*[20] Ces armoiries se retrouvent enregistrées dans l'*Armorial général* pour Jean-Baptiste de Lannoy[21] (*fig. 1*) et quelques-uns de ses cousins et cousines (*fig. 2*).[22]

Mais dans l'*Armorial général*, plusieurs de ces Lannoy parvenus franchissent le pas et s'attribuent trois lions de sinople comme les comtes de Lannoy, avec toutefois de très discrètes différences : suppression des couronnes pour Antoine Daniel (*fig. 3*)[23] ou ajout d'une champagne de sinople pour Michel (*fig. 4*).[24]

Ces brisures ne tarderont pas à disparaître.[25] Les armoiries portées à la génération suivante seront les mêmes que celles du vieux lignage noble, aux trois lions couronnés. Pierre de Lannoy, médecin militaire né à Colmar en 1701, porte les armes de la famille comtale, mais en timbrant d'un lion et non de la tête et col de licorne…[26]

Issu de cette même famille d'origine roturière, Philippe Théodore de Lannoy décède au début du mois de mai 1763. À l'occasion de ses funérailles, la famille fait placer une peinture représentant les armoiries usurpées. Le comte François Ferdinand de Lannoy, en tant que chef du nom et des armes de la vieille famille noble (*fig. 5*), réagit dès le 14 mai, soit quelques jours seulement après la cérémonie. Souhaitant vraisemblablement mettre un terme à une lente mais constante usurpation d'armoiries, c'est devant notaire qu'il convoque les protagonistes dix jours plus tard. L'acte passé devant Maître Théodore Joseph Becquart, notaire royal à Lille, nous est parvenu : [27]

Accord et promesse du 24 may 1763

Sont comparus messire François Ferdinand,[28] *né comte de Lannoy et de l'Empire, baron de Wasnes,*[29] *seigneur de la comté d'Annappes, d'Hestru etc. colonel aux grenadiers de France, demeurant en cette ville de Lille, d'une part, et dame Marie Lucie Delannoy, épouse de messire Jean-Louis de Bihotière, chevalier, seigneur de Chassincour et de luy authorisé aux fins cy après pour ce aussy comparant demeurans audit Lille, d'autre part.*

Pour assoupir le procès ventillant au siège de la Gouvernance de cette ville entre le seigneur premier comparant et demandeur aux fins de sa requette répondue le quatorze de ce mois contre dame Angélique Ursule Wartelle, veuve de Philippe Théodore Delannoy,[30] *seigneur de Ranquilly, chevalier de l'ordre royal et militaire de St Louis par rapport aux armes peintes sur le blason qui ont servi au convoy, funérailles et messes dudit seigneur de Ranquilly qui sont les mêmes armes avec une brisure*[31] *que celles du seigneur premier comparant et que ce dernier soutenait être une entreprise au préjudice de ses droits, à ces causes, ladite dame de Chassincour, sœur du défunt sieur de Ranquilly*[32] *a déclaré de donner acte audit seigneur comte de Lannoy que lesdites armes peintes sur leur dit blason ne pourront à l'avenir être cité ni tiré à conséquence au préjudice des droits dudit seigneur premier*

comparant et en outre a promis que dans la suite et après les messes à [illisble] *elle ne portera des armes pareilles qu'avec un fond d'or moyennant quoy le procès cy dessus enactée prend fin. Est aussi comparut dame Angélique Ursule Wartelle, veuve dudit Sr de Lannoy de Ranquilly, laquelle a déclaré d'acquiescer au présent acte. Ainsy fait et passé à Lille le vingt-quattre de may mil-sept-cent-soixante-trois pardevant les notaires royaux de la résidence de Lille en Flandre soussignés.*

[signatures :]

Le comte de Lannoy de Wasnes, Wartelle, veuve de Lannoy de Ranquilly, Chassincour, De Lannoy de Chassincourt, Desrousseaux le jeune, Becquart.

Est aussy comparu Joseph Delannoy escuier, sieur de Laroyère,[33] *demeurant audit Lille, cousin germain de feu le Sr Delannoy de Ranquilly, lequel aiant pris lecture de l'acte cy dessus a déclaré pour autant que la chose le regarde d'y acquiéscer avec promesse de s'y conformer ainsy fait et passé à Lille, le vingt-quatre de may mil-sept-cent-soixante-trois par devant les notaires royaux de la résidence de Lille en Flandre.*

Soussignés :

J. de Lannoy, Desrousseaux le jeune, Becquart.

Le comte obtient donc gain de cause et l'accord met fin à toute accusation d'usurpation héraldique. Non décrite dans l'acte, la brisure qu'avaient employée les Lannoy anoblis fut sans doute considérée comme

Fig. 5. Cachet aux armes de Charles, comte de Lannoy (1644–1726), grand-père de François Ferdinand, empreinte du 9 août 1704. AD Nord, E 96 (cliché de l'auteur).

ambigüe : elle pouvait faire passer les parvenus pour une branche cadette. Le fait de changer le champ d'argent en or permet d'accroître visuellement la différenciation entre les deux familles.

3. Le procès Massiet : « La grosse affaire qui fait tant de bruit dans la ville de Lille »[34]

Vieille famille noble de Flandre, les Massiet étaient tombés en quenouille au cours de la première moitié du XVIII[e] siècle. Un siècle plus tôt, elle concluait de belles alliances avec la noblesse locale et occupait encore des positions remarquables : Gilbert de Massiet (+ 1636) et son fils, Philippe (+ 1671) furent grands baillis de Chimay en Hainaut. Issus de Jean-François, fils de Gilbert, les deux derniers mâles, Charles-Antoine (+ 1728) et son frère Jean-François (+ 1746), seigneurs de Biévène (Belgique)[35] furent officiers militaires au service de l'Empire.[36]

Fig. 6. Armoiries d'Ignace de Massiette. AG Flandre, mss. fr. 32239, p. 810 (cliché Bibliothèque nationale de France, Paris).

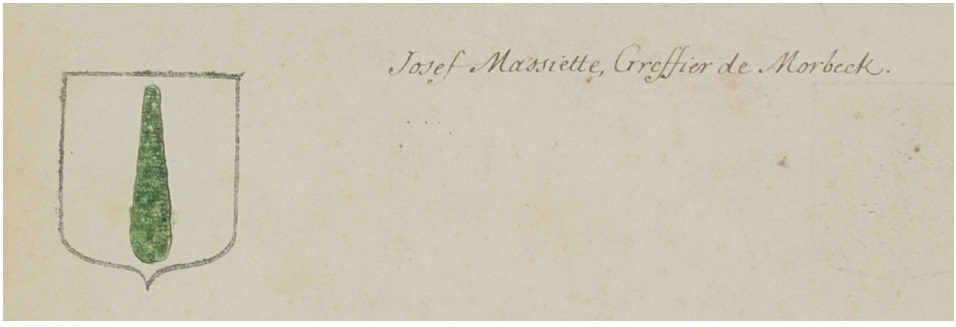


Fig. 7. Armoiries de Joseph Massiet(te) greffier à Morbecque, ancêtre des défendeurs. AG Flandre, mss. fr. 32239, p. 416 (cliché Bibliothèque nationale de France, Paris).

Connues, sous des formes légèrement différentes, dès le XIV^e siècle, les armoiries de cette famille nobles sont *d'argent à la fasce bretessée et contre-bretessée de gueules, un franc-quartier d'or à deux fasces de gueules brochant*.[37] Les enregistrements à l'*Armorial général* de 1696 mentionnent à trois reprises les armoiries à la fasce bretessée de ces Massiet : pour Ignace, seigneur de la Bussche, à Lille (*fig. 6*), pour une veuve de la famille dont le prénom n'est pas indiqué, enfin pour Pierre-François, à Ypres, ce dernier portant la même brisure de cadet que Pierre vers 1630, un croissant.[38]

Par ailleurs, le même registre « Flandre » de l'*Armorial général* contient les armoiries parlantes attribuées à un certain Joseph Massiet, greffier à Morbecque, roturier non apparenté aux précédents : *d'argent à une massue de sinople*[39] (*fig. 7*).

En pleine ascension sociale, les descendants de ce Joseph Massiet (orthographié « Massiette » par les commis de l'*Armorial général*) vont, vers le milieu du XVIII^e siècle, formuler des prétentions qui seront bientôt contrariées par l'action de la justice. Étalant les marques réservées à la noblesse, ils prennent le nom de fiefs et ajoutent à leur patronyme des titres nobiliaires qu'ils font inscrire dans les registres publics. Prétendant être

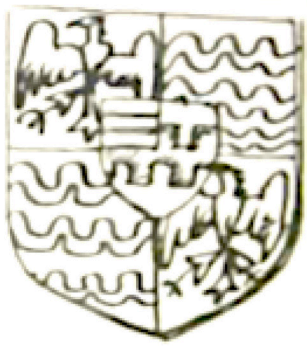


Fig. 8. Armoiries portées par Louis-Joseph Massiet en 1725. Les armes des anciens Massiet sont ici placées sur le tout d'un écartelé Calonne de Courtebourne et Barbesaen (dessin de l'auteur).

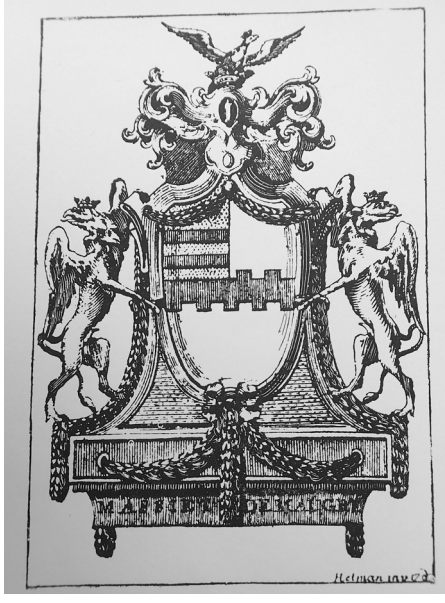


Fig. 9. Ex-libris de Philippe-Joseph Massiet de Maugré (reproduit dans Denis du Péage, *op.cit.,* p. 208).

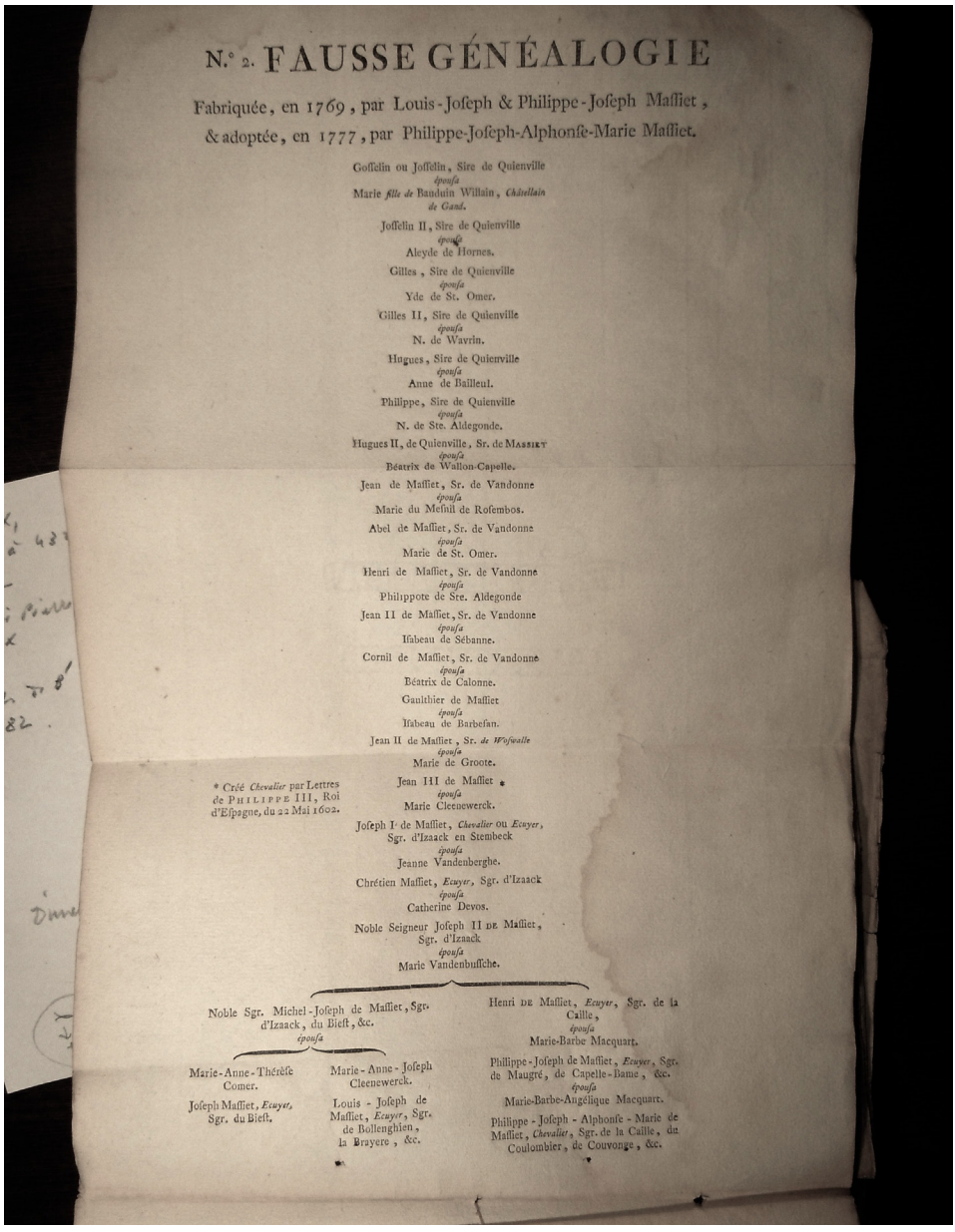
issus des nobles Massiet, ils en exposent les armes lors des funérailles familiales et les font reproduire sur leurs dalles funéraires ainsi que sur leurs cachets. Ces usurpations sont particulièrement bien documentées pour deux cousins germains, Louis-Joseph Massiet et Philippe-Joseph Massiet de Maugré, tous deux petits-fils du greffier de Morbecque.

Non content d'usurper les armes des nobles Massiet, Louis-Joseph les place dès 1725 sur le tout d'un écartelé Calonne de Courtebourne (une aigle) et Barbesaen (trois fasces ondées, *fig. 8*), familles dont, avec ses cousins, il prétend désormais descendre. La référence aux Barbesaen permet de s'affilier au patriciat brugeois, tandis qu'avec les Calonne, on se relie aux Bournonville, aux Fiennes et jusqu'aux comtes de Flandre...

Fils d'Henri et de Barbe Macquart, également petit-fils de Joseph le greffier de Morbecque, Philippe-Joseph Massiet de Maugré (Hazebrouck, 1718-Merville, 1792) fait graver en 1767 un ex-libris aux armes pleines de ces « anciens » Massiet[40] (*fig. 9*).

Or si le lignage féodal des Massiet est éteint depuis 1746, plusieurs autres familles nobles peuvent s'en revendiquer comme les ayant-droits : les Beauffort, Imbert de la Basecque, Nédonchel et Montmorency-Robecq. Avertis des prétentions avancées par les Massiet roturiers, ils se décident en 1769 à actionner en justice contre Philippe-Joseph et consorts : Massiet-du-Biest, Macquart-Massiet, Mullet-Massiet.

Les défendeurs répliquent en produisant des documents généalogiques destinés à étayer leurs prétentions. Ils fournissent notamment une généalogie que Louis-Joseph a fait fabriquer, et qu'assume également Phi-



N.° 2. FAUSSE GÉNÉALOGIE

Fabriquée, en 1769, par Louis-Joseph & Philippe-Joseph Massiet, & adoptée, en 1777, par Philippe-Joseph-Alphonse-Marie Massiet.

Gosselin ou Josselin, Sire de Quienville
épousa
Marie *fille de* Bauduin Willain, *Châtellain de Gand.*

Josselin II, Sire de Quienville
épousa
Aleyde de Hornes.

Gilles, Sire de Quienville
épousa
Yde de St. Omer.

Gilles II, Sire de Quienville
épousa
N. de Wavrin.

Hugues, Sire de Quienville
épousa
Anne de Bailleul.

Philippe, Sire de Quienville
épousa
N. de Ste. Aldegonde.

Hugues II, de Quienville, Sr. de Massiet
épousa
Béatrix de Wallon-Capelle.

Jean de Massiet, Sr. de Vandonne
épousa
Marie du Mesnil de Rosembos.

Abel de Massiet, Sr. de Vandonne
épousa
Marie de St. Omer.

Henri de Massiet, Sr. de Vandonne
épousa
Philippote de Ste. Aldegonde

Jean II de Massiet, Sr. de Vandonne
épousa
Isabeau de Sébanne.

Cornil de Massiet, Sr. de Vandonne
épousa
Béatrix de Calonne.

Gaulthier de Massiet
épousa
Isabeau de Barbesan.

Jean II de Massiet, Sr. *de Wosvalle*
épousa
Marie de Groote.

Jean III de Massiet *
épousa
Marie Cleenewerck.

* Créé *Chevalier* par Lettres de Philippe III, Roi d'Espagne, du 22 Mai 1602.

Joseph I.er de Massiet, *Chevalier* ou *Ecuyer*, Sgr. d'Izaack en Stembeck
épousa
Jeanne Vandenberghe.

Chrétien Massiet, *Ecuyer*, Sgr. d'Izaack
épousa
Catherine Devos.

Noble Seigneur Joseph II de Massiet, Sgr. d'Izaack
épousa
Marie Vandenbussche.

Noble Sgr. Michel-Joseph de Massiet, Sgr. d'Izaack, du Biest, &c.
épousa
Marie-Anne-Thérèse Comer.

Joseph Massiet, *Ecuyer*, Sgr. du Biest.

Marie-Anne-Joseph Cleenewerck.

Louis-Joseph de Massiet, *Ecuyer*, Sgr. de Bollenghien, la Brayere, &c.

Henri de Massiet, *Ecuyer*, Sgr. de la Caille,
épousa
Marie-Barbe Macquart.

Philippe-Joseph de Massiet, *Ecuyer*, Sgr. de Maugré, de Capelle-Bame, &c.
épousa
Marie-Barbe-Angélique Macquart.

Philippe-Joseph-Alphonse-Marie de Massiet, *Chevalier*, Sgr. de la Caille, du Coulombier, de Couvonge, &c.

Fig. 10. « Fausse généalogie » des « nouveaux » Massiet publiée par le parlement de Flandre. Le grand-père des défendeurs, Joseph Massiet, le greffier de Morbecque figurant dans l'*Armorial général* de 1696, y est qualifié de « noble seigneur »… AD Nord, Placards 8463 (cliché de l'auteur).

lippe-Joseph, comme l'indique une mention portée en haut du tableau que publiera le parlement de Flandre à l'issue du procès (*fig. 10*). L'expertise des pièces conduite par la cour révèle que, malheureusement pour les Massiet/Massiette, non seulement ces pièces ne concordent pas avec la généalogie des « vrais » Massiet[41] mais, plus grave encore, que certaines étaient falsifiées.[42]

Comme l'a fort pertinemment montré Fabrice Demeulenaere, les Massiet parvenus n'ont jamais pu prouver qu'ils descendaient du même lignage et, « *ayant accumulé les faux* [...] *s'exposèrent à de graves mécomptes* [...]. *Un anoblissement en bonne et due forme aurait pu être obtenu tôt ou tard puisqu'ils occupaient de hautes fonctions et figuraient dans le patriciat local* ».[43] Mais au lieu de se faire discrets, ils campèrent sur une position basée sur des preuves contrefaites. S'ils avaient fait montre de moins de précipitation, ils se seraient d'abord contentés d'un titre d'écuyer, puis cherchant à établir de nouvelles alliances, n'auraient introduit que progressivement les quartiers Massiet dans une composition héraldique plus complexe. En attendant quelques années de plus, ces « nouveaux Massiet » auraient pu faire passer leurs prétentions pour recevables. Sûrs que la simple similitude du nom suffirait, ils s'y sont pris trop vite, trop tôt. Les anciennes familles, surprises de voir émerger des « cousins » dont ils ignoraient tout, ont réagi rapidement. L'illusion avait assez duré. Le procès se solda par un jugement à leurs dépens.[44]

Le 18 février 1778, le parlement de Flandre à Douai fit droit aux conclusions du procureur général : par un arrêt du parlement en date du 11 mars 1778, les défendeurs furent condamnés à faire rayer et ôter toutes les mentions indues : « *il sera procédé sur les registres ... à la radiation de l'article De, apposé au nom de Massiet et des qualités indicatives de noblesse...* (dans les registres de l'Université, de l'hôtel de ville de Lille...) ; de même, l'un des accusés se voit « *enjoint de faire rayer tant devant les Maréchaux de France qu'ès Chambre des Comptes de Paris & de Nancy, à effet de faire rayer les qualités par lui induement prises* ». En outre, le parlement « *ordonne aux défendeurs de reconnoitre dans la même forme la fausseté de la généalogie cottée n°2, laquelle restera déposée audit greffe avec les pièces justificatives d'icelle...* ». Enfin, le parlement interdit aux Massiet roturiers le port des armes de la vieille famille noble de même nom, puisqu'ils n'en sont pas issus.[45]

L'affaire fit grand bruit, et l'on veilla à ce que l'écho en parvint jusqu'à Paris. En témoigne cette lettre de Denis Godefroy, garde des archives de la Chambre des comptes[46] à : « *M. de la Cour, garde des titres et généalogies de la bibliothèque du roy, rue Colbert à Paris*[47].

À Lille, le 1er novembre 1777

La punition qu'a subit et qu'avait mérité dans le dernier siècle le baron de Launay [48] *n'a pas empêché quelques habitans de cette Province d'en suivre les traces. On vient de découvrir beaucoup de titres faux ou tronqués, ou altérés pour une famille roturière de la Flandre Maritime appelée Massiet qui a voulu se hantter* [49] *sur une ancienne maison du même pays et portant le même nom. À l'appui de ces titres faux ils se sont faits convoquer à l'assemblée de la noblesse de*

cette Province et avaient déjà présenté une requête au Roy pour obtenir le titre de comte, mais Mr le Procureur général, auquel se joint Mme la comtesse de la Basèque[50], M. le Prince de Robecq[51], M. le Marquis de Nedonchel[52] et autres héritiers, oncles, cousins de cette maison, en découvrant l'iniquité de leurs prétentions et quel en était le fondement, ils leur ont prouvé par mémoire imprimé et publié, leur roture depuis plus de deux cents ans et y ont inséré toutes les pièces fausses ou tronquées. Comme ils ont voulu ce faire reconnaître partout, je me suis chargé d'avoir l'honneur de vous écrire pour vous demander si vous n'auriez pas mis dans votre dépôt quelques pièces concernant ce nom de Massiet ou si vous n'avez pas connaissance ou qu'il y en ait été déposé quelque part, je vous serais beaucoup d'obligation si vous voulez me le mander le plus tôt possible, les parties auront soin de vous faire parvenir un exemplaire et une copie authentique de l'arrêt du tribunal et que peut être on vous signifiera pour mettre dans votre dépôt précieux.»

4. Conclusion

Dans un cas comme dans l'autre, aucun spécialiste des armoiries n'est intervenu, aucune autorité héraldique n'a été sollicitée. On ne s'est même pas référé à l'*Armorial* de 1696. On a certainement eu recours à des généalogistes pour établir la généalogie forgée, puis pour fournir des précisions aux magistrats, mais ils sont demeurés dans l'ombre. Cependant, les litiges se sont réglés, soit à l'amiable devant un notaire, soit, après des difficultés, par une haute cour de justice.

Notes

1 Avec un Collège des magistrats se réunissant à Cassel. La gestion administrative de la Flandre maritime française est compliquée par le fait que Dunkerque, acquis par la France avant les autres villes, dépend de l'intendance de Picardie. Cf. Agathe Leyssens, « Élites municipales et réforme de L'Averdy en Flandre maritime », in *Revue du Nord,* 2013/2, n° 400–401, p. 737–765.

2 Pierre-Antoine-Samuel-Joseph Plouvain, *Notes historiques relatives aux offices et aux officiers de la cour de parlement de Flandres,* Douai, 1809 ; Yohann Travet, « La chancellerie près la cour du parlement de Flandre à la fin du XVIII^e siècle. Attributions, composition et privilèges », in *Revue du Nord,* 2009/4, n° 382, p. 727–737.

3 P.-A.-S.-J. Plouvain, *Notes historiques relatives aux offices et aux officiers du Conseil provincial d'Artois*, Douai, 1823, 2^e éd., Douai, 1843 ; Philippe Sueur, *Le Conseil Provincial d'Artois (1640–1790) : une cour provinciale à la recherche de sa souveraineté,* thèse de doctorat, Université de droit, d'économie et des sciences sociales, Paris II, mars 1975, Arras, *Mémoires de la Commission départementale des Monuments historiques du Pas-de-Calais,* t. XVII, 2 vol., 1978–1982.

4 Le texte intégral de ces deux édits est reproduit dans André Borel d'Hauterive, *Armorial d'Artois et de Picardie. Généralité d'Amiens. Recueil officiel dressé par les ordres de Louis XIV (1696–1710)…*, Paris, 1866, p. 387–393 et dans Lucien Fourez, *Le droit héraldique dans les Pays-Bas catholiques,* Bruxelles, 1932, p. 352-364.

5 Cf. Dominique Delgrange, « L'autorité des hérauts d'armes en question, à Lille au début du XVII^e siècle », in Steven Thiry et Luc Duerloo (dir.), *Heraldic Hierarchies,* Louvain, 2021, p. 147–167.

6 Rémi Mathieu, *Le système héraldique français,* Paris, 1946, p. 69–70.

7 Thibaut Cadot, *Le blason de France ou notes curieuses sur l'édit concernant la police des armoiries,* Paris, 1697, p. 37, cité par R. Mathieu, *op. cit.,* p. 72–73.

8 A. Borel d'Hauterive, *op. cit.,* p. 393–397.

9 Dispositions destinées à réglementer l'utilisa-

tion des marques d'honneur, Cf. L. Nicolas Chérin, *Abrégé chronologique d'édits, déclarations… sur le fait de la noblesse*, Paris, 1788, p. 139 et 145.

10 *Ibid.*, p.148.

11 Jusqu'à la conquête française, les hérauts et poursuivants d'armes provinciaux en référaient à Bruxelles. Ils dépendaient du Conseil privé et du lieutenant du roi d'armes Toison d'or.

12 R. Mathieu, *op. cit.*, p. 75–87.

13 Consignées dans des registres blasonnés ou peints, conservés à Paris, Bibliothèque nationale de France (désormais : BnF), fonds du Cabinet des titres, mss. fr. 32146 à 32262. Liste détaillée dans : Dominique Delgrange, *L'Armorial de 1696 : petit guide, présentation,* Wasquehal, 2021, p. 58–63. Pour la Flandre : *Armorial général de France dressé en vertu de l'édit de 1696, par Charles d'Hozier (1697–1709), vol. XII : Flandre,* blasonnements : BnF, mss. fr. 32205 ; écus peints : BnF, mss. fr. 32239, désormais : AG Flandre, mss. fr. 32239).

14 R. Mathieu, *op. cit.* p. 87–89.

15 Georges Dansaert, *Le blason de la maison de Lannoy à travers les siècles,* Bruxelles, 1928.

16 L'instabilité orthographique facilite le déclenchement du « syndrome d'Urberville » (*Cf.* le développement similaire entrant dans la trame du roman *Tess d'Urberville* de Thomas Hardy ...). Aux États-Unis, certains généalogistes ont pu croire un moment que les Delanoe, Delannoy, De Lannoy et Delano Roosevelt se rattachaient à une même famille ayant pour origine les anciens seigneurs de Lannoy...

17 Une autre famille de Lannoy installée à Lille prétendait également être issue de la famille féodale de Lannoy par Allard, fils de Gilbert, seigneur de Santes à la fin du XIVe siècle. Un de ses membres obtint un acte d'anoblissement (Philippe IV, Aranjuez, 6 mai 1642) mentionnant une brisure dans les armoiries, un chef chargé d'un homme sauvage issant. Le 7 août 1699, Pierre-Allard, fils de l'anobli, fit certifier sa généalogie par la gouvernance de Lille. La question des armoiries n'y est pas évoquée, mais l'enregistrement dans l'*Armorial général* de 1696 montre un écu aux trois lions désormais sans brisure ! (AG Flandre, mss. fr. 32239, p. 189).

18 Paul Denis du Péage, *Recueil de généalogies lilloises,* t. I, Lille, 1906, p. 103.

19 Le *rewart,* ou *ruwwaard,* mot équivalent à *régent* en français ou *Vogt* en allemand, assiste le mayeur à la tête du conseil gouvernant la ville.

20 Paul Janssens et Luc Duerloo, *Armorial de la noblesse belge, du XV^e^ au XX^e^ siècle,* Bruxelles, 1992, t. 2, p. 547.

21 AG Flandre, mss. fr. 32239, p. 182. Jean-Baptiste François Olivier de Lannoy, chevalier, seigneur des Pretz, Salomé, Rabodenge et La Deusle, bourgeois de Lille par relief du 18 mai 1675, avoué et grand bailli de Furnes par lettres données à Saint-Germain-en-Laye le 10 novembre 1679. Né le 23 janvier 1650 à Lille, décédé en 1700, il est le fils de Jean-Baptiste et de Marie-Catherine de Logenhagen.

22 *Ibid.,* p. 69, 189, 205 et 251.

23 Guillaume-Antoine de Lannoy, bourgeois de Douai, AG Flandre, mss. fr. 32239, p. 37 ; Pierre-Isidore de Lannoy (1688–1751), conseiller au conseil d'Artois en 1720, conseiller honoraire en 1746, cf. P.-A.-S.-J. Plouvain, *Notes historiques relatives aux offices et aux officiers du Conseil provincial d'Artois, op. cit.,* p. 37 et Amédée Le Boucq de Ternas, *Recueil de la noblesse des Pays-Bas, de Flandre et d'Artois,* Douai, 1884, p. 85.

24 AG Flandre, mss. fr. 32239, p. 225.

25 De même, certains Lannoy originaires de Tourcoing ajoutaient une bordure engrêlée de gueules (AG Flandre, mss. fr. 32239, p. 340). Cette brisure était déjà portée par Hugues, seigneur de Lannoy et du Lys, mort en 1349, puis par son fils, Gilbert, seigneur de Santes, par son petit-fils Hugues, chevalier de la Toison d'or en 1456, etc. (G. Dansaert, *op. cit.,* p. 18–19). Les Lannoy de Tourcoing prétendaient descendre de Hugues et Gilbert par une branche illégitime.

26 P. Denis du Péage, *Ex-libris de Flandre et d'Artois,* Lille, 1934, p. 162.

27 Archives départementales du Nord (désormais : AD Nord), 2 E3-152, f^o^ 64. Document signalé et transmis par Paul Povoas, président de l'association Genealo-Wasquehal, que je remercie cordialement.

28 François Ferdinand de Lannoy, né le 3 avril 1732, fils de Pierre Maximilien (1687–1749) et de Marie-Françoise d'Angeville, épousa Marie

Françoise Constance Antoinette d'Assignies le 4 septembre 1756.

29 Seigneurie et château situés à Toufflers, département du Nord, arrondissement de Lille, canton de Lannoy. Les Lannoy détiennent cette terre depuis la fin du XV^e siècle, suite au mariage en 1480 d'Antoine de Lannoy avec Philippine Abonnel, fille et héritière de Jean Abonnel dit *le Gros.*

30 Philippe Théodore de Lannoy (1715–1763) se voit donner ici le titre de seigneur de Ranquilly que son père, Philippe (1657–1755), ne portait pas... P. Denis du Péage, *Recueil de généalogies lilloises, op. cit.*, t. I, p. 111–112.

31 Les armoiries *d'argent aux trois lions de sinople,* mais avec une brisure que le texte ne précise pas.

32 Marie-Lucie de Lannoy (1713–an X), sœur du précédent, a épousé en premières noces à Lille (paroisse Sainte Catherine) le 5 avril 1756, Jean-Louis de Biothère de Ponchonier, sire de Chassincour, originaire de Chateloy, commune d'Hérisson dans le Bourbonnais.

33 Joseph de Lannoy (1689–1784), seigneur de La Royère à Néchin, secrétaire du roi à la chancellerie du parlement de Flandre, fils de Louis, également seigneur de La Royère, oncle de Philippe Théodore. Cf. P. Denis du Péage, *Recueil de généalogies lilloises, op. cit.,* t. I, p. 110. La proximité des lieux, Néchin, Toufflers et Lannoy, facilite la confusion généalogique...

34 Note de l'archiviste Godefroy adressée à *« M. de la Cour, garde des titres et généalogies de la bibliothèque du roy, rue Colbert à Paris »* le 1^er novembre 1777. Le même dossier contient quelques autres pièces relatives à la généalogie des Massiet (AD Nord, E 97).

35 Historiquement en Hainaut, Biévène (en néerlandais, *Bever*) est depuis 1963 dans la province du Brabant.

36 Sur cette famille, cf. notamment Jean-Charles-Joseph de Vegiano et Léon de Herckenrode, *Nobiliaire des Pays-Bas et du comté de Bourgogne,* t. 1, Gand, 1862, p. 191.

37 On connaît des sceaux aux armes depuis la fin du XIVe siècle :
– Sceau d'Henri Massiet en 1393 (Archives nationales de France, désormais ANF, moulage sc/F 2355). Type héraldique : écu *à la fasce bretessée et contre-bretessée* (Hondeghem), *une merlette à senestre en chef et au franc-quartier chargé de deux fasces* (Wallon-Cappel), posé dans un trilobe à redents. Légende : « S' HEN/RIC : M/AISIES » (Germain Demay, *Inventaire des sceaux de la Flandre... Département du Nord,* Paris, 1873, n° 2355 : AD Nord, B 489/12697, 28 juillet 1393.
– Sceau de Jean Massiet, homme de la cour de Cassel en 1445 (ANF, moulage sc/F 2356). Type héraldique : écu penché, *à la fasce bretessée, un quartier senestre chargé de deux fasces, brochant*, timbré d'un heaume fermé avec lambrequins et une tête de griffon pour cimier, entouré de feuillages. Légende : « S' JAN / MA/SSIET » en caractères gothiques ornés inscrits dans une banderole (G. Demay, *op. cit.,* n° 2356 : AD Nord, B 1527/15809, 17 juin 1445). On remarquera que le franc-quartier est passé à senestre.

38 AG Flandre, mss. fr. 32239, p. 332, 799 et 810.

39 AG Flandre, mss. fr. 32239, p. 416.

40 Reproduit dans P. Denis du Péage, *Ex-Libris de Flandre et Artois, op. cit.*, p. 208.

41 AD Nord, E 2485. Le parlement de Douai fit établir la « vraie généalogie », qui fut comparée avec la « fausse ». Ces documents sont publiés avec les pièces du procès (AD Nord, Placards 8337).

42 Un acte d'anoblissement censé avoir été octroyé par Philippe III, roi d'Espagne, le 22 mai 1602 depuis Aranjuez est signalé dans la publication du jugement de 1778... Un épais cahier généalogique de 62 pages, avec tableaux et armoiries (Lille, Archives municipales, 15461, reproduction aux AD Nord) a été composé vers 1770 pour étayer les prétentions des défendeurs ; d'autres pièces visées et considérées comme fausses par le procureur et le conseiller du parlement sont conservées aux AD Nord, Cumulus RDC 205).

43 Fabrice de Meleunaere, « La famille Massiet du Biest, aperçu généalogique, origines réelles ou présumées », in *Flandre- Artois Généalogie,* 1995, p. 161.

44 AD Nord, Placards 8337 : attendus et conclusion du procès imprimé, avec l'exposé des preuves de la généalogie forgée remontant jusqu'à Gosselin de Quienville (aujourd'hui : Hondeghem) et le rétablissement de la véri-

table ascendance, sur sept générations, de ces Massiet. Voir notamment 8337-9 : mémoire de 177 pages et 2 pl. généalogiques, 14 octobre 1777 – réquisitions des 14 avril et 15 mai 1777.

45 AD Nord, Placards 8463-41, 28 février 1778.

46 Concernant l'activité de Denis Godefroy (1740–1816), voir François Fossier, « Le dernier des Godefroy et les archives de la chambre des Comptes de Lille », in *Le Journal des savants,* 2018, p. 117–129.

47 AD Nord, E 97.

48 On fait allusion ici au tragique dénouement de l'affaire qui opposa le faux baron et véritable faussaire exécuté à Tournai en 1687 après un retentissant procès en appel, Jean de Launay, frère du roi d'armes de Brabant Pierre de Launay (et néanmoins généalogiste plus que douteux), Cf. Philippe de Ghellinck Vaernewyck, « Du danger d'être faussaire au XVII[e] siècle », Tournai, 1984 *(Publications de la Société royale d'histoire et d'archéologie de Tournai,* I, 1984. Publication extraordinaire) et D. Delgrange, *Certains l'aiment faux ! Les frères Pierre et Jean de Launay,* Wasquehal, 2021.

49 Sic : pour « enter », au sens de « greffer ».

50 Caroline de Massiet, dame de Reninghelst (1725–1783), fille de Pierre, seigneur de la Bussche, de Reninghelst et de la Clyte (+ 1756) et épouse d'Albert Imbert de la Basecque (1725–1780), grand bailli des États de Lille.

51 Anne-Louis de Montmorency, prince de Robecq, marquis de Morbecque, comte d'Estaires, etc. (1724–1812).

52 César-Joseph de Nédonchel (1727–1781).

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Heraldic Episodes in American Legal History: Stray Voltage or Saving Remnant?

By Joseph McMillan, A.I.H.

Abstract: Given the influence of English doctrine on the study of armorial usage in the United States, it is no surprise that discourse on heraldry's place in American law has historically focused on the most obvious difference between the British and United States heraldic-legal environments: the pervasive role of official regulation in Britain and its absence in the United States. Ever since 1788, when William Barton first proposed creation of the office of "herald-marshal", discussion of the legal aspects of heraldry in America has focused almost exclusively on how – or even whether – personal heraldry can exist without an official authority to regulate it.

But the truth is that heraldry and law have always interacted everywhere arms are used, including many places where regulation does not exist. The United States is no exception. While there seem to be no records of American lawsuits over competing claims to the same coat of arms, courts have frequently found themselves dealing with heraldic issues, notably including enforcement of name and arms clauses in wills and similar legal instruments. How do American courts, operating in the context of a body of law largely of English origin, handle these matters without recourse to a heraldic authority similar to the College of Arms, which plays a central role in the implementation of such provisions in England?

There are also other types of cases in which courts may be required to rule on issues touching upon the use of arms. How do they treat coats of arms in these contexts? Are they simply graphic symbols, essentially no different from commercial logos, or are they recognized as possessing a different character? Are there other situations in which armorial bearings have been taken into account in making judicial rulings? To what extent do these decisions rely on or, conversely, diverge from English precedents?

Finally, is the nature of this jurisprudence adequate to permit inferences about the status of armorial bearings in American law more generally? Are the examples discussed here simply exceptional "hard cases", the legal equivalent of atmospheric background noise, from which nothing significant can be inferred, or do they offer evidence that some sort of heraldic law has survived in the United States, albeit in much attenuated form, despite the absence of English-style regulation?

Résumé : Étant donné l'influence de la doctrine anglaise sur l'étude de l'usage des armoiries aux États-Unis, il n'est pas surprenant que le discours sur la place de l'héraldique dans le droit américain se soit historiquement

concentré sur la différence la plus évidente entre les environnements héraldique et juridique britanniques et américains : le rôle omniprésent de la réglementation officielle en Grande-Bretagne et son absence aux États-Unis. Depuis 1788, date à laquelle William Barton a proposé pour la première fois la création de la fonction de « herald-marshal », les discussions sur les aspects juridiques de l'héraldique en Amérique ont porté presque exclusivement sur la question de savoir comment – ou même si – l'héraldique personnelle peut exister en l'absence d'une autorité officielle chargée de la réglementer.

Mais la vérité est que l'héraldique et le droit ont toujours interagi partout où les armes sont utilisées, y compris dans de nombreux endroits où il n'y a pas de réglementation. Les États-Unis ne font pas exception. Bien qu'il ne semble pas y avoir d'archives de procès américains concernant des revendications concurrentes sur les mêmes armoiries, les tribunaux se sont souvent trouvés confrontés à des questions héraldiques, notamment en ce qui concerne l'application des clauses relatives au nom et aux armoiries dans les testaments et autres instruments juridiques similaires. Comment les tribunaux américains, opérant dans le contexte d'un corpus juridique largement d'origine anglaise, traitent-ils ces questions sans recourir à une autorité héraldique similaire au Collège d'armes, qui joue un rôle central dans la mise en œuvre de telles dispositions en Angleterre ?

Il existe également d'autres types d'affaires dans lesquelles les tribunaux peuvent être amenés à se prononcer sur des questions touchant à l'usage des armes. Comment traitent-ils les armoiries dans ces contextes ? S'agit-il de simples symboles graphiques, qui ne diffèrent en rien des logos commerciaux, ou leur reconnaît-on un caractère différent ? Existe-t-il d'autres situations dans lesquelles les armoiries ont été prises en compte dans les décisions judiciaires ? Dans quelle mesure ces décisions s'appuient-elles sur les précédents anglais ou, au contraire, s'en écartent-elles ?

Enfin, la nature de cette jurisprudence permet-elle de tirer des conclusions sur le statut des armoiries dans le droit américain en général ? Les exemples examinés ici sont-ils simplement des « cas difficiles » exceptionnels, l'équivalent juridique d'un bruit de fond atmosphérique, dont on ne peut rien déduire de significatif, ou apportent-ils la preuve qu'une certaine forme de droit héraldique a survécu aux États-Unis, bien que sous une forme très atténuée, en dépit de l'absence de réglementation de type anglais ?

1. Introduction

A recurring theme in American heraldic discourse is whether anything exists in the United States that could reasonably be called a law of arms. The general consensus is "no". Certainly, the full-blown English law of arms governing how arms are created and transmitted, who may use them and how, did not survive American independence, if indeed it even survived the voyage across the Atlantic.

But there are two ways of thinking about the issue of heraldry and the law. One relates to the internal rule set governing how arms are composed, acquired, displayed, and transmitted from person to person. The other asks how the custom of using heraldic arms interacts with the broader society and the laws by which it carries out its ordinary, non-heraldic business. This paper focuses on the latter question.

From necessity, at least in the American context, this is a subject that must be explored episodically and inferentially. Based on the empirical evidence uncovered by a survey of such heraldic episodes, it may be possible

to make some inferences concerning their significance for heraldic practice in the United States. Do they offer a useful foundation for articulating the legal standing of American coats of arms, or even just clarify our understanding of the place of heraldry in American life? Or are they nothing more than stray voltage – occasional isolated sparks of no enduring consequence?

2. Changes of Names (and Arms)

Most of the heraldic episodes in American legal history involve name or name and arms clauses in private legal acts such as wills and marriage settlements, by which a transfer of property is conditioned upon the recipient's taking the grantor's name or name and arms respectively. The use of such devices to preserve the grantor's family identity in the absence of male heirs has medieval roots, but really evolved into its modern form during the seventeenth century – the same era when the English were settling North America. Around 1605, the English heralds had begun articulating the principle that a change of *arms* under such a clause required royal consent. A systematic framework of obtaining this consent by royal license was developed during the reign of Charles II and an alternative method, the private act of Parliament, became available starting in 1700.[1]

This type of formal change of name, often but not invariably tied to a change of arms, is an exception to the general common law principle that a person can go by whatever name he or she pleases. American practice relating to such clauses can be gleaned from the documents mandating them, state statutes authorizing them, court decisions enforcing them, and measures taken by the legal profession to comply with or circumvent them.

Members of the colonial gentry adopted this English elite custom within a few decades of the earliest settlements, although in relatively small numbers and using procedures that did not always square with the still-evolving English norms. Its first mention in an American context seems to be the requirement in the 1669 Fundamental Constitutions of Carolina requiring anyone inheriting one of the province's feudal seigniories to "take the name and arms of his predecessor in that dignity, to be from thenceforth the name and arms of his family and their posterity",[2] a provision that seems never to have been enforced or even observed.

The earliest known name change requirement in an American legal instrument is a contingent remainder in the will of Councilor Daniel Parke of Virginia (d. 1679), requiring that if his young son, also named Daniel, were eventually to die without legitimate male issue, "the next Heire at Law [must] alter those heire's Name, and call them after the Name of Parke".[3] This provision came into operation in late 1710 when the younger Daniel, then serving as governor of the Leeward Islands, was murdered in St. John's, Antigua, without any "heirs male lawfully begotten", although several bastards of both sexes. The "next Heire at Law" was the elder of his two legitimate daughters, Frances, who with her husband John Custis had already taken the precaution of having their son and daughter christened with Parke as a middle name, evidently believing that doing so would satisfy the requirement in her

grandfather's will that they be "call[ed] after the name of Parke".

Whether the Custises' do-it-yourself approach of christening their children with the name of Parke would have been deemed sufficient by the Virginia courts is an unanswerable question, as there were no rival claimants with standing to raise objections. Indeed, the issue only arose some twenty years later, in the context of the late Governor Parke's estate in the West Indies, which he had willed to his illegitimate daughter, Lucy Chester, with a separate name and arms clause attached.[4] In 1732, Lucy's lawyer wrote to John Custis asserting that he and his family had no right to any part of the Parke legacy anywhere, because they had not changed their name by act of assembly. Custis's comment to a prominent fellow Virginian was that his son "is Christen'd Parke wch I hope will do".[5]

Yet the risk apparently seemed great enough that John and Frances's son, Daniel Parke Custis, felt the need to respond in some fashion. Within a few years, in an apparent effort to emphasize his Parke identity, he unilaterally changed his arms while retaining his surname. In lieu of the existing Custis arms *(Argent a chevron between three parrots vert)*, Daniel adopted a coat consisting simply of an eagle displayed, closely resembling the Parke quarters of the arms engraved on the title page of a posthumous biography of his grandfather, the governor.[6]

Later cases were handled more smoothly, if not entirely in keeping with contemporary English norms. The first two colonial name change acts with armorial consequences, both passed by the General Court (legislature) of Massachusetts Bay, authorized Spencer Bennett to take the name of Phips (1716)[7] and William Pepperell Sparhawk to take the name of Pepperell (1761).[8] The latter case was quite straightforward. The 1759 will of Sir William Pepperell, Bt., had left the bulk of his property to his grandson, William Pepperell Sparhawk, on the explicit condition that he take the surname of Pepperell. By contrast, nothing was said of a name change in the will by which Spencer Bennett eventually came into possession of the estate of his *de facto* adopted father, Governor Sir

Fig. 1. Arms of Spencer Phips, Esq. (1710), *Gore Roll of Arms*. R. Stanton Avery Special Collection, New England Historic Genealogical Society, Creative Commons License (CC BY-NC-ND 4.0).

Fig. 2. Bookplates of Theodore and William King Atkinson. Cleveland Museum of Art. Wikimedia Creative Commons License.

William Phips, upon the death of the governor's widow in 1704. Yet despite the absence of a legal requirement that he do so, Spencer petitioned for – and received – legislative authority to take the name of his benefactor in compliance with the late governor's "desire and intention", said to have been expressed separately from the will.[9]

The use of private legislation to confer legal authority for changes of name, whether pursuant to a will or otherwise, smoothly survived the transition to independence. In the midst of the Revolutionary War, the General Court of New Hampshire passed an act authorizing George King to adopt the name of Atkinson, a condition of the entail under which he inherited his cousin Theodore Atkinson's estate.[10] When George later died without issue in 1788, the estate passed to his nephew William King as heir to the entail, requiring a second act changing his name as well.[11]

What is interesting in all four of the New England cases is that, although neither the wills themselves nor the statutes implementing them made any mention of armorial bearings, all did result in fact in the beneficiaries' adoption of the respective testators' arms. Indeed, Spencer Bennett Phips was using his foster father's arms even prior to any legislative action, as indicated by his entry in the Gore Roll of Arms, dated 1710 (*fig. 1*).[12] William King Atkinson's armorial bookplate is an almost exact replica of Theodore's, although produced by different engravers several decades apart (*fig. 2*).[13]

Other name change acts may also have

had similar heraldic consequences despite the absence of any mention of arms in their texts. These include one in New Hampshire in 1803, changing the name of George Jeffries to Jaffrey,[14] and another in Virginia in 1804, confirming William Burnet Browne's right to his mother's maiden name, under which he had been christened.[15] All the families concerned used armorial bearings and it seems likely, although there is no direct evidence, that the subjects of the two acts would have taken the arms of their benefactors along with their surnames.

The only known statutes in the present-day United States in which changes of armorial bearings are explicitly mentioned were four private acts of the General Assembly of Maryland passed between 1783 and 1804. The first two, by which the nephews of Charles Carroll, Barrister, and Captain Charles Ridgely took the surnames and arms of their respective uncles, were triggered by provisions of the uncles' wills.[16] The third was prompted by a marriage settlement granted by Henry Rozer to his granddaughter Maria and her husband Francis Hall, requiring the couple to take the name of Rozer and their children to assume the Rozer arms as well. The last permitted James Clerk and his wife Margaret Russell Lee to add the name and arms of her grandfather Richard Lee to those of Clerk, simply to fulfill a wish expressed by Margaret's maiden aunt.[17]

Many states' post-Independence statute books are filled with other private acts for changes of name but the vast majority had nothing to do with name or name and arms clauses. Some served as means of quasi-adoption or legitimation; others were simply driven by personal dislike of an unpleasant sounding name. Legislatures soon began to see bills like these as an unproductive use of their time, so one by one, over the ensuing decades, they shed this workload by delegating responsibility for such personal status issues to local courts, typically at the county level or sometimes below.[18]

With more than 3,000 county-equivalent jurisdictions in the United States, this shift of responsibility makes systematic research into the subsequent history of name (or name and arms) changes almost impossible. Given the lack of even anecdotal evidence, however, it is unlikely that many had armorial repercussions. The sole known exception appears to be the case of Andrew H. Mickle (1856–1931) who, according to his own account, "in conformity with legal provisions and requirements assumed, by judicial decree, the [additional] name of Saltonstall".[19] That he took the Saltonstall arms along with the name is shown by his entry in *Matthews' American Armoury* (*fig. 3*)[20], but what the "legal provisions and requirements" may have been he does not say. Indeed, it is unclear whether this action was driven by anything more than personal whim. His Saltonstall connection was through his maternal grandmother; a search of the available contemporary wills of his Saltonstall cousins turns up no mention of Andrew Mickle.

It is clear, then, that at least some Americans of property and social standing employed name or name and arms clauses in much the same way and for the same purposes as their English counterparts and that during the early decades after Independence state legislatures were generally prepared to

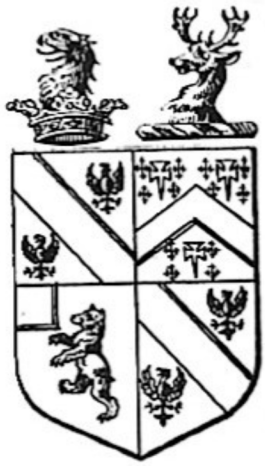

Fig. 3. Arms of Andrew Mickle-Saltonstall, *Matthews American Armoury and Blue Book*, London, 1907.

facilitate their implementation through private legislation. The question remains, however, whether such testamentary requirements could be legally enforced in the United States if the beneficiary were to balk at complying.

The judicial record clearly shows that they could, at least with respect to names. No less than the U.S. Supreme Court upheld a name clause in a will as early as 1824, including not only the requirement for the change itself but also the stipulation that it be made pursuant to "an act of public authority of the state".[21] The most oft-cited general statement on the subject is that made by the New York County (Manhattan) Surrogate's Court in 1913, that, if properly drafted, "what are called 'name and arms' clauses in wills or deeds of gift are entirely valid at common law".[22] Several other state courts took the same view in the twentieth century[23] and as recently as 2022 a federal court of appeals rejected an argument that such clauses are contrary to the Constitution and the Civil Rights Act of 1964.[24]

The presumption that name and arms clauses are enforceable can also be inferred from the measures American lawyers took in two prominent Virginia cases to shield their clients against court challenges arising from them. The first of these concerned the estate of Thomas, 6th Lord Fairfax, the only British peer permanently resident in the American colonies and by far their largest landowner, who died without issue in 1781 leaving the unentailed portion of his five-million-acre (20,000 km²) domain to his nephew, the Reverend Denny Martin, on condition that Martin "procure an Act of Parliament to pass to take upon him the name of Fairfax and coat of arms".[25] Probably because it was quicker and less expensive, Denny Martin opted to change his name and arms by royal license rather than private act.[26]

That done, and the war over, he traveled to Virginia to examine his new estates only to find himself upon arrival defending several lawsuits challenging his title to the property, all arising from wartime laws expropriating the property of loyalists and enemy aliens. The details of the litigation – which dragged on for more than three decades – need not concern us here.[27] Suffice it to say that Denny Fairfax decided to sell his interests to a small group of American investors headed by a young Virginia attorney named John Marshall – later Chief Justice of the United States. First, however, it was necessary that Fairfax be able to show clear title in accordance with his uncle's will, and the

royal license was insufficient to do that. Marshall insisted that the private act stipulated in the will be procured before the transaction could be completed, which was finally accomplished in 1797.[28] Marshall clearly took for granted that the precise terms of name and arms clauses were enforceable in the courts of newly independent Virginia. His caution would be vindicated when he and his partners ultimately prevailed in the U.S. Supreme Court, compliance with the name and arms clause being specifically mentioned in the court's opinion as one of the relevant facts in the case.[29]

The other case involved the estate of George Washington Parke Custis (1781–1857), great-grandson and last male-line descendant of John Custis and Frances Parke, whose travails with name and arms clauses were discussed above. Custis's will left his daughter Mary Ann, wife of then-Colonel Robert E. Lee, a life estate in his 1,100 acre (445 hectare) plantation known as Arlington, standing along a ridge directly across the Potomac River from Washington, D.C. Upon Mary Ann's death, the property would pass to her first son, George Washington Custis Lee, "he, my said eldest grandson, taking my name and arms".[30]

That orderly plan of succession was disrupted when Arlington was confiscated by the U.S. government in late 1863 for nonpayment of taxes. A few months later, the U.S. Army began burying its war dead on the grounds of the house, the first step in the creation of Arlington National Cemetery, which would make the Lees' actual recovery of Arlington an undesirable outcome for both sides.[31]

General and Mrs. Lee made no attempt to recover the estate after the war, assessing that it would be both futile and divisive. But by the time Mary Ann died in 1873, the U.S. Supreme Court had overturned two confiscations carried out under legally identical circumstances,[32] encouraging the new heir, Custis Lee, to believe had a good chance to prevail in court as well. First, however, there was one complicating factor to be addressed. Custis Lee did not possess clear title to the property – and therefore standing to sue – because he had not adopted the name and arms of Custis as required by his grandfather's will.

It was unthinkable in 1870s Virginia that the firstborn son of the South's greatest war hero would abandon the name of Lee. Instead, the necessary title was established in April 1874 when all Custis Lee's brothers and sisters (who otherwise would have shared the estate equally with him under Virginia's intestate succession statute) executed a deed assigning him "all and every right, title, interest and estate" they may have had in Arlington.[33] Here again, we see that a name and arms clause in a will was something American lawyers did not think they could take lightly.

George Washington Custis Lee filed his lawsuit in April 1877. After five and a half years of fierce legal opposition from the federal government, he finally prevailed when the U.S. Supreme Court overturned the 1863 confiscation as both unconstitutional and contrary to the statute under which it had been made.[34] The entire matter was closed in March 1883 when Custis Lee formally deeded the property to the United States for the sum of $150,000.[35]

3. Legal Significance of the Display of Arms

Turning from changes of name and arms to a small but interesting set of American court cases in which armorial bearings have played a central role, we begin with two in which coats of arms were held by the highest courts of two different states to possess a judicially cognizable significance.

The first was *Industrial Trust Co*. v. *Alves,* decided by the Supreme Court of Rhode Island in 1924. Samuel Pomeroy Colt (1852–1921) was a wealthy industrialist, financier, and lawyer – the founder of the U.S. Rubber Company, president of Rhode Island's largest bank (the Industrial Trust Company), and a three-term state attorney general. In his will, he provided for payments of $1,000 to each of the "servants" who had been in his employ for at least six months at the time of his death. Agusta (or August) Alves, from whom this case takes its name, was one of 21 men and women whose claims to one of these legacies had been rejected by Industrial Trust as Colt's executor. The grounds for the refusal were that, while all but four of the claimants were indeed employed by Colt, their duties were primarily connected with his farm rather than his household, and that they were therefore not servants "within the meaning of the language of the will". [36]

The court disagreed. There were several reasons for concluding that Colt considered the farm staff servants, but what seems to have most impressed the court was that they were supplied with blue working uniforms "the buttons of which bore the testator's coat-of-arms".[37] The decision also notes that when Colt entertained guests, either on the farm or at his town mansion, Linden Place, the farm workers were brought in to assist, wearing the same white uniform as the house staff, again equipped with armorial livery buttons. As Justice Elmer Rathbun wrote:

> *A uniform bearing a family coat-of-arms is a badge of servility. The order requiring such uniforms to be worn when guests and visitors were at the farm is a strong indication that the testator considered the wearer a servant and not a mere employee.*[38]

It is not entirely clear what exactly the buttons depicted, attempts to locate photographs having been unavailing. Samuel P. Colt's entry in a compendium of prominent Rhode Islanders published during his lifetime gives his arms as *Argent a fesse azure between three colts in full speed, sable*,[39] but he made much more extensive use of a crest alone: a rearing colt holding the handle of a broken tilting spear in his mouth, the upper portion falling to the ground between his front legs. This device, without a shield, is engraved on Colt's bookplate, stamped in gold on the leather cover of a privately printed edition of his mother's poems, and carved on his tombstone. It is also carved within a cartouche in the pediment of the Colt Memorial School in Bristol, built by him in 1906 as a gift to the town (*fig. 4*) and may well have been the design on the buttons.

A second case in which an American court ascribed substantive significance to the display of a coat of arms arose in a dispute as to whether New York or Connecticut would have jurisdiction over (and thus the right to

Fig. 4. Arms of Samuel P. Colt, Colt Memorial School, Bristol, RI. Detail of photo by Kenneth C. Zirkel, Wikimedia Creative Commons License.

tax) the $9.2 million estate of the financier James Atwater Trowbridge (1843–1931), the issue turning on which state was his legal domicile at the time of his death.

Without recounting the to-and-fro in lower tribunals, the controversy eventually came before the New York State Court of Appeals, which ruled in Connecticut's favor, costing its own state's treasury almost a million dollars in taxes.[40] New York's case was based primarily on statements made by Trowbridge for tax and voting purposes,[41] but the court ruled that actions spoke louder than words. In a unanimous decision, it found that "Mr. Trowbridge actually lived only in his Noroton [Connecticut] house for years before his death." Moreover, "his purpose to keep his family settlement there as long as he lived [was] demonstrated by the accepted evidence", including the fact that when building a grand new mansion after the old family house burned down in 1921, Trowbridge "embellished it with the family crest and coat of arms".[42] As shown in the

Fig. 5. Arms of James A. Trowbridge, Trowbridge House, Noroton, CT. Case File, *Matter of Trowbridge,* by permission New York State Library.

exhibits submitted by Connecticut, this embellishment included carvings above the front and rear doors, on the doors flanking the entry to the dining room, and above the dining room fireplace.[43]

The clearest photograph available is of the sculpture over the main entrance (*fig. 5*). Although the resolution is relatively poor, the arches of a bridge are clearly discernible in base with something vertical mounted atop the span in the upper portion of the shield. From this, the arms can be identified as those of Trowbridge of Somerset, published in the 1724 edition of Guillim's *Display of Heraldry,*

where they are blazoned *Or, on a Bridge of three Arches in Fess Gules, masoned Sable, the Streams transfluent Proper, a Fane Argent.*[44] These arms have been used in the United States since at least the 1820s and possibly longer by various descendants of Thomas Trowbridge of Taunton, Somerset, who settled in Dorchester, Massachusetts, by 1636. Examples include an armorial embroidery made by Susan Trowbridge (1803–1825),[45] James A. Trowbridge's fifth cousin once removed. They are also printed in color on the frontispiece of a comprehensive family genealogy published in 1908[46] and (omitting the "fane," or banner) as the entry for another very distant cousin, Samuel B. P. Trowbridge, in *Matthews' American Armoury.*[47]

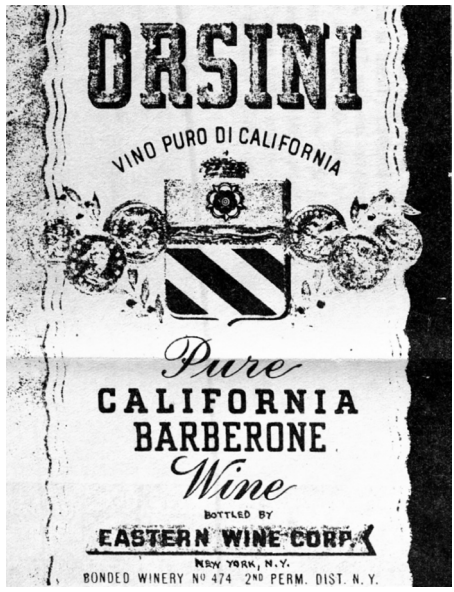

Fig. 6. Wine label depicting arms of Orsini. Case File, *Orsini v. Eastern Wine Corp.*, by permission New York State Library.

4. Protection Against Usurpation

The only successful recorded action for heraldic usurpation in the United States was undertaken in Manhattan in 1947. Prince Virginio Filippo Orsini first came to New York in 1923, where he became a stockbroker. He would live in the city off and on for the rest of his life. The lawsuit commenced a few months after Virginio succeeded to the headship of the Roman noble family of Orsini upon the death of his father. Prince Orsini contended that the Eastern Wine Corporation's practice of depicting his family's arms on the labels of its "Orsini" line of wines (*fig. 6*) was a misappropriation of his identity under the state's civil rights statute and sought an injunction against the company prohibiting the practice.

It was an established doctrine in New York law that using someone else's surname alone was inadequate to violate his or her privacy since the surname could be borne by any number of people, related or not. Eastern Wine argued at trial that this case was no different; the law protected only a person's full name, and they were not using the prince's full name.

The court disagreed, finding that any combination falsely implying a connection between the product and a specific person would suffice. In this case, the juxtaposition of Prince Orsini's arms and surname was equivalent to the use of his full name and therefore an infringement of his privacy rights. The court issued a restraining order barring the company from using the Orsini arms on its wine bottles.[48] The ruling was

subsequently upheld in the Appellate Division, and a further appeal was dismissed without a hearing.[49]

5. Conclusion: Stray Voltage or Saving Remnant?

What theoretical and practical implications can be inferred from these episodes?

The most important episode is arguably the last, *Orsini* v. *Eastern Wine*. In at least two respects, it is the United States' equivalent of the well-known Manchester Case in England's Court of Chivalry seven years later.[50] Firstly, it demonstrated that it is possible to take legal action to bar armorial usurpation in certain circumstances. In both *Orsini* and *Manchester*, the defendant lost because it was misusing the plaintiff's arms as a mark of corporate identity, in one case on wine labels, in the other on a corporate seal.

The two are also similar in that neither has ever been replicated.

The cases are differentiated, however, by one key point. For many decades, there had been strong skepticism in English legal circles that the Court of Chivalry had survived the 19th-century legal reforms that had folded the other civil law courts into the unified High Court of Justice. Indeed, there is good reason to believe that the 1954 case was contrived precisely to establish that the Court of Chivalry actually could still be convened. Moreover, after the case concluded the judge presiding over it, Lord Goddard, strongly urged that any future attempt to use the court be preceded by legislation to place it on a firm statutory footing.[51] In contrast, *Orsini* v. *Eastern Wine* was litigated in the normal state courts of New York, which enjoyed clear jurisdiction over offenses under the statute in question and unquestioned authority to enforce their judgments.

The Colt and Trowbridge cases are important as well, in showing that under the right circumstances American courts at the highest level may be prepared to attribute to armorial bearings a significance that goes beyond the conventional view – that in countries without heraldic regulation an emblazonment of arms is nothing more than mere decoration. While it must be borne in mind that the precedents established by one state's courts are not binding on those of another state, the reasoning underlying such decisions is often found compelling across state lines.

Finally, although the episodes involving name and arms changes are the most numerous, they are probably the least significant. For one thing, all of them except the Lees' circumvention of the name and arms clause in G. W. Parke Custis's will date back more than two centuries. More importantly, there is no known instance in which failure to comply with a requirement for change of arms – as opposed to a change of name – has been litigated in the United States. It would be difficult to assess compliance with the armorial element of a name and arms clause in any event, given that there are virtually no circumstances in the 21st-century United States in which a person would be expected, let alone required, to bear any arms at all. Finally, without an authoritative public record of who is entitled to which bearings, a court might well find a testamentary requirement for a change of arms to be void on grounds of uncertainty.

Notes

1 W. P. W. Phillimore, "The Law and Practice of Change of Name", in Phillimore and E. A. Fry, *An Index to Changes of Name* (London, 1905) p. xxvi; UK Deed Poll Office, "Private Acts of Parliament Used to Change a Name" (online index), <https://deedpolloffice.com/research/private-acts-parliament> (accessed 15 June 2023).

2 Fundamental Constitutions of Carolina, 1 March 1669, art. 8, online at <https://avalon.law.yale.edu/17th_century/nc05.asp> (accessed 11 June 2023).

3 Will of Daniel Parke (Sr), prob. PCC, 16 Sept. 1679 (TNA (PRO) PROB 11/360/606). For a detailed account of the Custis-Parke case see J. McMillan, "Changes of Arms in Colonial America: The Strange Case of Custis", *The Coat of Arms*, 3rd ser. 9 (2015) pp. 117–138.

4 Will of Daniel Parke (Jr), prob. PCC, 15 May 1711 (TNA (PRO) PROB 11/521/116). Governor Parke's will repeated, practically verbatim, the provision in his father's with respect to the Virginia property, probably necessarily so since the earlier instrument had established an entail.

5 John Custis to John Randolph, 5 Sept. 1732, in J. L. Zuppan, ed., *The Letterbook of John Custis IV of Williamsburg, 1717–1742* (Lanham, MD, 2005) p. 125. Of course, at the time the original will was made in 1677, the practice of changing names by legislative act was still decades away, even in England.

6 *Azure gutty [metal indistinguishable] an eagle displayed argent, on the title page of G. French, The History of Colonel Parke's Administration* (London, 1717). Interestingly, the standard legal treatise on English probate practice, citing a much later case, suggests that the Custises' approach should have been entirely adequate (2 Jarman on Wills 1533 [ed. 1881]).

7 Private act no. 32, 6 Mass. Acts 85, 23 June 1716.

8 Private act no. 96, 6 Mass. Acts 205, 18 June 1766.

9 William Goold, "Sir William Phips", *Collections of the Maine Historical Society*, 9 (1887) pp.: 63–64.

10 Will of Theodore Atkinson, prob. PCC, 17 Oct 1783 (TNA PROB 11/1108/468); 3 N.H. Laws 525, 29 Oct. 1779.

11 5 N.H. Laws 315, 12 June 1788.

12 Entry for Spencer Phips dated 1710, John Gore, *The Gore Roll of Arms* (MS, 17–?) (Online database: AmericanAncestors.org, New England Historic Genealogical Society, 2003), <https://www.americanancestors.org/DB112/i/0/21/0>. See also H. Bowditch, "The Gore Roll," Rhode Island Historical Society Collections, 29 (1936) pp. 59–61.

13 Theodore and William King Atkinson's almost identical bookplates are illustrated in C. D. Allen, *American Book-Plates* (London, 1895) p. 166 and plates 38 and 39.

14 7 N.H. Laws 165, 29 Nov. 1803.

15 1803 Va. Acts c. 75, 18 Jan. 1804. The unusual use of the mother's surname was mandated by his maternal grandfather in a marriage settlement and subsequently repeated in his will.

16 Captain Ridgely's will required only a change of name, making no mention of arms, which Ridgely himself had evidently never borne. Regardless, Charles Carnan successfully petitioned the Assembly to be allowed to assume the arms as well as the name.

17 The Maryland acts are discussed at length in J. McMillan, "The Maryland Name and Arms Acts: Heraldic Law in the United States", *The Coat of Arms*, 3rd ser. 8 (2012) pp. 91–116. The acts are 1783 Md. Laws c. 3 (Macubbin to Carroll), 1790 Md. Laws c. 10 (Carnan to Ridgely), 1792 Md. Laws c. 24 (Hall to Rozer), and 1803 Md. Laws c. 69 (Lee to Clerk Lee).

18 L. M. Friedman, *A History of American Law,* 3rd ed. (New York: Simon and Schuster/Touchstone, 2005) pp. 143–44, 148–49.

19 A. H. Mickle-Saltonstall, "Mickle of Long Island", *New York Genealogical and Biographical Register,* 28 (1897) p. 212.

20 J. Matthews, *Matthews' American Armoury and Blue Book* (London, 1907) p. 221.

21 *Taylor v. Mason,* 22 U.S. 325 (1824).

22 *Matter of Anonymous,* 141 N.Y. Supp. 700 at 704 (1913).

23 Examples from Nebraska, both decided by the state's Supreme Court, are *Smith v. Smith,* 64 Neb. 563 (1902) and Cast v. *National Bank*

of Commerce, 186 Neb. 385 (Neb. Sup. Ct., 1970); and from Illinois *Jiles v. Flegel,* 9 Ill. App. 3d 74 (1972).

24 *Aruca v. Allan,* U.S.C.A. 11th Cir., 5 Oct 2022 (unpublished; online at the official U.S. Courts website, <https://media.ca11.uscourts.gov/opinions/unpub/files/202211017.pdf>, accessed 15 June 2023).

25 F. Harrison, "The Proprietors of the Northern Neck", *Virginia Magazine of History and Biography,* 33 (1925), 45–46. The entailed portion also subsequently passed to Denny Fairfax under upon the death of Robert, 7th Lord Fairfax, in 1793.

26 Royal license 12320, 10 Aug. 1782, indexed in Phillimore and Watts, 110; arms exemplified Coll. Arms Grants 15/83.

27 See L. S. Emmert, "Judicial Review and Five Million Acres: an Appellate Tale", Virginia News & Analysis (online blog), <https://virginia-appeals.com/judicial-review-and-five-million-acres-an-appellate-tale/>, accessed 20 June 2023.

28 Act of 37 Geo III, c. 33 (1797), indexed at UK Deed Poll Office, <https://deedpolloffice.com/research/private-acts-parliament> (accessed 15 June 2023).

29 *Fairfax's Devisee v. Hunter's Lessee,* 11 U.S. 603 (1812) at 607 and *Martin v. Hunter's Lessee,* 14 U.S. 304 (1816) at 311.

30 Dated 26 March 1855, proven 7 Dec 1857, Alexandria Co., Va., Wills 7:267–69.

31 *Congressional Record,* 6 Apr 1874, 2053–56.

32 *Bennett v. Hunter,* 76 U.S. 326 (1869) and *Tacey v. Irwin*, 85 U.S. 549 (1873).

33 Deed of William H. F. Lee and wife, Mary Custis Lee, Robert E. Lee (Jr) and wife, and Mildred C. Lee, 18 April 1874, recorded 7 Dec 1874, Alexandria [now Arlington] Co., Va., Deeds B-4:414–15.

34 *United States v. Lee*, 106 U.S. 196 (1882).

35 E. A. Chase, "The Arlington Case: George Washington Custis Lee against the United States of America", *Records of the Columbia Historical Society of Washington*, D.C., 31/32 (1930) p. 206.

36 *Industrial Trust v. Alves*, 46 R.I. 16 (1924) at 17.

37 *Industrial Trust* at 19.

38 *Industrial Trust* at 23.

39 T. W. Bicknell, *The History of the State of Rhode Island and Providence Plantations*, 4 pt. 2 (New York: American Historical Soc., 1920) p. 438.

40 *New York Times*, 2 May 1935, p. 14.

41 Trowbridge had a sizable investment in New York state and municipal bonds, the interest on which was exempt from taxation in New York but not in Connecticut.

42 *Matter of Trowbridge*, 266 N.Y. 283 (1935).

43 Court of Appeals of the State of New York, *[Matter of Trowbridge]: Record on Appeal* ([Albany, 1935]) pp. 24–25, 478.

44 J. Guillim, *A Display of Heraldry*, 6th ed. (London, 1724) p. 308.

45 Sold by Stephen and Carol Huber Samplers, <http://www.antiquesamplers.com/silkpict/trowbridge-embroidery.htm>, accessed 31 May 2023.

46 F. B. Trowbridge, *The Trowbridge Genealogy* (New Haven, 1908) frontispiece.

47 Matthews p. 169, omitting the fane.

48 Eastern Wine's solution was, ironically, to display the arms of the Kingdom of Italy—defunct since the previous year—on its Orsini-branded wines.

49 *Orsini v. Eastern Wine Corp.*, 190 Misc. 235 (1947); 73 N.Y.S.2d 426 (1947).

50 *Manchester Corporation v. Manchester Palace of Varieties, Ltd.*, [1955] P. 133.

51 François Velde, "Regulation of Heraldry in England: Modern Times," online at <https://www.heraldica.org/topics/britain/england2.htm#manchester> (accessed 24 Aug 2023). See also G. D. Squibb, *The High Court of Chivalry: a Study in the Civil Law in England*, 2nd ed. (Oxford: Clarendon Press, 1997), 123–127.

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The High Court of Chivalry: A How To Do It Guide

By Professor Mark Watson-Gandy, O.B.E., C.St.J. [1]

Abstract: The English High Court of Chivalry came into existence in about 1350, deriving its authority from the King's Council to try cases outside the remit of the common law. In 1954 the Court was finally re-awoken when the Manchester Corporation sought an injunction to prevent the display of its Arms. Since the excitement of Manchester Corporation v Manchester Palace of Varieties Limited [1955] 1 All ER 387, and, unlike its busy cousin, Lyon Court in Scotland, the Court of Chivalry has fallen back into slumber.

Not limited to awarding damages and granting injunctions for the misuse of heraldry, Comyn's Digest explained "The Court of Chivalry has an absolute jurisdiction, by prescription, in matters of honour, pedigree, descent, and coat armour". Indeed, its jurisdiction covered anything that might give rise to a duel.

More flexible in design than trademarks (and arguable trumping them), coats of arms present an important protection for branding. Why is Lyon Court busy and the Court of Chivalry apparently mothballed? How would one start a case in the Court of Chivalry? Could anyone stop you? What would the pleadings look like? What form would the evidence take? Who would hear the case and what would the hearing involve?

Résumé : La Haute Cour de chevalerie anglaise a vu le jour vers 1350. Elle tenait son autorité du Conseil du roi pour juger des affaires ne relevant pas de la common law. En 1954, la Cour a finalement été réactivée lorsque la Manchester Corporation a demandé une injonction pour empêcher l'affichage de ses armoiries. Depuis la passionnante affaire Manchester Corporation v Manchester Palace of Varieties Limited [1955] 1 All ER 387, et contrairement à sa cousine très active, la Lyon Court en Écosse, la Cour de chevalerie est retombée dans son sommeil.

Ne se limitant pas à accorder des dommages-intérêts et à prononcer des injonctions en cas d'utilisation abusive de l'héraldique, le Comyn's Digest explique que « la Cour de chevalerie a une compétence absolue, par prescription, en matière d'honneur, de pedigree, de descendance et d'armoiries ». En effet, sa compétence s'étendait à tout ce qui pouvait donner lieu à un duel.

Plus souples dans leur conception que les marques (et pouvant même les supplanter), les armoiries constituent une protection importante pour l'image de marque. Pourquoi la Lyon Court est-elle occupée et la Cour de chevalerie apparemment mise en sommeil ? Comment peut-on engager une procédure devant la Cour de chevalerie ? Quelqu'un peut-il vous en empêcher ? À quoi ressembleraient les plaidoiries ? Quelle forme prendraient les preuves ? Qui entendrait l'affaire et en quoi consisterait l'audience ?

1. The Court of Chivalry

The High Court of Chivalry came into existence in about 1350, deriving its authority from the King's Council to try cases outside the remit of the common law.

The Court's business was divided between "causes of instance", proceedings between private persons, and the quasi-criminal "causes of office". Originally issues as diverse as debt and broken parole fell within its jurisdiction. As the common law increasingly clashed with the Court's jurisdiction, the Court's competence was slowly curtailed.

Lord Goddard CJ in the case of *Manchester Corporation v Manchester Palace of Varieties Limited*,[2] relied on a passage in *Comyn's Digest*[3] regarding the jurisdiction of the Court:

"The Court of Chivalry has an absolute jurisdiction, by prescription, in matters of honour, pedigree, descent, and coat armour".

Most colourfully, its jurisdiction has been described as encompassing all matters that might give rise to a duel. Most significantly the Court's jurisdiction encompasses disputes arising from Coats of Arms.

Following the restrictions placed upon the Court it had fallen into disuse by 1737 and therefore avoided the effect of the Supreme Court of Judicature Act 1873, which formed the modern High Court of Justice. By this lucky happenstance, the Court survived as a separate jurisdiction, slumbering for some two hundred years.

This has also meant the Court has retained its traditional procedure and terminology to the present day. In 1954 the Court was finally awoken when the Manchester Corporation sought an injunction to prevent the display of its Arms. Since the excitement of that case and in contrast to its bustling Scottish cousin, the Lyon Court, the Court of Chivalry has fallen back into slumber.

2. Dramatis Personae

Some sense of how the Court operates can be gained from the various players who form distinct roles in its operation. Besides the parties, the following have roles to play.

The Earl Marshal

The Earl Marshal is entitled to sit as the sole judge in the Court of Chivalry. The Earl Marshal is a hereditary role held by the Duke of Norfolk.

Surrogate or Lieutenant

If the Duke of Norfolk is disinclined to sit as judge, he may appoint a Surrogate or Lieutenant to sit in his place. In the Manchester Corporation case the Duke of Norfolk, although technically still presiding over the case, appointed the Chief Justice, Lord Goddard, to decide the case and give judgment as his Surrogate.

The Registrar of the Court

The role of Registrar of the Court is generally held by a notary. The role of the Registrar is to record the formal acts of the Court.

The Commissioners to the Court of Chivalry

Each party may appoint between four and six commissioners. In a process similar to taking a deposition, their role is to question the witnesses. The answers are recorded by the Registrar of the Court or a notary.

King's Advocate
The King's Advocate promotes the office of the judge and gives advice as to whether the fiat (authorisation) of the Earl Marshal was warranted by a cause of instance.

Cryer
The Cryer's role is similar to that of a court clerk or usher. The Cryer proclaims the sittings and rising of the court.

Counsel
Historically, only members of Doctors Commons had rights of audience before the Court of Chivalry. On the abolition of Doctors Commons, their rights and privileges vested on the Bar of England and Wales. Thus, to enjoy rights of audience, a party's advocate does not need to hold a doctorate in common law but cannot be a solicitor.

3. Procedure

The first step is to Petition the Earl Marshal requesting that he issue process.

The Petition must set out the alleged cause of action. Thus, in a claim for infringement of arms it would need to describe the crest and arms alleged to have been infringed and the manner in which the Defendant has displayed the crest and arms. The petition must be signed by the Claimant or Counsel and be lodged with the Register of the Court.

It would read something like this:

To The Most Noble Edward William Fitzalan-Howard, Duke of Norfolk

THE HUMBLE PETITION of Arthur Angry of Angry Hall, Dorset SHOWETH That the Petitioner lawfully bears arms of Argent, an Ostrich Rampant Gules and for Crest an Ostrich Rampant azure.

That Barry Bogus of 8 The Sidings, Croydon, displays and has displayed publicly arms of Argent, an Ostrich Rampant Gules and for Crest an Ostrich Rampant azure without leave of licence and contrary to the will of Your Petitioner representations of the said Arms and Crest or of arms and Crest differing in no material respect contrary to the laws and usages of arms.

That notwithstanding Your Petitioner's request to cease to display of the said representation of Arms and crest as aforesaid the said Barry Bogus has continued and threatens to continue the display thereof, whereby your Petitioner is greatly disparaged.

WHEREFORE THE PETITIONER HUMBLY PRAYS that Your Grace may be pleased to award process against the said Barry Bogus to appear and answer the premises in Your Grace's Court of Chivalry or Court Military and that thereupon such course may be taken for Your Petitioner's reparation as Your Grace shall think fit.

And this Humble Petitioner will ever pray for your good estate.

ARTHUR ANGRY
DATED 1st April 2025

Let Process be issued as is desired.

.....
Earl Marshal

The Claimant must lodge a bond with his Petition. The bond is fixed at the sum of

£100. This, of course, is much more affordable now than when the condition was instituted.

The Earl Marshal then considers whether the claim falls within his jurisdiction and whether to issue a fiat, starting the legal process.

The question is sometimes asked as to whether the Earl Marshal or indeed the College of Arms could refuse to allow the Court of Chivalry to be reawakened from its present sleep. Whilst the case cannot proceed without the Earl Marshal's fiat, the decision must be exercised judicially[4] and could not be withheld if jurisdiction exists.[5]

Once the fiat of the Earl Marshal has been granted the Register of the Court will issue a Citation summoning the Defendant to the Court. The Citation contains a notice of the time and place at which appearance is to be entered and contain the nature of the alleged cause of action. The Citation is executed by showing a copy to the Defendant or his agents and leaving them with a copy. The Defendant must enter his Bond of £100 at the time of complying with Citation.

The next step is the Libel. The Libel is the equivalent of the modern Particulars of Claim. It must be addressed to the Earl Marshal. For a claim based on an infringement of arms, the Libel must open with a description of the Claimant's arms and his title to them, state the grounds for complaint against the Defendant and must be signed by Counsel.

The Libel would look something like this:

BEFORE YOU The Most Noble Edward William Fitzalan-Howard, Duke of Norfolk, Earl Marshal and Hereditary Marshal of England by way of complaint in law propounds as follows:

1. *That on 1st April 2023, Ernest Escutcheon, Garter Principal King of Arms, and Clarence Crescent, Clarenceux King of Arms, by writing under their respective hands and seals granted and assigned to Arthur Angry of Angry Hall, Dorset arms of Argent, an Ostrich Rampant Gules and for Crest an Ostrich Rampant azure to be borne and used forever by Arthur Angry and his descendants with all due and proper differences according to the Law of Arms.*
2. *Also, That Barry Bogus of 8 The Sidings, Croydon displays and has displayed publicly before many worthy persons the arms of Argent, an Ostrich Rampant Gules and for Crest an Ostrich Rampant on the hoarding of "The Bogus Ostrich Burger Bar" or without leave of licence and contrary to the will of Your Petitioner representations of the said Arms and Crest or of arms and Crest differing in no material respect contrary to the laws and usages of arms.*
3. *Also, that notwithstanding a request from Grey & Grim, as solicitors for and on behalf of Arthur Angry, to cease to display of the said representation of Arms and crest as aforesaid the said Barry Bogus has continued and threatens to continue the display thereof, whereby Arthur Angry's is greatly disparaged.*
4. *And that Barry Bogus orally stated "Up yours, squire" and, by that, he did not admit Arthur Angry's right to require him to cease to display the said Arms and Crest and further that he did not propose to stop so displaying them.*

5. *Also, that all and singular the premises were and are true, public and notorious and therefore there was and is a public voice, fame and report.*

WHEREFORE THE CLAIMANT PRAYS for right and justice from Your Grace and that Barry Bogus may be compelled to make may Arthur Angry full satisfaction and restitution of his honour and that he may be condemned in the cost of this suit incurred on the part of Arthur Angry and condemned to whatever further may be requisite according to the laws and customs of Arms and of this Court by Your Definitive Sentence.

AND the Claimant propounds the premises jointly and severally not binding himself to the burden of superfluous proof and saving himself the benefits of the law in all things.

Barry Barrister

The Petitioner's evidence is taken at this stage.

Evidence is given "on commission", that is to say not orally.

After the Libel has been lodged, "Letters Commissory" in the name of the Earl Marshal are issued by the Registrar, commanding named persons to take evidence on behalf of the Claimant. These are the Commissioners.

Witnesses attend at the request of the Claimant or are summoned by a "Compulsory", that is to say, a sub poena or witness summons signed by either the Earl Marshal or the Commissioners.

The commissioners hear witnesses at a named time and place in the presence of the Registrar or a notary public.

If the Defendant takes exception to any witness being called, "Letters Remissional" can be filed by the Defendant signed by Counsel.

Expert evidence can be obtained on any question arising in a cause in the form of a report directed to the King of Arms.

It is only at this stage that the Defendant files his pleading. His Defence is called an "Answer". The Answer need not be lodged until all the evidence has been given for the Claimant but must be addressed to the Earl Marshal. The Answer must contain either a denial of the Libel or a plea of confession and avoidance. It must also answer each of the paragraphs of the Libel and be signed by Counsel.

Letters Commissory are issued on behalf of the Defendant after he has lodged his Answer. The Defendant's evidence is taken by his chosen Commissioners using much the same process as for the Claimant.

The hearing takes place before the Earl Marshal or his Surrogate. Both parties submit a "Definitive Sentence", similar to a draft order, upon which the Court gives its judgment, adopting one of the two versions put forward with any adaptations that the Court deems necessary. The Court has the power to award damages, to fine and to award costs.

Itemised bills of costs must be submitted and signed by each Counsel, and the assessment of costs is by the Registrar, subject to appeal to the Earl Marshal or his Surrogate. Costs can also be agreed.

The enforcement of an order of the Court of Chivalry is by proceedings for contempt in the High Court. The High Court has

powers to punish contempt of court by imposing fines, imprisoning defaulters or in the case of a company sequestration of assets.

Notes

1 Professor Mark Watson-Gandy OBE CStJ is a practising barrister at Three Stone Chambers. He is a Visiting Professor at the Universities of Westminster and Lorraine. He is Chair of the UK government's Biometrics & Forensic Ethics Group.

2 Manchester Corporation v Manchester Palace of Varieties Limited [1955] 1 All ER 387.

3 Sir John Comyns, Comyn's Digest. A Digest of the Laws of England (1822).

4 Hence the role of the King's Advocate

5 An unwarranted refusal would be both a breach of the Human Rights Act 1998 and indeed article 40 Magna Carta 1215 (one of its few still extant provisions).

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Die Reichskanzlei des Heiligen Römischen Reiches und die Österreichische Hofkanzlei als Wappenbehörden

Von Dr. Michael Göbl, A.I.H.

Zusammenfassung: Nachdem sich die Adelserhebungen und Wappenverleihungen als Reservatrecht des Kaisers des Heiligen Römischen Reiches im späten Mittelalter durchgesetzt hatte, musste sich parallel dazu ein Procedere entwickeln, auf welche Weise die Urkunden von den Verwaltungsbehörden ausgestellt werden können. Die Herolde, die um 1500 in ganz Europa an allen Fürstenhöfen verbreitet waren, kamen dabei nicht in Betracht, da ihr Amt zunehmend einen zeremoniellen Status erhielt und ihre ursprünglichen Aufgaben immer mehr von Beamten der Reichskanzlei bzw. des sich formierenden Hofstaats übernommen wurden. Diese Zeit wird auch als Beginn des Briefadels und der Kanzleiheraldik angesehen. Die Nobilitierungspraxis der Habsburger vom 16. bis 18. Jahrhundert löste eine Ausweitung der Adelsgesellschaft aus und bewirkte eine Titelinflation, die sich auch auf die Rangstufen des Adels auswirkte. Die vermehrt erteilten Wappen- und Adelsbriefe bewogen die Behörde heraldische Differenzierungen vorzunehmen, die optisch einerseits die Abgrenzung der bürgerlichen zu den adeligen Wappen und andererseits die Abstufungen der Adeligen untereinander erkennbar machen sollten. Das bedeutete, dass der Adel innerhalb seiner Gesellschaft stärker differenziert wurde und weitere Rangstufen gebildet wurden. Die Reichskanzlei schuf dabei ein Reglementierungssystem und bezog auch das Erscheinungsbild der Wappen mit ein. Charakteristische Zeichen wurden hinzugefügt, um aus der Flut der heraldischen Erzeugnisse die entsprechende Stufe ihres Trägers in der Adelshierarchie erkennbar zu machen. Da schriftlich fixierte Regeln für die Gestaltung von Wappen fehlen, kann man die heraldischen Regeln nur im gegenseitigen Vergleich der Wappen in den heraldischen Abbildungen von Wappen- oder Adelsbriefen erkennen. Es wurde auch die Arbeit der Beamten erforscht, auf welche Weise die eingereichten Wappen verändert und welche Formulierungen in den deutschen und lateinischen Wappenbeschreibungen gebraucht wurden. Die Reichskanzlei und später die Hofkanzlei für die habsburgischen Erbländer erließen in ihren Kanzleiordnungen und Taxordnungen Bestimmungen für die Registerführung und den Geschäftsgang bei den Wappen- und Adelsverleihungen. Im 17. Jahrhundert scheint die Heraldik in der Reichskanzlei nicht zum Besten gewesen zu sein. Denn der Kurerzkanzler Lothar Franz von Mainz bestellte 1707 einen Wappeninspektor für die Reichskanzlei: den Irländer Wilhelm O'Kelly. In dieser Zeit tauchen auch die ersten Namen der Wappenmaler auf. Damit im Zusammenhang stehen auch die Verbote und Anmaßungen von Wappen, die vor dem Reichshofrat verhandelt wurden. Das ausführende Organ war der Reichsfiskal, der diese Verstöße untersuchte.

Abstract: After the ennoblement and the bestowal of coats of arms had become the preserve of the Holy Roman Emperor in the late Middle Ages, in parallel a procedure had to be developed for the way in which the documents could be issued by the administrative authorities. The heralds, who were widespread at all royal courts throughout Europe around 1500, were not considered in this context, as their office increasingly acquired a ceremonial status and their original tasks were increasingly taken over by officials of the Imperial Chancellery or the emerging Imperial Household. This period is also seen as the beginning of the granted nobility and chancellery heraldry. The Habsburgs' practice of ennobling from the 16th to the 18th century triggered an expansion of the nobility and caused an inflation of titles, which also affected the ranks of the nobility. The increasing number of coats of arms and letters of nobility prompted the authorities to make heraldic distinctions that were intended to visually distinguish between the coats of arms of the commoners and those of the nobility, and to make the gradations of the nobility among themselves recognizable. This meant that the nobility was more differentiated within its society and further ranks were created. The Imperial Chancellery created a system of regulations and also included the appearance of the coats of arms. Characteristic symbols were added in order to make the corresponding level of the bearer in the nobility hierarchy recognizable from the flood of heraldic products. Since there are no written rules for the design of coats of arms, the heraldic rules can only be recognized by comparing the coats of arms in the letters patent through which coats of arms or nobility were granted. The work of the officials was also researched, in which way the coats of arms submitted were changed and which wording was used in the German and Latin blazons. The Imperial Chancellery and later the Chancellery for the Habsburg hereditary lands issued regulations in their chancellery regulations and tax regulations for the keeping of registers and the procedures for the granting of coats of arms and nobility. In the 17th century, heraldry in the Imperial Chancellery does not seem to have been at its best. In 1707, the Elector Archchancellor Lothar Franz of Mainz appointed a coat of arms inspector for the Imperial Chancellery: the Irishman William O'Kelly. The first names of herald painters also appear during this period. Also related to this are the bans and usurpations of coats of arms, which were negotiated before the Aulic Council. The executive body was the Imperial Fiscal, who investigated these violations.

1. Einleitung [1]

Im späten Mittelalter hatten sich die Adels- und Wappenverleihungen als Reservatrecht des Kaisers des Heiligen Römischen Reiches durchgesetzt. Trotzdem gab es in drei anderen Fällen auch noch Personen, die ein Wappen oder den Adel verleihen konnten. Bei Sedisvakanz des Kaisers traten die Reichsvikare in diese Rolle, zweitens konnten auch noch andere Kurfürsten und Reichsfürsten solche Gnadenakten gewähren und drittens waren auch die kaiserlichen Hofpfalzgrafen befugt Nobilitierungen zu erteilen. Gleichzeitig hatten sich die Habsburger 1453 mit der Bestätigung der Privilegien des Hauses Österreich (*Privilegium maius*) das Recht gesichert, auch in ihren Erbländern derartige Verleihungen aus eigener Machtvollkommenheit ausstellen zu dürfen. Kurz gesagt, billigten sie sich daher die Rechte wie die eines Hofpfalzgrafen zu.

Das bedeutete, dass König Ferdinand I. noch vor seiner Wahl zum König von Böh-

men und Ungarn 1526/27 als Adelsverleiher agieren konnte. Da in dieser Zeit Kaiser Karl V. Reichsoberhaupt war, konnten die Adelsurkunden entweder aus seiner eigenen kaiserlichen Machtvollkommenheit, oder aus der königlichen Autorität seines Bruders Ferdinand I. erlassen werden. Die Adelsverleihungen in den habsburgischen Erbländern wurde nach der Länderteilung von 1564 noch weiter aufgesplittert, da es ab nun eine Linie in Tirol (bis 1665) und eine in Innerösterreich (= Steiermark, Kärnten, Krain, bis 1619) gab, die ebenfalls Adels- und Wappenverleihungsbriefe ausstellen konnten. Alleine die Tiroler Linie stellte über 2100 Diplome aus.[2] Die Gesamtzahl der von den Kaisern Karl V. bis Karl VI. im Zeitraum 1519 bis 1740 aus der deutschen Expedition der Reichskanzlei verliehenen Nobilitierungsdiplome (ohne Wappenbriefe und Adelsbestätigungen, die einen großen Teil ausmachten) wird auf ungefähr 6.700 Diplome für insgesamt ca. 10.200 Personen geschätzt.[3]

2. Geschäftsgang der Reichskanzlei

Für den Geschäftsgang der Reichskanzlei im 15. und Anfang des 16. Jahrhundert lassen die Dichte und Art der überlieferten Quellen keine zusammenhängenden Erkenntnisse zu. Erst mit Karl V. ändert sich das Bild, indem jetzt neben den Eintragungen in die Reichsregister, auch bereits in größerer Zahl die Konzepte der Verleihungsakten und die Gesuche der Parteien überliefert sind. Die an den Kaiser gerichtete Majestätsgesuche (Suppliken) um Verleihung oder Bestätigung des Adels oder auch nur eines Wappens wurden dem Monarchen in einer Ratssitzung vorgelegt, der hierbei mündlich über jedes Gesuch seine Entscheidung traf. Im Falle der Genehmigung wurde sogleich vom Vizekanzler oder dem protokollführenden Sekretär ein entsprechender Vermerk auf das Gesuch geschrieben. In der zuständigen Kanzlei ging man nun ermächtigt durch diesen Vermerk an die Ausfertigung des Diploms. Der Konzipist des Diploms hatte hierbei das bewilligte Gesuch vor sich, da er die darin enthaltenen Angaben über die Familie und die Verdienste des Bittstellers meist wortwörtlich in den Diplomtext übernahm und die Wappenbeschreibung auf Grund der Abbildung des gewünschten Wappens, die dem Gesuch beigeschlossen war, verfasste. Nach Genehmigung des Konzepttextes durch den Kanzleileiter wurde das Original auf Pergament angefertigt und dem Kaiser unterschrieben vorgelegt. Die Besiegelung dieses vom Kaiser unterschriebenen Originaldiploms und seine Aushändigung an den Petenten erfolgte allerdings erst, wenn die vorgeschriebenen Taxen und Gebühren eingezahlt waren. Als Datum des Diploms wurde gewöhnlich der Tag der Ratssitzung gewählt. Zwischen dem im Diplom angegebenen Datum und seiner tatsächlichen Fertigstellung lagen deshalb auf jeden Fall einige Monate, manchmal konnten aber auch einige Jahre vergehen. Nach Aushändigung des Originaldiplomes an den Empfänger verblieben somit das Majestätsgesuch samt eventuellen Beilagen und das Konzept des Diplomes in der Registratur der Kanzlei.

In allen Kanzlei- und Taxordnungen wurden immer wieder festgehalten, dass die Taxierung der Urkunden *vor* der Siegelung zu erfolgen habe. Viele Parteien hatten die

Behebung der taxpflichtigen Stücke oft jahrelang hinausgeschoben, weil sie die Bezahlung der Taxen nicht begleichen konnten oder wollten. Besonders häufig war das bei den Wappen- oder Adelsbriefen der Fall. Die Begünstigten führten zwar sogleich den Titel oder das Wappen, unterließen es aber das Diplom aus dem Taxamt abzuholen. Schon seit der Taxordnung König Ferdinands I. von 1545 wurde dieser Missstand kritisiert. Seit Beginn des 18. Jahrhunderts änderte man die Vorgangsweise ab, indem die Taxen schon vor dem Ingangsetzen des Verleihungsvorgang berechnet (Taxzettel) und den Parteien mitgeteilt wurden. Erst wenn die Bezahlung erfolgt war, wurde der Geschäftsgang bis zur Expedition durchgeführt.[4]

Nach Bezahlung der Taxen und dem Schreiben der Urkunde, konnte sie besiegelt werden. Auch dafür war das Taxamt zuständig. Dem Taxator oblag es an die Urkunden das große oder mittlere kaiserliche Siegel anzuhängen. Aus diesen Vorgängen der Urkundenausfertigung ist die enge Verknüpfung mit dem Taxamt ersichtlich.

Diese Zeit als die Reichskanzlei die Dominanz über die Ausstellung von Wappenbriefen erlangte wird nicht nur als Beginn des Briefadels angesehen, sondern auch als Entstehung der Kanzleiheraldik. Nicht mehr die Herolde, Persevanten und Wappenkönige entschieden über Aussehen und Gestaltung der Wappen, sondern die Beamten der königlichen oder kaiserlichen Hofkanzleien.

3. Äußere und innere Merkmale der Urkunden

Nach ihren äußeren und inneren Merkmalen gleichen die Wappen- bzw. Adelsbriefe den gleichzeitigen sonstigen Ausfertigungen der Reichskanzlei, sie sind entsprechend ihrer Bedeutung als feierliche Beurkundung immer auf einem großen feinen Pergament in kalligraphisch hochstehender, sorgfältiger Kanzleischrift geschrieben. Das zur Verleihung anstehende Wappen wurde in die Mitte des Kontextes als anspruchsloses Bildchen oder als hochwertige Miniaturmalerei ausgeführt. Erst nach ca. 1640 führten die Erweiterung des Textes und der Wunsch nach einfacherer Lesbarkeit zu einer Änderung des Formats als Libell, ein Heft im Quartformat: vier bis sechs Doppelblätter und einem roten Samteinband mit seidenen Schließbändern. Die kaiserlichen Libellen mit schwarzen und gelben, die aus der österreichischen Hofkanzlei mit rot und weißen Bändern. An einer mit den gleichen Farben geflochtenen Schnur hing das große kaiserliche Siegel in einer Holzkapsel oder später in Messingkapsel.[5] Ob die Urkunde in deutscher oder lateinischer Sprache ausgefertigt werden sollte, dafür waren territoriale Gesichtspunkte entscheidend. Für Empfänger innerhalb der zehn Reichskreise war die deutsche, für Empfänger außerhalb dieser, also beispielsweise für Spanien, Italien oder Ungarn war die lateinische Expedition vorgesehen.[6] Für das kreisfreie Gebiet des Königreiches Böhmen kam in den meisten Fällen die deutsche, in einigen Fällen auch die tschechische Sprache zur Anwendung. Obwohl dieses territoriale Kriterium nicht für alle Urkunden zutrifft, kann man es doch in den meisten Fällen feststellen.

Beide Abteilungen waren mit jeweils eigenen Sekretären, die von Konzipisten und

Schreibern unterstützt wurden, ausgestattet. Dazu kamen die Taxatoren und Registratoren, die wichtige Funktionen auszufüllen hatten. Die Taxierung spielte eine große Rolle, da die kaiserlichen Einkünfte aus den Taxen eine große finanzielle Bedeutung besaßen.

4. Das Adelsdiplom

Die Ausfertigungen der Urkunden folgen einem im Mittelalter entwickelten Formular mit ganz bestimmten Textpassagen.[7] Nach dem Titel des Ausstellers (*Intitulatio*) folgt die Arenga (Präambel) in der die Motivation des Ausstellers erläutert wird, also der Hinweis auf die kaiserliche Großmut und das Bestreben, die Verdienste würdig zu belohnen, öfters mit dem Hinweis versehen „um auch andere anzuspornen". Danach wird der Urkundenempfänger mit seiner Abstammung und seine Leistungen benannt. Die *Dispositio* enthält die Willenserklärung des Ausstellers, darunter auch die Wappenbeschreibung bzw. Blasonierung. Dieser Abschnitt wird im 16. Jahrhundert meistens „mit Namen ein Schild", „namentlich" oder „nämlich" eingeleitet, in den lateinischen Urkunden lautet dies „*scutum videlicet*", oder „*videlicet clypeum*". Die Wappenbeschreibung endet mit den Worten „…alß dann solch adelich Wappen und Clainot in mitte dieses unseres kaiserlichen Briefes mit Farben eigentlicher ausgestrichen ist…", oder auf Lateinisch: „*…prout haec omnia artificiosa pictoris manus in diplomatis huius pagina vivis coloribus expressa accuratius conspicienda exhibet...*". Darauf folgt, die Concessio, die Bewilligung, wer und wie die Titel, das Wappen und/oder das Adelsprädikat führen darf. Daran schließen eine Strafandrohung (*Sanctio* oder Poenformel) und eine salvatorische Klausel über die Rechte Dritter am verliehenen Wappen an. Die Schadloshaltung an anderen Wappen war nötig, da damals ebenso wenig wie heute ein lückenloses Verzeichnis aller Wappen existierte, anhand dessen man etwaige doppelte Wappenbilder hätte feststellen können. Die Beglaubigungsformel mit Datierung, Unterschriften und Siegelankündigung schließen das Formular ab.

Diese Strafandrohung wurde tatsächlich in einigen Fällen im 18. Jahrhundert durch den Reichsfiskal verfolgt. Der Reichsfiskal war das Exekutivorgan des Reichshofrates, der Klagsfälle zu vollstrecken oder untersuchen sollte. In den meisten Fällen sah er im offenen Turnierhelm das Delikt einer Adelsanmaßung bei Personen an, die keine Adelsverleihung vorweisen konnten und leitete einen Prozess vor dem Reichshofrat ein. Wie bei den meisten Prozessakten des Reichshofrats blieb der Prozess liegen und es kam zu keinem Urteil.[8]

5. Wappenbeschreibung

Die Abfassung der Konzepte war die Aufgabe der Sekretäre der Reichskanzlei, die sich als Hilfskräfte der Konzipisten bedienen konnten. Außerdem konnten für die Konzepte, die nach gleichbleibenden Formeln abgefasst wurden auch besser qualifizierte Kanzleischreiber herangezogen werden. Die Taxordnung von 1658 erwähnt ausdrücklich, dass Kanzlisten Privilegien konzipieren.[9] Bei den Blasonierungen, wo freie Stilisierungen schwer möglich sind, folgen sie einer spröden

Kanzleisprache, deren umständliche Formulierungen überlang und weitschweifig werden und mit der Fachsprache der mittelalterlichen Herolde nichts mehr gemein hatten.[10] Diese aufgeblähten Beschreibungen halten bis in die Mitte des 19. Jahrhunderts an, bis sich eine heraldische Kunstsprache etablierte. Sie musste auch deshalb so überlang ausfallen, weil die Wappen immer aufwändiger gestaltet und mit vielen Details ausgestatten wurden. Durch die unterschiedlichen Wappenbilder gleicht keine Blasonierung der anderen. Auch werden volkssprachliche Begriffe verwendet, die von der heutigen Fachsprache stark abweichen, wie z.B. „zwerch geteilt", oder „uberzwerch geteilt", (= horizontal geteilt), „der Länge nach", oder „der Länge übersich geteilt" (= gespalten), „schrembs geteilt" (= schräg) etc. Lediglich die Reihenfolge der Beschreibung und die Beziehung der Figuren im Schild zueinander sind der im 19. Jahrhundert entwickelten Terminologie ähnlich. Die Reihenfolge lautet also: Schild und Schildfarbe, Teilung des Schildes, Schildfiguren, dann das Oberwappen mit Angaben zum Helm, Helmzier und Helmdecken. Auffällig sind auch die Farbbezeichnungen, die durchgehend von einer merkwürdigen Redundanz beherrscht werden. So werden bis auf die seltene Farbe Grün die anderen Farben immer mit Ergänzungen beschrieben, wie „rot- oder rubinfarben", „blau- oder lasurfarben", „schwarz, zobel- oder kohlfarben", „gold- oder gelbfarben", „silber- oder weißfarben". In den lateinischen Urkunden ist ähnliches festzustellen, indem nämlich für die einzelnen Farben mehrere gleichbedeutende Begriffe auftauchen: „*ruber, punic(e)us* oder coccineus" für Rot; „caeruleus, coelestinus, caelestinus, azurus, oder venetus" für Blau; „niger" für Schwarz; „aureus, flavus, croceus" für Gold; „candidus, argenteus, albus" für Silber.

Darüber hinaus ist auch noch eine andere terminologische Merkwürdigkeit festzuhalten, die sich nämlich auf die rechts-links-Problematik bezieht, durch die der Schild vom Schildträger aus gesehen wird, also gewissermaßen „von hinten". In den deutschen Blasonierungen vom 15. bis zum 18. Jahrhundert werden bei der Beschreibung des Schildes nicht die heute üblichen Worte rechts und links verwendet, sondern immer nur von „vorne" und „hinten", bzw. „hinten unten" und „vorne oben", oder vom „Vorderteil" oder „Hinterteil" des Schilds gesprochen.[11] In den lateinischen Texten werden dagegen durchwegs „*sinistra*" und „*dextra*" verwendet. Wenn hingegen die vom Helm herabhängenden Helmdecken auf Deutsch beschrieben werden, hängen sie rechts und links herab.

6. Reichskanzlei und Hofkanzlei bei Wappenprüfungen

Wenn man die Verwaltungsvorgänge der Reichskanzlei untersucht, muss man auch die Entwicklung der Hofkanzlei der Habsburger im Blick haben. Da die habsburgische Hofkanzlei zur Verwaltung ihrer Erbländer bis 1620 eine Abteilung der kaiserlichen Reichshofkanzlei war und überdies auch meistens ihren Sitz in der Wiener Hofburg hatte, ergaben sich nicht nur personelle, sondern auch inhaltliche Überschneidungen von selbst. Auch nach 1620 als die Hofkanzlei

autonom war, eigentlich bis Maria Theresia zur Mitte des 18. Jahrhunderts, sind selbständige Entwicklungen nicht feststellbar. Erst danach und besonders nach Ende des römisch-deutschen Reiches 1806 entwickeln sich eigenständigere österreichische Vorschriften und Gebräuche für die Gestaltung von Wappen.

Zur Zeit der Reichskanzlei Karls V. war auch die Hofkanzlei Ferdinands I. mit Nobilitationen und Wappenverleihungen befasst. Dies änderte sich nach der Abdankung Karls V. und der Erlassung einer neuen Kanzleiordnung 1559. Danach gab es nur noch eine Reichskanzlei, aber mit zwei Expeditionen, eine für das Reich, die andere für die österreichischen Erbländer. Bei Neuverleihungen und Besserungen von Wappen erwuchs der Kanzlei noch eine besondere Aufgabe. Es musste geprüft werden, ob das erbetene Wappen den allgemeinen Grundsätzen und auch der persönlichen Stellung des Werbers entsprach. Die Flut an Wappenverleihungen aller Art im 16. und 17. Jahrhunderte zog auch weitere Differenzierungen der einzelnen Wappen nach sich, damit die neugeschaffenen Adelsstufen auch für den Betrachter zu erkennen waren. Da schriftlich fixierte Regeln für die Gestaltung von Wappen fehlen, kann man die heraldischen Regeln nur im gegenseitigen Vergleich der Wappen in den Wappen- oder Adelsbriefen und in den Taxordnungen der Reichskanzlei erkennen.

7. Taxordnung 1545

In der erstmals schriftlich festgehaltenen Taxordnung von König Ferdinand I. von 1545 wird außer dem Grafen- und Freiherrnstand auch der einfache Adelsstand mit einem Turnierhelm (um 100 fl.) und ein Adelsstand mit einem gekrönten Stechhelm (um 60 fl.) verliehen. Dazu kamen noch die einfachen Wappenbriefe, die entweder mit dem Lehenartikel (um 32 fl.) oder ohne Lehenartikel (um 20 fl.) gewährt werden konnten. Weiters gab es Wappenbesserungen (meistens durch Quadrierung des Schildes), Wappenbestätigungen und Bestätigungen anderer Rechte.[12]

Zu den wichtigsten Quellen, die die Tätigkeit der Kanzleiheraldiker im 16. und 17. Jahrhundert in verdichteter Form optisch sichtbar machen, gehören die drei Bände der Reichskanzleiwappenbücher.[13] Wir ersehen darin, dass die von den Petenten in ihren Gesuchen eingereichten Wappenentwürfe ausgeschnitten und in diese Wappenbücher eingeklebt wurden. Manchmal sind die darauf gemachten Vermerke dadurch erhalten geblieben. Sie bilden eine wertvolle Quelle für die Kenntnis des Geschäftsganges und ebenso für heraldische Fragen. Die Reichskanzleiordnung von 1559 hat dem Taxator ausdrücklich die Führung eines Wappenbuches vorgeschrieben.

Mit dem Ende der Regierung Ferdinands I. (1564) und ganz besonders unter Maximilian II. (1564–1576) setzte eine gewaltige Steigerung der Zahl der Nobilitationen und vor allem der Wappenverleihungen mit all ihren Abstufungen ein. Aus der Zeit von 1563 bis 1568 ist auch eine Art Einreichprotokoll erhalten geblieben, in dem nicht nur die Eingaben der Parteien, behandelt wurden, sondern in dem sämtliche in der Reichskanzlei behandelten Adels- und Wappensachen verzeichnet sind.[14]

Abb. 1. Wappen Lucas Knöller, Krone auf Stechhelm gestrichen, ex 1565. Österreichisches Staatsarchiv, Abt. Allgemeines Verwaltungsarchiv (AVA), Adelsarchiv, Hofadelsakt Knöller Lucas 1565 und Reichskanzleiwappenbuch I, 186. Foto: Michael Göbl.

Abb. 2. Wappen Stefan und Hans Klodt, rot-weiß-roter Bindenschild gestrichen, ex 1559. AVA, Adelsarchiv, Hofadelsakt Klodt 1559 und Reichskanzleiwappenbuch I, 194. Foto: Michael Göbl.

Die Korrekturen an den eingereichten Wappenentwürfen fokussieren vor allem in zwei Richtungen: einerseits auf rangmäßigen Differenzierungen, andererseits auf die Umgestaltung bestimmter Figuren und Farben. Dabei handelt es sich zumeist um die Streichung der erbetenen Kronen auf dem Helm oder auf Figuren (vor allem bei Tieren), oder um die Umwandlung des gewünschten Turnierhelms in einen niederrangigen Stechhelm. Gelegentlich können aber auch Hinweise zu den Wappenfiguren selbst bemerkt werden: Adler und Löwe, der österreichische Rot-weiß-rote Bindenschild und die Teilung bzw. Quadrierung von Schilden.

Anhand von einigen Beispielen soll die Vorgangsweise anschaulich gemacht werden. Viele Wappen- oder Adelswerber zeichneten in ihren Gesuchen bereits einen Vorschlag, wie das erbetene Wappen auszusehen hätte. Als Beispiel kann der Fall des Reichskammer Gerichtsgefällen Einnehmers Lukas Knöller angeführt werden, dem 1565 ein Wappen genehmigt wurde. In seinem Entwurf hatte er eine Krone auf den Stechhelm gemalt, dies war vom Reichsvizekanzler jedoch nicht

genehmigt worden, da es sich nur um ein bürgerliches Wappen handelte – Helmkronen standen nur Adelswappen zu. Die Randbemerkung „bewilligt ausserhalb der Cron" ist mit „Zas.." am 11. Juli 1565 unterschrieben worden und zeigt die Beteiligung des Reichsvizekanzlers Johann Ulrich Zasius[15] am Vorgang der Wappenzensur (*Abb. 1*).[16]

Ein anderer Punkt, der immer wieder das Missfallen des Reichsvizekanzlers hervorrief, war die Verwendung des österreichischen rot-weiß-roten Bindenschilds bzw. überhaupt die Kombination der rot-weiß-roten Farben, gelegentlich auch die Verwendung der schwarz-goldenen Farbkombination. Auf der Wappenskizze der Brüder Stefan und Hans Klodt aus der Stadt Dinkelsbühl, die 1559 ein Wappen mit der Krone bewilligt bekamen, können wir aus der Hand des Reichsvizekanzlers Georg Selds[17] lesen: „Bewilligt, doch mit austhuung des österreichischen Schildes." Die Farben des Schildes und der Helmzier wurden deshalb von Rot auf Schwarz verändert (*Abb. 2*).[18]

Auch die Verwendung von Kronen bei Schildfiguren war einer Reglementierung unterworfen. Einem Wolf Peer war 1565 ein Wappen verliehen worden, der seinem klingenden Namen nach in seinem Entwurf ein redendes Wappen verwenden wollte. Sowohl im Schild als auch in der Helmzier wollte er dem Bären eine Krone aufsetzen, die jedoch nicht genehmigt wurde (*Abb. 3*).[19]

8. Rangkronen

Als Vorstufe für die späteren Rangkronen ist die Verwendung von Kronen auf Helmen oder auf Schildfiguren anzusehen, wie sie

Abb. 3. Wappen Wolf Peer, gekrönte Wappenfiguren gestrichen, ex 1565. AVA, Adelsarchiv, Hofadelsakt Peer 1568 und Reichskanzleiwappenbuch I, 149. Foto: Michael Göbl.

schon seit dem 15. Jahrhundert üblich war. Die Bekrönung von Figuren war immer mit einer gewissen Steigerung des Prestiges und daher des Ranges verbunden. Von der Form her war es die alte „königliche Krone", das heißt ein Goldreif aus dem drei oder fünf Blättern wachsen, nach oben offen. In den Wappenbeschreibungen wird sie sowohl als „goldene königliche Krone", als „regia corona aurea" oder „regium diadema aureum" bezeichnet. Daneben kommt aber auch noch die Bezeichnungen „antike" oder „heidnische Krone" vor. Die zuletzt bezeichnete Krone bezeichnet eine Zackenkrone mit einem

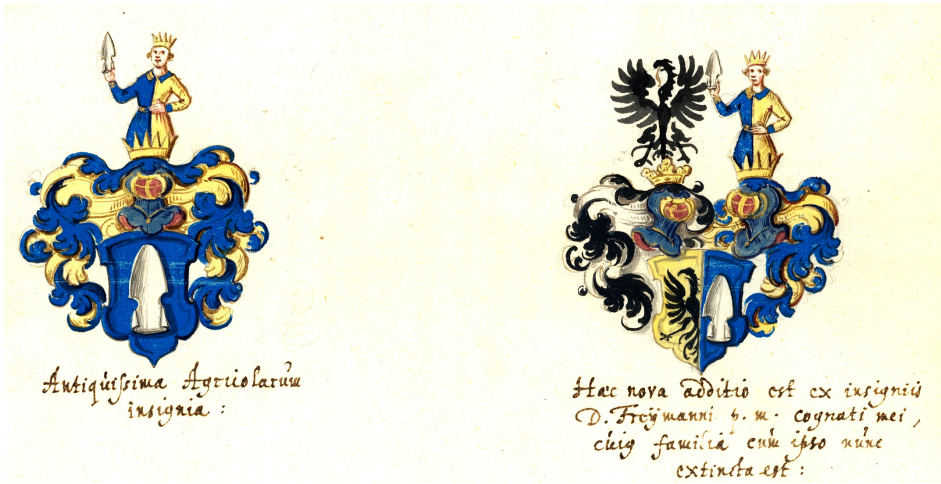

Fig. 4. Wappen Agricola, alt und neu, ex 1638, mit zwei verschiedenen Kronen. AVA, Adelsarchiv, Reichskanzleiakt Agricola, Christoph, Ritterstand 1638. Foto: Michael Göbl.

Goldreif aus dem sechs oder mehr sichtbare Zacken wachsen.[20]

Eine besonderes Beispiel stellt die Adelsverleihung an den brandenburgischen Gesandten Christoph Agricola aus 1638 dar, der um eine Adelsbestätigung gebeten hatte. Er verwendete nämlich in seinem Wappen zwei verschieden bekrönte Turnierhelme, „jeder mit einer goldfarben königlichen Cron", darunter „die vorter spizig und auf die heidnische Manier". Der Ausdruck „heidnische Krone" wird im 16. und 17. Jahrhundert oft für die Zackenkrone gebraucht[21] (*Abb. 4*).

Der Brauch eine Krone unmittelbar auf den Schild aufzusetzen und damit zu dem Symbol einer Rangkrone zu machen, taucht Anfang des 17. Jahrhunderts in den Adelsbriefen der Reichskanzlei auf. Besonders die Kanzlei der lateinischen Expedition war mit den Wünschen ausländischer Wappenerwerber konfrontiert, denen derartige Rangkronen schon länger bekannt waren und die sie nun auch in die Adelsbriefe des Reiches übernahm.[22] Bei gräflichen und freiherrlichen Wappen sind derartige Kronen als erste bekannt geworden. Eine exakte Definition, wie die Krone auszusehen hätte, wenn sie einen bestimmten Rang repräsentieren sollte, existierte jedoch noch nicht.

9. Die Reichskanzlei übernimmt die Rangkronen des Auslandes

Langsam beginnt sich die Reichskanzlei jener Auffassung anzuschließen, die im Ausland schon länger vorherrschte, dass nämlich die verliehenen Wappen ab dem Freiherrn aufwärts mit Rangkronen ausgestattet werden sollen. Ein frühes Beispiel zeigt das Wappen des Generalschatzmeisters des Bistums Lüttich Guillaume de Moreau aus 1703, wo in der Wappenbeschreibung ausdrücklich auf den fremdländischen Brauch hingewiesen wird, dass über dem Schild eine goldene Krone

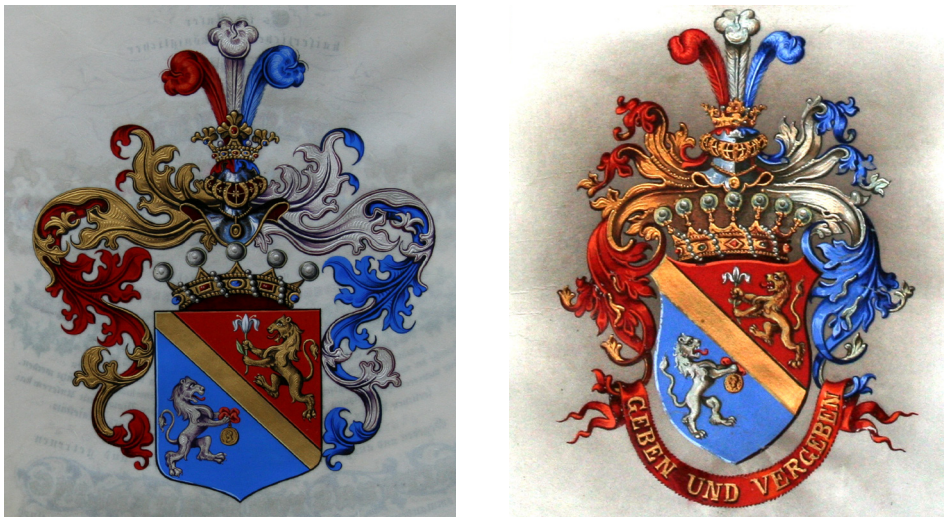

Fig. 5. Zwei Wappen Macchio, alte und neue Freiherrnkrone, ex 1861 und 1885. Österreichisches Staatsarchiv, AVA, Adelsarchiv, Macchio Florian, Freiherrnstand 1861, und Abt. Haus-, Hof- und Staatsarchiv (HHStA), NL Macchio, Placat. Foto: Michael Göbl.

liegt, die ähnlich der Krone sein soll, die die Freiherrn in dieser Region gebrauchen. Dieser einem Barette ähnliche Hut ist eine belgische Spezialität: Er besitzt einen Goldreifen, über dem sich eine rote Samthaube wölbt, welche durch Perlenschnüre zusammengezogen erscheint; er ist mit Edelsteinen besetzt und oben mit fünf Perlen verziert.

Die Ausgestaltung und Festlegung des Systems der Rangkronen, die unmittelbar auf den Schild gesetzt wurden, geschah erst im Laufe des 18. Jahrhunderts. In den österreichischen Ländern unterscheidet sich das System der Rangkronen etwas von der Entwicklung im deutschen Reich. In Österreich gab es nur für Freiherrn und Grafen Rangkronen, und zwar besaßen die Freiherrn fünf Perlen und die Grafen neun Perlen, die direkt, ohne Spitzen, auf dem Kronenreif aufsaßen.

Die Normen, welche sich dann allmählich entwickelten, sind dazu erst im Laufe des 19. Jahrhunderts durch amtliche Verordnung sanktioniert worden. So sind beispielsweise in der Habsburgermonarchie die Freiherrnkrone mit sieben Perlkugeln auf Stielen erst 1862[23] und die Rangkronen überhaupt erst 1877[24] verordnet worden.

Ein dazu passendes Beispiel ist das Wappen des Feldmarschallleutnants Florian Macchio, der 1861 in den Freiherrnstand erhoben wurde. Sein Wappen besaß noch die Freiherrnkrone alten Stils, mit fünf Perlen, die unmittelbar auf dem Kronreif aufsitzen, so wie sie im 18. Jahrhundert erfunden und bis ins 19. Jahrhundert üblich war. Als Macchio 1885 zusätzlich auch noch eine Devise seinem Wappen hinzu fügen wollte, musste neuerlich ein Diplom ausgefertigt werden. Inzwischen war jedoch die österreichische Freiherrnkrone den deutschen Verhältnissen angepasst worden

und die Rangkrone erhielt daher *sieben* Perlen[25] (*Abb. 5*).

10. Wappenzensor

Die Behandlung der Adels- und Wappengesuche, die sich in der zweiten Hälfte des 16. Jahrhundert in der Praxis der Reichskanzlei herausgebildet hatte, wurde auch während des 17. Jahrhundert fortgeführt. Allerdings scheinen sich die Vizekanzler nicht mehr um die Prüfung der Wappen interessiert zu haben. Das Wappenbuch war seit längerem in Verfall geraten und wurde nicht mehr evident geführt. Es überrascht daher kaum, dass der Erzkanzler des Reiches, der Erzbischof von Mainz Lothar Franz Schönborn, der nominelle Vorsteher der Reichskanzlei in Wien, mit Dekret vom 14. Juni 1707 einen eigenen Wappeninspektor für die Reichskanzlei anstellte.

Vor allem zwei Personengruppen waren es nun, die die Heraldik in ihrer täglichen Arbeit mit den neu zu verleihenden Wappen maßgebend beeinflussten, neue Ideen entwickelten und dem Zeitgeist anpassten, nämlich die Wappenzensoren und die Wappenmaler. Beide Personengruppen werden von Beginn des 18. Jahrhunderts an in den Akten nachweisbar, und haben als eigens geschaffene Institutionen bei den Reichs- und Hofkanzleien in den Archivalien über die Wappen- und Adelsverleihungen ihre Spuren hinterlassen.[26]

Von diesen Wappenzensoren wurden zunehmend Regeln formuliert und danach ausgeführt. Sie kontrollierten die von den neuen Adelserwerbern eingereichten Wappen nach ihrer rechtlichen und ästhetischen Brauchbarkeit, ob die Farbregeln eingehalten wurden, ob die Rangabzeichen richtig verwendet wurden oder ob nicht gegen sonstige Regeln verstoßen wurde. Sie machen auch gleich Vorschläge, wie die Wappen ihrer Meinung nach gestaltet sein sollen. Jedoch gibt es weiterhin keine weitreichenden schriftlichen Fixierungen, sondern immer nur Entscheidungen von Fall zu Fall und der Verweis auf früher bewilligte Wappen, die Juristen sprechen bei dieser Art der Rechtsfindung von „Case-Law".

Der erste offiziell ernannte Wappenzensor an der Reichskanzlei war Wilhelm O'Kelly von Aghrim 1707. O'Kelly entstammte einer irischen Adelsfamilie und wurde als Doktor der Philosophie und Lizentiat der Rechte an die unter Joseph I. neu gegründete Ritterakademie der niederösterreichischen Stände in Wien berufen. Vor seiner Berufung war er Wappenkönig der Provinz Hennegau. Über die Arbeit O'Kellys an der Reichshofkanzlei sind nur wenige Hinweise überliefert. Die Vermerke neben den inspizierten Wappen lauteten auf Latein stereotyp: „*conforme est arti et statui*", oder kurz: „*conforme est arti*". Als markantes Beispiel für seine Gutachtertätigkeit als Wappenzensor kann das dem sächsischen Regierungsrat Johann Andreas Kellner am 30. März 1713 verliehene Wappen benannt werden. Der Gesuchsteller wollte ursprünglich in der rechten Hälfte seines Schildes die Figur des heiligen Andreas aufnehmen, das ihm aber vom Wappenzensor abgelehnt wurde, mit der Bemerkung, dass die Heiligenfigur besser für Gemeinschaften oder Kollegien geeignet sei, als für Einzelpersonen. Zum Vergleich und als Anweisung für den Wappenmaler stellte er das

korrigierte Wappen neben den Wappenentwurf. Bei seiner Fixierung auf die Heiligenfigur, war ihm jedoch ein gravierender Fehler unterlaufen, nämlich der Verstoß gegen die heraldische Farbenregel, dass im Schild neben einer Farbe nur ein Metall, also Gold oder Silber, stehen dürfe.[27]

O'Kelly ist auch durch eine heraldische Innovation hervorgetreten. Er erfand eine neue Wappenfigur, mit der das weibliche Geschlecht der Wappenträgerin charakterisiert werden sollte. Durch die Verwendung einer Muschel mit einer Perle anstatt des über den Schild gestellten ritterlichen Helms, sollte die Wappenträgerin für den Betrachter offen sichtlicher gemacht werden. Er symbolisierte damit die Frau auf geradezu poetische Weise.[28] In mehreren Verleihungsakten konnte die Muschelfigur als Kennzeichen für Frauenwappen festgestellt werden. Als Beispiel wird die Adelsverleihung Kaiser Karl VI. an Katharina Seyfert aus 1740 mit dem Prädikat „von Seyferhold" gezeigt. Sie war die Braut des Ludwig Ernst von Bibra, eines Mitglieds der fränkischen Reichsritterschaft, der sie trotz ihrer bürgerlichen Herkunft geehelicht hatte. Nun bat er nachträglich für seine Gemahlin um ein kaiserliches Adelsdiplom und eine Namensänderung auf „von Seyferhold", damit auch die mit ihr gezeugte Nachkommenschaft bereits eine adelige Mutter besäße. Das Wappen zeigt eine Göppelschnittteilung, rechts in Silber ein grüner Lorbeerkranz, links in Gold ein aus dem linken Rand wachsender natürlicher Biber, unten in Blau ein sechseckiger goldener Stern. Über dem Schild eine weiße Muschel mit einer Perle, aus der ein natürliche Biber wächst, mit einem grünen Lorbeerkranz in der rechten Pranke.[29] Nachhaltig war die neue Wappenfigur jedenfalls nicht, da alle Nachfolger von O'Kelly in ihrer heraldischer Performanz keine Unterscheidung mehr zwischen weiblichen und männlichen Wappenträgern machten (*Abb. 6*).

Abb. 6. Wappen Seyfert von Seyferhold, mit Muschel und Perle, ex 1740. AVA, Adelsstand für Katharina Seyfert, datiert vom 8. Feb. 1740. Foto: Michael Göbl.

11. Adels- und Wappenregulierungen im 18. Jahrhundert

Das Jahr 1620, als die österreichische Hofkanzlei von der Reichskanzlei abgespalten wurde, kann als Beginn des Auseinan-

dertriftens vom Heiligem Römischen Reich und den österreichischen Erbländern angesehen werden. Kaiser Ferdinand II. wollte ein von den Reichsständen unabhängiges Verwaltungsorgan für seine Erbländer schaffen. Zwar zählte die Frage der Standeserhöhungen nicht zu den politisch bedeutsamsten, rief aber wegen ihrer finanziellen Auswirkungen doch empfindliche Reaktionen hervor. Die Doppelstellung des Kaisers, der auch in seinen von der österreichischen Hofkanzlei ausgehenden Privilegien den Kaisertitel führen konnte, bot die Gelegenheit für die Hofkanzlei auf dem Gebiete der Standeserhöhungen gegenüber der Reichskanzlei in scharfe Konkurrenz zu treten. Der Hofkanzlei gelang es nämlich im Laufe der Zeit die erbländischen Untertanen zu zwingen ihre Diplome nur bei ihr ausfertigen zu lassen und damit ihre eigenen Taxeinnahmen zu steigern. Weder die Bestimmungen der Wahlkapitulationen oder Kanzleiverträge vermochten den Niedergang der Geschäfte und damit auch der Einnahmen der Reichskanzlei Einhalt zu gebieten. Als dann im 18. Jahrhundert auch andere deutsche Landesfürsten Standeserhöhungen im eigenen Namen zu verleihen begannen, bedeutete das für die Reichskanzlei weitere finanzielle Einbußen und den Verlust ihrer umfassenden Kompetenz in heraldischen Fragen.

Im 18. Jahrhundert, unter Maria Theresia, wurden schließlich die Adelsrangstufen und das der jeweiligen Stufe entsprechende Wappen einer weiteren Regulierung unterzogen und in der k. k. Hofkanzlei schriftlich festgehalten: Somit waren für den einfachen Adel, ein Schild mit einem, zwei, drei oder vier Feldern, und einem gekrönten Helm mit offenem Visier, also ein sogenannter Turnier- oder Spangenhelm, erlaubt. Dem Ritterstand sollten zwei Helme zustehen und der Freiherrnstand sollte auf Wunsch drei Helme, und zusätzlich eine Rangkrone mit fünf Perlen zwischen Helm und Schild erhalten. Den Grafenstand sollte eine Rangkrone mit neun Perlen kennzeichnen. Fürstenhut und Fürstenmantel blieben ausschließlich für die fürstlichen Wappen reserviert. Herzschilde waren nur für die Freiherrn, Grafen und Fürsten zugelassen, die nach den jeweiligen Landesverfassungen ein Erbamt zu führen berechtigt waren, Panier und Fahnen wurden nur auf ausdrücklichen Antrag als besondere Auszeichnungen erteilt.[30]

12. Adler und Löwe

Wir haben gezeigt, dass die Reichsvizekanzler schon im 16. Jahrhundert die Verwendung von Adler und Löwe beanstandet hatten. Diese Eingriffe werden von den Wappenzensoren auch im 18. Jahrhunderts weitergeführt. War es früher der einfache Adler, der Missfallen erregte, so gerät jetzt zunehmend der Doppeladler in den Fokus der Ablehnung. Der gekrönte Doppeladler war im Verlauf der vergangenen Jahrhunderte zu einem Synonym für den Kaiser und das Reich geworden. Viele Wappenerwerber wollten daher ihre Nähe und Ergebenheit zum Kaiserhaus durch Aufnahme des Doppeladlers in ihre Wappen zum Ausdruck bringen. Gerade dieses massenhafte Auftreten der doppelköpfigen Adlerfiguren veranlasste die zuständigen Hofstellen Verwendungsbeschränkungen aufzustellen, und zwar

dahingehend, dass „keine ganzen Adler mehr passiert werden". In der Folge hätten also nur noch aus den Schildteilungen, oder aus dem Schildrand wachsende halbe und ungekrönte Adler bewilligt werden dürfen. Auch für die Stellung des Vogels im Wappen selbst, beispielsweise im gevierten Schild, wurde eine Regelung erlassen. Anlassfall war die Adelsverleihung an den Rittmeister Johann Pöltz aus 1759, wo es im Diplomkonzept heißt: „Der Adler ist das vorderste Ehrenzeichen, so einem Nobilitandi ertheilet werden mag, gehört also in die erste und letzte Feldung".[31] Damit sollte sichergestellt sein, dass Adler nur in dem qualitativ höherbewerteten 1. Platz, also im rechten oberen Feld eines gevierten Schildes verwendet werden (*Abb. 7*). Trotzdem wurden auch weiterhin immer wieder doppelköpfige Adler verliehen, jedoch mussten diese dann extra begründet werden, oder wurden eben aus besonderer Gnade vom Kaiser selbst bewilligt.

Abb. 7. Wappen Johann Pöltz, korrigierter Wappenentwurf ex 1759. AVA, Wappen Pöltz 1759 in Salbuch 176 fol. 723. Foto: Michael Göbl.

Das zweite heraldische Lieblingstier ist der Löwe, der sowohl von Zivilisten als auch von Militärpersonen mit Vorliebe als Wappenfigur herangezogen wurde. Mit den Eigenschaften, die dem Löwen zugeschrieben wurden, konnte man sich selbst auch in Beziehung setzen, sich identifizieren und ihn stellvertretend für sich als eigene Wappenfigur erscheinen lasse. Seitens der Kanzleiheraldik war jedoch die Darstellungsweise von Löwen einem Reglement unterzogen worden. Man unterschied zwischen militärischen und zivilen Wappenerwerbern in der Weise, dass ausschließlich Militärpersonen im eigenen Schild den Löwen, oder auch ein anderes Tier mit Waffen ausrüsten durften. Personen die nie mit einer Waffe gekämpft hatten, mussten auch in ihren heraldischen Wünschen auf jegliche Art von Waffen verzichten.

Ein zweiter Aspekt des Löwen, der seine Bedeutung als Symboltier außer Acht lässt, gewann immer mehr die Oberhand, nämlich der politische Aspekt. Der gekrönte silberne Löwe in rotem Feld, mit einem über sich geworfenem Doppelschwanz ist das Wappentier des Königreiches Böhmen. Die Bewohner dieses Kronlandes suchten deshalb mit Vorliebe dieses Wappentier aus, nicht nur um die Verbundenheit mit ihrem Heimatland, sondern auch um ihre eigene geographische Herkunft zu signalisieren (Landespatriotismus). Dieses ist im 19. Jahrhundert auch unter dem sich entwickelnden Blickwinkel des Nationalismus zu sehen. Da jedoch eine exakte Abbildung eines Territo-

rialwappens in Privatwappen unzulässig war – wie es ja auch schon im 16. Jahrhundert die Reichsvizekanzler festgestellt hatten – musste dem Löwen bevor er als Wappenfigur erscheinen durfte, entweder die Krone oder der Doppelschwanz entfernt werden; auch eine wachsende Löwenfigur war zulässig.

13. Heraldische Norm 1824

Wie schon gezeigt wurde, existierte im Bereich der Heraldik keine schriftlich festgelegte Vorschriftensammlung, nach der die Beamten hätten vorgehen können, vieles basierte auf Traditionen, vieles war durch ausländische Faktoren beeinflusst, vieles hing von der eigenen heraldischen Bildung und vom künstlerischen Verständnis ab und war auch den sich immer wieder ändernden Zeit- und Modeerscheinungen unterworfen. Dazu kam, dass gerade an der Wende vom 18. zum 19. Jahrhundert durch die vielen territorialen Zuwächse, wie Galizien, Bukowina, Dalmatien und Venetien, die dort üblichen landesspezifischen heraldischen Traditionen nach Wien strömten und angepasst werden mussten.

Mit der ständigen Ausweitung der Adelsverleihungen waren die Zensoren in der Adelsbehörde mit einer Vielzahl von Wünschen konfrontiert, die auch ihre eigenen Entscheidungen beeinflussten. Im Jahr 1824 wurde schließlich eine inoffizielle „heraldische Norm“ aufgestellt, die ganz bestimmte immer wiederkehrende Figurenwünsche regulieren und eine gleichförmige Heraldik für die gesamte Monarchie sicherstellen sollte.

Der pensionierte k. k. Kapitänleutnant Severius Rapaich hatte nach 35-jähriger Dienstzeit auf dem Gebiet der Militärgrenze, wo er auch des Öfteren mit dem „Degen in der Linie“ gekämpft hatte und verwundet worden war, einen systemmäßigen Anspruch auf den Adelsstand erworben. Seinen Wappenentwurf aus 1824, den er selbst gestaltet hatte, wurde von der Hofkanzlei einer Begutachtung unterzogen, da sie nicht den in Österreich vorherrschenden Traditionen entsprach.[32]

Der Wappenzensor nahm nun diesen Entwurf zum Anlass, eine sogenannte „Heraldische Norm“ auszuarbeiten, nach der zukünftig bei der Gestaltung von neuen Wappen vorzugehen wäre.[33] Die Farbe des Löwen, der offenbar mit natürlicher Farbe, also gelb, gezeichnet worden war, konnte unmöglich auf einem weißen Feld erscheinen, weil dies ein Verstoß gegen die Farbenregel bedeutet hätte, daher wurde er in eine rote Farbe abgeändert. Diese Farbenregel war an sich nichts neues, denn sie wurde schon seit dem Mittelalter praktiziert, das eigentlich Neue an der Regel bezog sich jedoch auf die Straußenfedern in der Helmzier, eine Figur, die bei den Adelserwerbern immer beliebter wurden. Der unmittelbare Anlass war ihre Zahl fünf und die Farbgebung. Zukünftig sollten nämlich bei einem einfachen Adel nicht mehr als drei Straußenfedern auf eine Helmkrone gesetzt werden dürfen und die Farbe der Federn sollte sich nach den Farben im Schild richten. Wenn jedoch nur zwei Farben im Schild vorkommen, so müssen zwei von derselben Farbe genommen werden. Ehren-, Ordens- und Verdienstmedaillen dürfen aufgrund ihres persönlichen Charakters in keinem Wappen

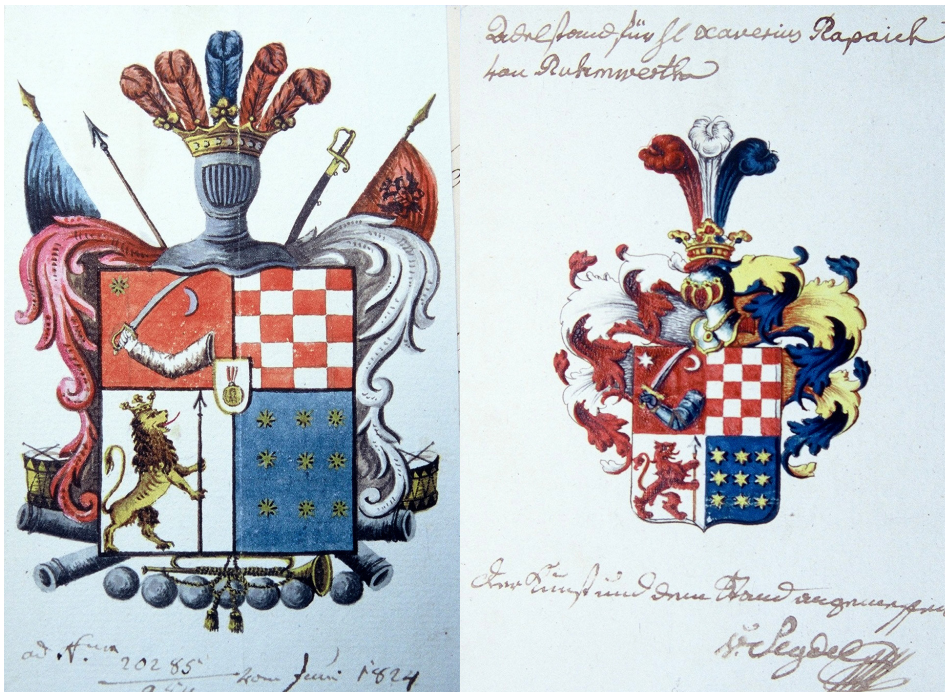

Abb. 8. Zwei Wappen Severius Rapaich, Entwurf und genehmigtes Wappen ex 1824. AVA, Adelsstand für Severius Rapaich von Ruhmwerth, dat. v. 12. Sept. 1824. Foto: Michael Göbl.

erscheinen. Ebenso wenig seien militärische Trophäen, in oder um den Wappenschild herum gelegt, zu bewilligen (*Abb. 8*).

14. Schlussfolgerungen

Betrachtet man die Entwicklung der Reichs- und Hofkanzleien und ihre heraldischen Einflussnahmen auf das Wappenwesen, so muss man feststellen, dass sie eng mit der Entwicklung des Adelswesens zusammenhängen. Die Differenzierung des Adels in immer mehr Rangstufen forderte auch die Heraldik heraus, spezifische Merkmale in ihren Formen- und Figurenkanon neu einfließen zu lassen, um schon bei Betrachtung des Wappens die entsprechende Stufe in der Adelshierarchie erkennbar zu machen. Dazu kam, dass sich die Wünsche der neuen Wappenträger immer weiter vom eigentlichen Wesen der Heraldik entfernten. Die Diskussionen kreisten ständig um die Frage, inwieweit die Vorstellungen der Wappenerwerber überhaupt in symbolisch-heraldische Figuren umgesetzt werden können. Die ausführenden Beamten in den Hofkanzleien waren zunehmend herausgefordert zwischen den Wünschen der neuen Wappenträger und den eigenen Vorschriften zu vermitteln, wobei die Diskussionen der Entwürfe meistens unter

drei Gesichtspunkten geführt wurden:

1. Staatsrechtliche Gesichtspunkte: Doppeladler, Kronländerwappen, doppelschwänziger Löwe, gekrönte Wappenfiguren, Landesfarben, Waffen für zivile Wappenträger, etc.
2. Standesrechtliche Gesichtspunkte: Rangkronen, gekrönte oder ungekrönte Figuren, Form und Anzahl der Helme, Devisen, Schildhalter, Wappenzelte etc.
3. Heraldische Motive: perspektivische Landschaften, szenische Darstellungen, Ordenszeichen, Farbzusammenstellungen, militärische Trophäen, etc.

Noten

1 Michael Göbl, Heraldische Normen im Heiligen Römischen Reich und in der Habsburgermonarchie. In: Herold-Jahrbuch NF 19. Band (Berlin 2014), S. 53–85. Die gegenwärtige Studie stellt eine Erweiterung des seinerzeit beim Herold in Berlin gehaltenen und gedruckten Vortrags dar.

2 Petr Mata: Die Standeserhebungen im Heiligen Römischen Reich und in den österreichischen Erblanden. In: Michael Hochedlinger, Petr Mata, Thomas Winkelbauer (Hg.): Verwaltungsgeschichte der Habsburgermonarchie in der Frühen Neuzeit. Band 1 (Wien 2019), S. 119–139. Gustav Pfeifer: Wappenbriefe. In: Höfe und Residenzen im spätmittelalterlichen Reich. Hof und Schrift. Hgg. Werner Paravicini (Residenzforschung, Bd. 15,3), (Ostfildern 2007), S. 645–763. https://adw-goe.de/digitale-bibliothek/hoefe-und-residenzen-im-spaetmittelalterlichen-reich/id/rf15_III-614/?tx_find_find%5BunderlyingQuery%5D%5Bposition%5D=669 (abgerufen 20.5.2023)

3 Mata, a.a.O., S. 324.

4 Lothar Groß, Die Geschichte der Deutschen Reichshofkanzlei von 1559 bis 1806 (Wien 1933), S. 221f.

5 Pfeifer, a.a.O, S. 656.

6 Die Kreiseinteilung des Hl. Röm. Reiches wurde im Zuge der Reichsreform der Jahre 1500, 1507 und 1512 auf zehn Reichskreise erweitert und umfasste: Bayern, Schwaben, Oberrhein, Franken, Westfalen, Niedersachsen, Österreich, Burgund, Kurrhein und Obersachsen. Die Länder der Böhmischen Krone: Böhmen, Mähren, Schlesien und Lausitz lagen außerhalb der Kreise. Vgl. Reichskreise, In: Handwörterbuch zur Deutschen Rechtsgeschichte, Sp. 681–687.

7 Ausführlich über die Ausstellung von Wappenbriefen siehe Jürgen Arndt: Die Entwicklung der Wappenbriefe von 1350 bis 1806 unter besonderer Berücksichtigung der Palatinatswappenbriefe. In: Der Herold. Vierteljahrsschrift für Heraldik, Genealogie und verwandte Wissenschaften. Band 7, Berlin 1970, S. 161–193 und Hans Jäger-Sunstenau: Über die Wappenverleihungen der Deutschen Kaiser 1328 bis 1806. In: Wappen, Stammbaum und kein Ende (Wien-Köln-Graz 1986), S. 20–28; eine neuere Studie siehe bei Gustav Pfeifer: Wappenbriefe, Fußnote 1 mit neuerer Literatur.

8 Gernot P. Obersteiner, Das Reichshoffiskalat. In: Verwaltungsgeschichte der Habsburgermonarchie 1/1, a.a.O., S. 320ff.

9 Groß, Reichskanzlei, a.a.O., S. 195–197.

10 Georg Scheibelreiter: Wappen im Mittelalter. (Darmstadt 2014), S. 104–106.

11 Dieser Umstand ist übrigens ein eindeutiges Erkennungsmerkmal für die vielen Fälschungen der „Wappenfabriken" des 19. Jahrhunderts. Damals wurden angebliche Abschriften von älteren Wappenbriefen angefertigt, um sie als ältere Verleihungen auszugeben. Da der tatsächliche Text nicht bekannt war, haben die „Wappenfabrikanten" unwissentlich rechts--links hineingeschrieben in der irrigen Meinung, dass es im 16. Jahrhundert oder früher auch so gewesen wäre.

12 Österreichisches Staatarchiv, Abt. Haus-, Hof- und Staatsarchiv (hinkünftig: HHStA), Mainzer Erzkanzlerarchiv, Reichskanzlei und Taxamt 1; gedruckt bei Thomas Fellner/Heinrich Kretschmayr (Bearbeiter): Die österreichische Zentralverwaltung I. Von Ma-

ximilian I. bis zur Vereinigung der österreichischen und böhmischen Hofkanzlei (1749) 2. Aktenstücke 1491–1681 (Veröffentlichungen der Kommission für neuere Geschichte Österreichs 6), Wien 1907, S. 97.

13 Die Reichskanzleiwappenbücher I, II und III befinden sich im Österreichischen Staatsarchiv, Abt. Allgemeines Verwaltungsarchiv (hinkünftig nur: AVA) in der Bestandsgruppe Adelsarchiv. Das Reichskanzleiwappenbuch I mit 335 Seiten, ca. 1100 Wappen (1554–Anfang 17. Jh.) und das Reichskanzleiwappenbuch II mit 382 Seiten, ebenfalls mit ca. 1100 Wappen (ca.1540–1688). Das Reichskanzleiwappenbuch III, 443 Wappen, (1540–1560) ist nur als Kopie erhalten, das Original gilt als im Zweiten Weltkrieg verschollen.

14 HHStA, Reichskanzlei, Taxbücher 1.

15 Johann Ulrich Zasius (1521–1570), war ab 1564 Mitglied des Geheimen Rates und kurze Zeit später Reichsvizekanzler.

16 AVA, Adelsarchiv, Hofadelsakt Knöller Lucas 1565 und Reichskanzleiwappenbuch I, 186.

17 Georg Sigmund Seld (1516–1565), war 1550–1563 Reichsvizekanzler.

18 AVA, Adelsarchiv, Hofadelsakt Klodt 1559 und Reichskanzleiwappenbuch I, 194.

19 AVA, Adelsarchiv, Hofadelsakt Peer 1568 und Reichskanzleiwappenbuch I, 149.

20 Den Ursprung dieser Krone vermutet man in vorchristlichen Kulturen, etwa in dem Attribut der Gloriole, die bei Abbildungen des Gottes Helios oder Sol oft sieben Strahlen bzw. Zacken aufwies. Die zwölf Zacken späterer Kronen sollen der Überlieferung nach die zwölf Monate eines Jahres symbolisieren. Einige römische Kaiser ließen sich ab dem 3. Jahrhundert n. Chr. mit einer Zackenkrone als Attribut des Reichsgottes Sol invictus abbilden. Vgl. https://www.heraldik-wiki.de/wiki/Zackenkrone (abgerufen 22.9.2023).

21 AVA, Adelsarchiv, Reichskanzleiakt Agricola, Christoph, Ritterstand 1638.

22 Oskar Freiherr von Mitis: Zur Geschichte der Rangkronen. In: Jahrbuch Adler, Bd. 17. 1907. S. 158–169.

23 Erlass des k.k. Ministeriums des Innern Z. 24.244 ex 1862.

24 Erlass des k.k. Ministerium des Innern Z 54/A, vom 5. März 1877.

25 AVA, Adelsarchiv, Macchio Florian, Freiherrnstand 1861 und HHStA, NL Macchio, Placat.

26 Hanns Jäger-Sunstenau: Die Wappenzensoren in den Hofkanzleien in Wien 1707–1918. In: Genealogica et Heraldica, Report of the 16th International Congress of Genealogica and Heraldic Scienes, Helsinki 1984, S. 354–364, hier S. 356; William O'Kelly war von 1707–1751 Wappeninspektor.

27 AVA, Adelsarchiv, Reichsadelsakt Kellner 1713.

28 Michael Göbl, Die Frau und das Wappen im Hl. Römischen Reich und in der Habsburger Monarchie. In: Heraldry and Woman. Proceedings of the XIVth International Colloqium on Heraldry in St. Petersburg 2005 (Saint Petersburg 2022), S. 38–49, hier besonders S. 42–44.

29 AVA, Adelsstand für Katharina Seyfert, datiert vom 8. Feb. 1740.

30 AVA, k.k. Hofkanzlei, IV.D.1, Diplomformulare, 30, Zl. 142 ex Novembris 1752.

31 AVA, Wappen Pöltz 1759 in Salbuch 176 fol. 723.

32 AVA, Adelsstand für Severius Rapaich von Ruhmwerth, dat. v. 12. Sept. 1824.

33 AVA, Adelsgeneralia 35, Zl. 14542/1824 (Heraldische Norm).

Elizabeth Roads speaking at the opening ceremony. Photo: Selma Rosenfeld.

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Inspecting the Coat of Arms Censors in Württemberg 1806–1918

By Clemens L. Herzog, a.i.h.

Abstract: In the Holy Roman Empire, the period from the 16th to the 19th century is broadly considered to be a time of decay in heraldry. Assuming a coat of arms had become a means for climbing the social ladder (patent nobility) and, consequently, issuing letters patents a lucrative and thus flourishing business – at the expense of heraldic as well as genealogical standards. The research focuses on the little-explored office of the "Wappenzensor" (coat of arms censor), as these public officials were supposed to be regulating heraldic practices. Using the kingdom of Württemberg as a case study, it explores the academic backgrounds, duties, and impact of the four officeholders and their role in the supervision of heraldry the 19th and early 20th century.

Résumé : Dans le Saint Empire romain germanique, la période allant du 16e au 19e siècle est généralement considérée comme une période de décadence de l'héraldique. La possession d'armoiries était devenue un moyen de gravir l'échelle sociale (noblesse patente) et, par conséquent, la délivrance de lettres patentes était devenue une activité lucrative et donc florissante – au détriment des normes héraldiques et généalogiques. Cet article se concentre sur la fonction peu étudiée de « Wappenzensor » (censeur d'armoiries), ces fonctionnaires qui étaient censés réglementer les pratiques héraldiques. En utilisant le royaume du Wurtemberg comme étude de cas, il explore le parcours académique, les fonctions et l'impact des quatre titulaires de cette fonction et leur rôle dans la supervision de l'héraldique au 19e et au début du 20e siècle.

1. Introduction

The period from the 16th to the 19th century is generally regarded as a period of heraldic decline in the Holy Roman Empire. At that time, the official supposed to supervise heraldry was the "coat of arms censor" or "coat of arms inspector". At imperial level, and in a number of sovereign states, the heralds of old had been replaced by clerks and scribes as heraldic authority. Yet, in light of repeated criticism, it appears, either their efforts had been largely in vain, or they were not up for the task. In 1792, Johann Christoph Gatterer, for instance, laments the dilettantism among the coat of arms censors:

> *One does not take singers and comedians to hunts, and not hunters to operas and comedies, why does one take —* [1] *to declare (an-*

> *geben) new coats of arms? It is easy to see in our times that the heralds at the courts are no longer what they used to be. But aren't there still some people, who are perfectly versed in heraldry, whom one could consult in such an interesting matter, which countries and lords use not only for the state, or for amusement, but for the assertion of the most important rights? […] It would certainly be worth the effort […] to have coats of arms drawn up by such intelligent persons who are perfectly capable of the task.*[2]

In the same vein, Gustav Seyler criticized that the regulation of princely coat of arms mostly laid in the hands of court officials, "to whom scientific heraldry was an unknown country".[3] More recently, Hanns Jäger-Sunstenau evaluated the censors and their actions more nuanced and criticized them mainly for their deficient artistry:

> *Undoubtedly, the coats of arms censors, with their attention to the preservation of rigid regulations, were primarily followers of the 'chancery heraldry' that later rightly fell into disrepute, and which severely neglected the artistic aspects that make coats of arms so attractive. It is no accident that modern textbooks of heraldry refer to the 17th to 19th century as the period of decline.*[4]

Nevertheless, by the 19th century the now emerging academization of the humanities and the professionalization of the historical auxiliary sciences promised to bring a new dawn to heraldry. A well-founded historical education supposedly rooted out the aforementioned dilettantisms and the accused shortcomings of the coat of arms censors, thus, marking a turning point.

The kingdom of Württemberg, which is one of the above-mentioned sovereign states, saw the introduction of its very own coat of arms censor in 1806. It, thereby, appears to be a good and manageable example to put the thesis to the test, whether its coat of arms censors, proved to be more capable than their general reputation.

Unfortunately, there has not been much research on the subject to date. In recent years, there are only a few scientifically serious accounts on the subject, among which are the ones by Hanns Jäger-Sunstenau and by Walter Goldinger focusing mainly on the court chancellery in Vienna.[5] Otherwise, the coat of arms censor has only been touched upon in the context of the history of the heraldic authorities (*Heroldsämter*),[6] mostly dealing with nobility issues rather than heraldry. This leaves the interested reader with online resources which inform about the office of the coat of arms censor in a concise manner but without the certainty that this information is actually accurate.[7] As a consequence, it seems only apt to begin the inspection of the coat of arms censors in Württemberg by approaching their historical roots first and clarifying what their actual tasks and duties were before focusing on how well they performed them.

2. The Road to Württemberg's First Wappen-Herold

Ever since the Middle Ages, the German-Roman Emperor had been the so-called 'fount of honor'. He held the authority to

bestow elevations of rank and to grant or rather to provide legal protection for coats of arms. Ever since the 14th century letters patents had been issued for that purpose. This prerogative was exclusively exercised either by the Emperor himself (or rather by his chancery), or, from the 16th century onward, by appointed imperial counts palatine (*comites palatini Caesarei*).[8] This office included civil academics and lawyers, but also universities. The number of counts palatine who held this position between 1355 and 1806 is not exactly known. It is estimated that in the roughly 550 years around 3,000 to 4,000 of these so-called "minor" *comites palatini Caesarei* held office. They were operating until 1806 when the Holy Roman Empire of the German Nation ceased to exist. Thanks to their activities, letters patents for coats of arms had become a mass product in the Holy Roman Empire by the 18th century. With the fall of the old realm in 1806 this monopoly had come to an end and the production of letters patents shifted from the realm to the now newly emerged sovereign states, among which was the kingdom of Württemberg.

The Napoleonic era had brought about significant changes to the once small duchy in the German southwest. Between 1798 and 1810 Württemberg's population and territory doubled. In 1803, as a consequence of the Imperial Deputation, Württemberg gained the electoral dignity. When it joined the Confederation of the Rhine in 1806 – although not entirely voluntarily – it became a kingdom by grace of Napoleon Bonaparte. As a result, Württemberg had gained full sovereignty from the old realm and was now able to bestow its own elevations of rank and issue letters patents for coats of arms. For the purpose of conducting this business in an orderly fashion, king Friedrich I did not lose much time and introduced a new office in the late summer of 1806. On September 14, he decreed that "the installation of the professor and librarian Lebret as coat of arms inspector or herald" had been "graciously approved". The new officeholder was to be supported by "the fief registrar (Lehens-Registrator) Lohbauer as coat of arms painter".[9]

As we learn from the Württemberg state handbook 1807/1808 the now so-called "coat of arms herald" (*Wappen-Herold*) was placed within the department of foreign affairs, one of the six departments of the new royal administration.[10] The department of foreign affairs was in charge of the diplomatic service and external communication, dealt with matters of ceremony, regulated the elevations of rank and took care of the affairs of the Royal House, the postal and notary services. It also oversaw the Royal House and State Archives and the commission of censorship.[11] Assuming from its title that the "Wappen-*Herold*" was to play a similar role as the heralds of the Middle Ages, thereby serving the king as diplomats, masters of ceremony and coat of arms experts, this appeared to be quite an appropriate match. This, however, was more façade than reality.

3. At the Censorship – Tasks and Duties

Briefly after his introduction, the "herald" was reduced to be the "coat of arms censor" (*Wappencensor*, sometimes also *Wappeninspec-*

Fig. 1. Coat of arms for the Abele family. Source: Hauptstaatsarchiv Stuttgart E 40/33 Bü 185

Fig. 2. Coat of arms for the Abele family (another family than in *fig. 1* but with the same name). Source: Hauptstaatsarchiv Stuttgart E 40 Bü 183.

tor). Even though there is no clear-cut job description of the office, it is possible to piece together his main fields of activity. Apart from his role as a creator of coats of arms for the royal state (see section 5 below), he served as a heraldic expert and as an advisor for editors of rolls of arms.[12] Estimating from the extensive material in the archives, the cooperation with the famous heraldist and publisher Konrad Tyroff from Nuremberg for the *Wappenbuch des gesamten Adels im Königreich* Württemberg (4 vols, 1844–1850) must have been quite intense.[13]

The coat of arms censor's main field of activity, however, lay in the *censura*, i.e., the censorship, supervision and criticism of coats of arms. More to the point, the coat of arms censor served foremost as an examiner and blazonist in the context of nobilitations, thereby modifying or correcting faulty coats of arms. Eugen Schneider, Württemberg's last coat of arms censor, confirms this in his memoires, thereby hinting at the difficulties that this job brought about:

> *As a secondary office, I had to examine the coats of arms that were granted by the king at elevations of rank. I cannot conceal that I sometimes looked into much nonsense (Schwachheit) during the discussions with the applicants.*[14]

Prior to these discussions, the petitioners would have to hand in their paperwork, typically attaching a painted copy of their family coat of arms for inspection. After the introduction of the register of nobility in 1818 this had become standard procedure: "Each family shall submit the evidence necessary to establish its noble status together with their family coat of arms." [15]

While the chancery appeared to check the

Fig. 3. Coat of arms for the von Anspach family. Source: Hauptstaatsarchiv Stuttgart E 40/33 Bü 192.

validity of the claims, the coat of arms censor solely bothered himself with examining the submitted coat of arms artistically and heraldically. If a coat of arms was sound, he noted *vidit* or *gesehen* next to the drawing to indicate his approval (see *fig. 1*). He then produced the blazon on a separate piece of paper. This blazon was later inserted into the text of the letters patent.

If, however, the handed-in coat of arms failed to comply with heraldic standards, if, for instance, a crest was missing, the coat of arms censor would object and add certain parts, which he indicated in the blazon text. The submitted drawing would receive a note that read "to be changed according to the blazon" (*nach der Beschreibung zu ändern*) so the painter knew what to paint. In the case of the von Abele coat of arms, (see *fig. 2*) an eagle issuant Sable was added as a crest.

Once all calligraphically hand-written text passages had been assembled and the coat of arms painted, the document was bound together in a yellow silk-lined velvet folder (measuring 38 x 25 cm) with yellow silk ribbons. Finally, the folder would receive the royal wax seal in a wooden capsule with mother-of-pearl inlays and the signature of the king and the issuing state and cabinet minister. The comparison between the coat of arms template included in the file (see *fig. 3*) and the finished letters patent shows that the drawing had most truthfully been copied. In 2020, the said letters patent was auctioned in Munich for 950€.[16]

Back in the day, acquiring such letters patent for oneself was even pricier. The Regulation for Tax and Chancery Fees Regarding Elevations of Rank, dating to March 2, 1807[17] can be read as a "pricelist" in that respect (see *tab. 1*).

The said regulation also suggests that the legal chancery was in charge of checking the right to bear a certain coat of arms as they received a fee for elevations of rank but not for augmentations of arms. It would be surprising, however, if the coat of arms censor would not verify the right to bear coat of arms. The last coat of arms censor's memoires leave no doubt that he made

> *Peculiar experiences […] namely with coat of arms-addicted Americans; one of them asked to be shown the coat of arms of Duke Eberhard the Bearded (1445–1496), which he wanted to bear because his ancestors were called Eberhard, i.e., descended from the duke.*[18]

He recalls another instance when a person

		fl. (guilder)	**x** (kreutzer)
from a Count	Tax	2666	40
	Chancellor	400	
	Secretary	200	
	Legal chancery	266	40
	Total	**3533**	**20**
from a Baron	Tax	1333	20
	Chancellor	200	
	Secretary	100	
	Legal chancery	133	20
	Total	**1766**	**40**
from a Nobleman	Tax	300	
	Chancellor	60	
	Secretary	30	
	Legal chancery	66	
	Total	**456**	**0**
Pro melioratione armorum without adding a new helmet	Tax	66	40
	Chancellor	12	
	Secretary	6	
	Total	**84**	**40**

Tab. 1. "Pricelist" according to the Regulation for Tax and Chancery Fees Regarding Elevations of Rank, dating to March 2, 1807.

named Ellwanger petitioned to bear the coat of arms of the city of Ellwangen.[19] Apparently, from the viewpoint of the petitioner, his ancestor must have founded the city. Therefore, he would be entitled to bear the coat of arms.[20] The examples show that despite not being the one legally deciding who was to bear which arms, the coat of arms censor certainly knew which arms belonged to whom.

In addition to the fees, the side costs for the actual production of the letters patent had to be paid. The files regularly included invoices and receipts from the suppliers and producers among which are the coat of arms censors (see *tab. 2* and *3*). Per blazon the censor received 13 fl. 45 x, and 24 marks after the currency reform in the 1870s. These rather meagre emoluments were never seriously challenged and remained the same throughout the entire time span of the researched period.[21]

	fl.	**x**
Coat of arms censor	13	45
Painter	20	
Book binder	10	30
	36	
Seal capsule	25	
Cords	16	48
Parchment	8	
Total	**94**	**39**

Tab. 2. List of expenses, 1813. Source: Bezahlte und noch schuldige Taxen für Standeserhöhungen, E 40/33 Bü 463, Hauptstaatsarchiv Stuttgart, 32.

	M (Mark)	Pf (Pfennig)
Coat of arms censor	24	–
Painter	33	–
Book binder & Parchment	64	–
Cords & tassels	6	–
Seal capsule	42	50
Total	**169**	**50**

Tab. 3. List of expenses, 1899. Source: von Kapff, E 40/33 Bü 271, Hauptstaatsarchiv Stuttgart, 45.

Overall, it can be noted that a nobilitation cost a small fortune. To become a count, it cost 3533 fl. 20 x plus another 94 fl. and 39 x of expenses for the document, totaling at 3627 fl. and 59 x. How pricy nobilitations were becomes apparent once these figures are put into context: The annual salary of a simple clerk (*Kanzlist*) within the state's administration in Württemberg in 1822 ranged between 600 fl. (3rd class) and 800 fl. (1st class).[22] The annual salary (without additional benefits) of a privy councillor (*Geheimrat*) who was at the top of the payroll within Württemberg's administration in 1822 ranged from 3.000 fl. (2nd class) to 4.714 fl. (1st class).[23]

4. The (Sideline) Officeholders

One can already estimate from the emoluments paid, that the office holders were hardly able to sustain life on the blazoning of coat of arms alone. Based on Maximilian Gritzner's works, Christoph Franke counts that between 1806 and 1908 a total of 108 elevations of rank had been granted by the kings of Württemberg.[24] Judging from the lists in the archives, the number seems grossly understated. According to the latter, between 1806 and 1825 a total of 84 nobilitations and elevations of rank had taken place (1 prince (*Fürst*), 17 counts (*Graf*), 15 barons (*Freiherr*), 51 nobilitations (*untitulierter Adel*).[25] For the period of 19 years that roughly equals 4 ½ of such acts per year. These figures, admittedly, do not include the issuing of simple letters patents for the granting or confirmation of coat of arms (*Wappenbriefe*), of which there is no reliable number available to date. Still, to achieve a salary comparable to a clerk, they roughly would have to issue one such document per week and that over decades – not a likely scenario and for the coat of arms censor not a solid basis to build an existence on.

As indicated by Eugen Schneider's memoire (cf. above), being a coat of arms censor rather was a sideline job or secondary office and the officeholders were called upon when necessary; in modern terms, he worked "project-oriented" and had no regular income in this capacity. In 1906 state secretary von Soden describes the office of coat of arms censor to the king as a "position, with which, apart from a fee to be paid for the design of the description of the coat of arms in the case of elevations and bestowals of coats of arms, no official emoluments are connected".[26] Instead, all of the four officeholders held high positions in academic and archival institutions.

The first coat of arms censor who served from 1806 until his death in 1829 was Karl Friedrich Lebret. He was the son of Professor Johann Friedrich Lebret, the chancellor of Tübingen University. Like his father he studied theology and history and he rose to the position of head librarian of the Ducal Public

Library in Stuttgart. He also held a professorship for Numismatics and Heraldry at the Hohe Karlsschule in Stuttgart and oversaw the state's coin and medal collection. Later he became the supervisor for the royal art collection.

After a two-year vacancy Lebret was succeeded by Christoph Friedrich Stälin who held the office of coat of arms censor from 1831 to 1873. By profession an archivist and a historian he became the director of the Royal Public Library in Stuttgart. During his tenure as coat of arms censor, he regularly struggled with the regulations of the archives, which unlike today were not easily accessible let alone open to the public. He frequently complained about this inaccessibility.[27]

Christoph Friedrich Stälin was succeeded as coat of arms censor by his son Paul Friedrich. In this capacity the younger Stälin served from 1873 to 1906 when he resigned due to his poor health. As a studied archivist and historian, he followed his father in his footsteps and eventually became the director of the Royal Württemberg Secret House and the State Archives in Stuttgart.

In 1906, Eugen Schneider was the first head of the Royal Archives in Stuttgart who held that post without a law degree. He served as coat of arms censor from 1906 until the end of the monarchy in 1918. "Schneider was held in particularly high esteem by the cabinet and the King. He regularly attended the King's gentlemen's evenings in illustrious company and also was "the only representative of the Department of Foreign Affairs [...] on the cabinet's invitation lists [...]".[28] After 1918 he was still called upon about heraldic matters (see section 5). It was his merit that Württemberg's archives were eventually opened to the public. "Schneider is the one who […] marks the transition of the archives from a treasure trove of documents guarded by lawyers to a research site for state history for Württemberg."[29]

Against the background of these impressive curricula, we can hardly find a lack of academic education in the relevant disciplines as they were all learned men of high acclaim. As far as theoretical and practical knowledge as well as heraldic education is concerned, the Württemberg coat of arms censors appear to have been well-equipped for their tasks.

5. The Censors at Their Limits

Despite their evident education and capabilities, one cannot fail to recognize that at times still rather peculiar designs were produced – sometimes even with the active support of the coat of arms censors. Now, one could argue, restrictively, that beauty lies in the eye of the beholder. This commonplace certainly holds true for heraldry – at least to a certain degree. Eugen Schneider once said himself that he "had never found two heraldists who were of the same opinion".[30] Nevertheless, differing tastes in aesthetics still cannot fully justify why certain coat of arms had been endorsed by the coat of arms censors as two examples from 1816 and 1921/22 illustrate.

In 1816 Wilhelm I. succeeded Friedrich I. as king of Württemberg. Unlike his father, who had had a lot of love for pomp and ostentation, Wilhelm was seen as a reformer. In the fall of the following year, still under

Fig. 4. Coat of arms of Württemberg 1817. Source: Hauptstaatsarchiv Stuttgart E 9 Bü 5.

the impression of the Congress of Vienna (1814–1815), he had the so-called "simplified" state coat of arms drawn up by coat of arms censor Lebret and architect and designer Nikolaus Thouret. The goal was to produce a simpler state coat of arms that on the one hand avoided elements that (with respect to the loss of Mömpelgard[31]) went against the accords of the Congress of Vienna and, on the other hand, aptly reflected upon the external status of the state as well as its internal structure.[32] After some rather bold designs, eventually a draft was presented to the king (*fig. 4*). It derived from the inescutcheon of the previous coat of arms, i.e., of the royal coat of arms from 1806. It shows dexter the coat of arms of the house of Württemberg (Or three deer antlers per pale Sable) and sinister the former coat of arms of the duchy of Swabia (Or three lions passant Sable, langued Gules). The shield was – quite peculiarly – an oval shaped shield with a golden oak leaf bordure.

With the enlargement of its territory up until 1803 the house of Württemberg had gained large parts of the formed duchy of Swabia. By adding the three lions to their coat of arms they stylized themselves to be the successors of the illustrious house of Hohenstaufen, being the German kings and Roman-German emperors of the Middle Ages. Quite fittingly, Eberhard Gönner had called it an "Anspruchswappen"[33], a coat of arms expressing entitlement.

The drawing already included a detail that led to some heraldic confusion: although no official blazon picked it up, the dexter paw of each of the three lions was painted Gules. It was supposed to memorialize the untimely demise of prince Conradin, the last of the house of Hohenstaufen. Out of grieve the lions supposedly had been painted Sable and only the right "bloody" paws remained Gules.[34] Although still visible in historical painting and sites, e.g. portrait of Friedrich I., the coat of arms inside the theater at castle Ludwigsburg or ornaments inside castle Lichtenstein, this heraldic rarity had been abandoned by the end of the 19th century.

The shield itself is supported by a crowned lion Sable and a stag Or. The helmet is crowned with a royal crown. Underneath the latter the mantling in shape resembling two ostrich feathers lurks out on either side. A closer look reveals that somebody – supposedly the king himself – however, had crossed out the mantling with a pencil, thereby rendering Württemberg's coat of arms grossly incomplete. Now, not only the mantling was missing, but so was the actual crest. The used

crown is a rank crown. The correct crest would have been a horn Gules, the mouthpiece stuck with three feathers Azure, Argent, Sable. Despite all these shortcomings the coat of arms was eventually adopted as the new state coat of arms. The drawing by Nikolaus Thouret – contentwise identical to *fig. 4* – is the most commonly seen, even today in numerous garden plots throughout Württemberg.

Although Lebret already expected a revision himself,[35] it was not until the 1890s that the state coat of arms of 1817 provoked criticism from contemporary heraldists who demanded corrections. Max Bach, for instance, commented on the coat of arms in 1894 as follows:

> *If one takes a plate of German imperial and state coats of arms in hand, the Württemberg state coat of arms always presents itself heraldically and stylistically as the most unfavorable.*[36]

In the same vein, Hugo Ströhl provided Württemberg's coat of arms with biting criticism:.

> *The state coat of arms of 1817, an excellent example to show how not to draw up a coat of arms, would be in urgent need of a redesign, as it does not the least bit meet historical, nor heraldic requirements.*[37]

And Friedrich von Gaisberg-Schöckingen discarded the state coat of arms wholesale, as its "form has never quite satisfied, because it is a completely unusual one"[38] before he goes on offering a counterproposal. In essence, they quite rightfully objected to the shape of the shield, the unfortunate arrangement of two metal fields side by side, and the missing mantling and crest.

In response to the continued criticism coat of arms censor Paul Friedrich Stälin felt compelled to write an expert opinion for the king. In a 91-page manifesto he partly defended the coat of arms against its critics, but also had to concede certain inconsistencies.[39] All attempts to revise the coat of arms, however, were eventually discarded for reasons unknown. The simplified state coat of arms of 1817 kept its function until the end of the monarchy in 1918. One could estimate that both Lebret and Stälin knew what they were doing and what they were confronted with. Nevertheless, it appears they did not have the ultimate authority to come out on top. Apparently, they shared the fate of any person having to deliver commissioned work: the customer is king – literally.

When Emperor Wilhelm II abdicated on November 11, 1918, the monarchy had come to an end in Germany. 21 days after his namesake in Prussia, king Wilhelm II of Württemberg followed suit and abdicated on November 30, 1918. Thereby he gave way to democracy and the formation of the People's State of Württemberg (*Volksstaat Württemberg*). Naturally, the new state needed new insignia in the form of a coat of arms. The constitution even demanded it formally. This, however, got the newly elected democrats over a barrel. It seemed impossible for a republic to keep the old coat of arms including their royal insignia. At the same time, the public at home and abroad had become accustomed to the three deer antlers as the symbol of Württemberg over the centuries. It appeared to be equally unthinkable to cre-

ate a new coat of arms leaving them out altogether.

A solution was not easily found. As a matter of fact, it took the involved parties until the spring of 1921 to come up with a parliamentary bill proposing a combination of the much-adorned Württemberg antlers and the colors of the state flag, i.e., divided across black and red.[40] By then, roughly 50 different drafts had been produced. Without a first reading in parliament, the discussion was delegated to the Constitutional Law Committee which met twice in the fall of the same year, on October 8 and on November 3, 1921.[41] This committee consisted of delegates from all major parties plus a number of experts on the matter. Among the latter were the former coat of arms censor Eugen Schneider as well as Professor Gustav Pazaurek, head of the arts and crafts department at the state museum of trade in Stuttgart.

After much controversy and after all pros and cons had been heard, in the best parliamentary manner the committee put the matter to a vote. Quite peculiarly the members were asked to cast their vote regarding the individual components and the arrangement of the coat of arms: Firstly, should the house coat of arms of Württemberg be included? – 7 ayes, 3 abstentions. Secondly, should the colors of the state flag (black and red) be used? – 7 ayes, 2 abstentions. Thirdly, should the shield be quartered? – 7 ayes, 1 nay, 1 abstention. Lastly, should two stags support the shield? – 6 ayes, 3 nays.[42] The result was no less peculiar (*fig. 5*).

The resulting coat of arms showed the coat of arms of the house of Württemberg in a quartered shield in the first and fourth

Fig. 5. Coat of arms of Württemberg 1922. Source: Hauptstaatsarchiv Stuttgart E 30 Bü 32.

field. The state flag appeared twice in the second and third field, respectively. For lack of a civil pendant to a royal crown, a so-called "Bürgerkrone" was invented and put on top of the shield which was supported by two golden stags. After the second and third reading on December 2 and 20, 1921 parliament passed the law and accepted the design as the new state coat of arms – against the will of the old king. Shortly before his death, Wilhelm II had sent word that "the coat of arms of the house should not be used in any form in the coat of arms of the people's state".[43] Even though the parliamentarians were generally eager to comply with the king's wishes, the law came into effect on February 20, 1922.

The given example draws an ambivalent picture of the (former) coat of arms censor Eugen Schneider in this historical situation. On the one hand it speaks for his high reputation and general acceptance as a heraldic authority that he was part of the committee.

On the other hand, it is rather strange that according to the committee report he objected at no point against the unheraldic arrangement of the second and third field, which bluntly violated the heraldic colour rule. That such a rule existed was known to the committee members as the discussion about having deer antlers Sable in a field Gules revealed. One might also criticize that with a quartered shield containing the house coat of arms in the first and fourth and the state's flag pattern in the second and third field, they not only had created a rather stereotypical coat of arms, but one that looked like an impalement which in German heraldry is often realized by quartering. Yet, Schneider appeared to be content with the general manner of the proceedings and the vote. A reason could be that he didn't have any substantial leverage to stop it.

6. Conclusion

In May of 1808 count Armand-Charles-Daniel de Firmas-Périés had proposed the establishment of a heraldic statute.[44] Judging from the manuscript in which the count outlined his "projet d'un réglement héraldique" it is a pity that it was shut down by king Friedrich I only four weeks later partly calling it "very inappropriate".[45] In 39 articles Firmas-Périés describes his vision of a heraldic tribunal, occupied with the highest ranks of the court, the captain of the guard and no less than three heralds overseeing and regulating Württemberg's heraldry and especially the use of symbols of rank and merit. His failure is regrettable, as such an institution might have established the authority that the office of coat of arms censor lacked throughout (and even beyond) his existence.

Despite the fact that all coat of arms censors had a solid academic education and held reputable positions as head librarians and archivists their power as a heraldic authority never extended beyond the strictly academic field. If unusual heraldic designs came to pass it appears that for the most part, there was not much they could have legally done about it. In contrast to the heraldic tribunal proposed by Firmas-Périés they were a heraldic institution without any legally binding power. As a consequence, the criticism initially uttered by Gatterer appears to be ill-placed when speaking of Württemberg's coat of arms censors. For the most part they fulfilled their duties to the best of their abilities and served as capable professionals despite their meagre pay as holders of a sideline office. The criticism by Jäger-Sunstenau styling the coat of arms censors as unimaginative bureaucrats appears to be more to the point and is understandable and justified – but only if we assign the censors the role of heraldic artists which they neither were, nor supposed to be.

Notes

1 The author left this blank in order not to write for example "amateurs" or "idiots" or worse.

2 Johann Christoph Gatterer, *Abriß der Heraldik: mit 8 Kupfertafeln* (Göttingen Dieterich, 1792), p. 113.
General note: For the purpose of a better reading experience all quotes have been translated by the author. If a certain wording appeared crucial for understanding and contextualization, it has been added in parentheses.

3 *Geschichte der Heraldik (Wappenwesen, Wappenkunst, Wappenwissenschaft),* Reprogr. Nachdr.

d. Ausg. Nürnberg 1885–1889 (1890) (Neustadt an der Aisch: Bauer & Raspe, 1970), p. 711, fn 2.

4 Hanns Jäger-Sunstenau, 'Die Wappenzensoren in den Hofkanzleien in Wien 1707–1918', in The Finnish National Committee for Genealogy and Heraldry, ed., *Genealogica et Heraldica: Report of the 16th International Congress of Genealogical and Heraldic Sciences in Helsinki 16–21 August 1984* (Helsinki, 1984), pp. 354–364.

5 *Ibid.*; Walter Goldinger, 'Das ehemalige Adelsarchiv', *Mitteilungen des Österreichischen Staatsarchivs*, 13 (1960), pp. 486–502.

6 *Wappen. Handbuch der Heraldik,* 20., aktualisierte und neugestaltete Auflage (Köln, Weimar, Wien: Böhlau Verlag, 2017).

7 Heraldik-Wiki, 'Wappenzensor', available at https://www.heraldik-wiki.de/wiki/Wappenzensor (last visited 23 October 2023).

8 Cf. *Wappen*, pp. 163–166.

9 Ernennung des Wappenzensors und der Wappenmaler in Württemberg 1806–1919, E 40/33 Bü 6, Hauptstaatsarchiv Stuttgart.

10 Cf. *Königlich-Württembergisches Staatshandbuch auf die Jahre 1807 und 1808* (Stuttgart: Steinkopf, 1808), p. 116.

11 Cf. Alfred Dehlinger, *Württembergs Staatswesen in seiner geschichtlichen Entwicklung bis heute. vol. 1* (Stuttgart: Kohlhammer, 1951), pp. 253–258.

12 Cf. Herausgabe heraldischer Werke, Weitergabe von Informationen über den Adel an die Herausgabe adeliger Wappenbücher, E 40/33 Bü 12, Hauptstaatsarchiv Stuttgart.

13 Herausgabe des Wappenbuchs des Württembergischen Adels durch Tyroff in Nürnberg unter Mitarbeit des Geheimen Kanzlisten und Wappenmalers Liezenmayer sowie der Wappenzensoren von Lebret und Bibliotheksprofessor Stälin, E 146 Bü 211, Hauptstaatsarchiv Stuttgart.

14 Eugen von Schneider, *Archivar und Historiker zwischen Königreich und Republik: Blätter aus meinem Leben* (Stuttgart: Kohlhammer, 2011), pp. 24 and 33.

15 'Bekanntmachung wegen Errichtung einer Adels-Matrikel', *Königlich-Württembergisches Staats- und Regierungsblatt* (1818), pp. 42–44.

16 Hermann Historica, *Lot 1424: Adelsdiplom von König Friedrich I. von Württemberg für Dorothee Gabriele von Anspach, datiert 1814* available at https://www.hermann-historica.de/de/auctions/lot/id/140335 (last visited 09 October 2023).

17 Regulativ der Tax und Canzlei-Gebühr, E40/33 Bü 461, Hauptstaatsarchiv Stuttgart.

18 Schneider. *Archivar*, p. 29.

19 *Ibid.*

20 Cf. *ibid.*

21 Hauptstaatsarchiv Stuttgart, Ernennung, 48.

22 Hermann Zeller, 'Zur Statistik und Geschichte des öffentlichen Dienstes in Württemberg', *FinanzArchiv / Public Finance Analysis*, 6, 2 (1889), pp. 1–73.

23 *Ibid.*, p. 47.

24 Christoph Franke, 'Alter Adel – neuer Adel. Großherzoglich-hessische Nobilitierungen im 19. Jahrhundert', in Eckart Conze, Alexander Jendorff and Heide Wunder, eds., *Adel in Hessen: Herrschaft, Selbstverständnis und Lebensführung vom 15. bis ins 20. Jahrhundert*, vol. 70: Veröffentlichungen der Historischen Kommission für Hessen (Marburg: Historische Kommission für Hessen, 2010), pp. 359–371.

25 Standeserhöhungen: Verzeichnisse, Beilagen usw., E 40/33 Bü 462, Hauptstaatsarchiv Stuttgart, 1.

26 Ministerium der auswärtigen Angelegenheiten: Stellen und Personal 1885–1918, E 14 Bü 701.

27 Cf. Hauptstaatsarchiv Stuttgart, Ernennung.

28 Bernhard Theil, 'Eugen Schneider', in Maria Magdalena Rückert, ed., *Württembergische Biographien: Unter Einbeziehung hohenzollerischer Persönlichkeiten.* 3 vols. (Stuttgart, 2006–2017), pp. 256–259.

29 Hermann Ehmer, 'Eugen Schneider (1854–1937). Vom Theologen zum Archivar', *Blätter für württembergische Kirchengeschichte*, 112, 2012, pp. 229–240.

30 'Bericht des Staatsrechtlichen Ausschusses zu dem Entwurf eines Gesetzes, betr. Farben und Wappen von Württemberg (Beil. 356). Beilage 600, *Verhandlungen des Landtags des freien Volksstaates Württemberg auf dem 1. ordentlichen Landtag in den Jahren 1920/1922: Beilagenband 3 (Beil. 518–891)* (Stuttgart: [s.n.], 1922), pp. 83–88.

31 Note: set within today's Bourgogne-Franche-

Comté region in France the feudal county of Mömpelgard/Montbélard had belonged to Württemberg until 1793. Displaying the county's coat of arms (Gules two barbels outward Or) in the state's coat of arms could have been interpreted as claim to a lost territory.

32 1817. Neues königliches Wappen betrf., E 9 Bü 5, HStA Stuttgart.

33 Eberhard Gönner, 'Das Wappen des Herzogtums Schwaben und des Schwäbischen Kreises', *ZWLG*, 26 (1967), pp. 18–45.

34 Cf. *ibid.*, p. 39.

35 Cf. Friedrich von Gaisberg-Schöckingen, 'Ein Vorschlag für ein neues württembergisches Wappen', *WVLG NF*, 13 (1904), pp. 215–229.

36 Max Bach, 'Zur Reform des königlich württembergischen Wappens', *Der Deutsche Herold. Zeitschrift für Wappen-, Siegel- und Familienkunde*, 25, 9 (1894), pp. 109–111.

37 Hugo Gerard Ströhl, *Deutsche Wappenrolle* (Stuttgart, 1897), p. 76.

38 Gaisberg-Schöckingen, 'Vorschlag', p. 215.

39 Regierungsantritt von König Wilhelm I., Einführung eines neuen Staatswappens, E55 Bü 393, HStA Stuttgart.

40 Cf. 'Entwurf eines Gesetzes, betreffend Farben und Wappen von Württemberg', *Verhandlungen des Landtags des freien Volksstaates Württemberg auf dem 1. ordentlichen Landtag in den Jahren 1920/1922: Beilagenband 2 (Beil. 1–517)* (Stuttgart: [s.n.], 1921), pp. 521–523.

41 Cf. 'Bericht des Staatsrechtlichen Ausschusses zu dem Entwurf eines Gesetzes, betr. Farben und Wappen von Württemberg (Beil. 356). Beilage 600', *Verhandlungen des Landtags des freien Volksstaates Württemberg auf dem 1. ordentlichen Landtag in den Jahren 1920/1922: Beilagenband 3 (Beil. 518–891)* (Stuttgart: [s.n.], 1922), pp. 83–88.

42 Cf. *ibid.*, p. 87.

43 *Ibid.*, p. 84.

44 Entwurf eines heraldischen Statuts und Anfertigung eines adeligen Wappenbuchs beim Kabinettsministerium, E 40/33 Bü 464, Hauptstaatsarchiv Stuttgart, p. 1.

45 *Ibid.*,p. 3.

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Sir Thomas Innes of Learney, Lord Lyon King of Arms (1945–1969): A 'Ventilation'[1]

By Huw Sherrard

Abstract: Recent judicial opinion in Scotland's highest civil court, the Court of Session, presents Sir Thomas Innes of Learney, Lord Lyon King of Arms from 1945 to 1969, as an unparalleled authority on the law of arms in Scotland. However, this appears to be incongruous with the recent development of this area of law. How authoritatively should Learney be treated, therefore?

This paper aims to contribute to the limited amount of existing literature critically analysing Learney's reign. It does so by presenting three new approaches to examining the "Noblesse", a foundational concept in Learney's interpretation of the law of arms. Examining a separate legal innovation of his, redeemable conveyances of subsisting rights to arms, suggests that it is to some extent incompatible with the Noblesse. While these conveyances relate to the use of arms by natural and legal persons, the implication of the Noblesse that legal persons may be "noble" in the United Kingdom at all appears unfounded. Finally, the paper explores Learney's interpretation of precedence, closely linked to his beliefs regarding the Noblesse, and concludes that precedent set by the Court of Session undermines it.

The conclusions these analyses present suggest that the Noblesse is, overall, a flawed concept. Due to the importance of the Noblesse to Learney's reign as Lord Lyon King of Arms, it appears prudent that Learney's authoritativeness should be treated with a greater degree of nuance.

Résumé : Un récent jugement du plus haut tribunal civil d'Écosse, la « Court of Session », présente Sir Thomas Innes de Learney, Lord Lyon de 1945 à 1969, comme une autorité indépassable en matière de droit des armes en Écosse. Cela semble toutefois incongru avec l'évolution récente de ce domaine du droit. Avec quelle autorité faut-il donc traiter Learney ?

Cet article vise à apporter son humble contribution à la quantité limitée de littérature existante sur le sujet en analysant de manière critique le charge de Learney. Pour ce faire, il présente trois nouvelles approches pour examiner la « noblesse », ce concept fondamental dans l'interprétation du droit des armes par Learney. L'examen d'une de ses innovations juridiques distinctes, la cession à titre onéreux de droits d'armes subsistants, suggère qu'elle est dans une certaine mesure incompatible avec la noblesse. Bien que cette cession concerne l'utilisation d'armes par des personnes physiques et morales, l'implication de la noblesse selon laquelle les personnes morales peuvent être « nobles » au Royaume-Uni semble infondée. Enfin, l'article explore l'interprétation de la préséance donnée par Learney, étroitement liée à ses convictions concernant la noblesse, et conclut que le précédent établi par la Court of Session le sape.

Les conclusions présentées par ces analyses suggèrent que la noblesse est, dans l'ensemble, un concept erroné. En raison de son importance pour la charge de Learney en tant que Lord Lyon, il semble prudent que l'autorité de ce dernier soit traitée de manière plus nuancée.

1. Introduction

There is an apparent incongruity in Scots law as it relates to heraldry. If one's only point of reference for Sir Thomas Innes of Learney, Lord Lyon King of Arms from 1945 to 1969,[2] was his recent treatment by Scotland's highest civil court, the Court of Session, one might assume he is a definitive, uncontroversial authority. In the Inner House in 2009, in *Kerr v Advocate General*, their Lordships referred to the "learned author" Learney's writing as "highly authoritative", and two separate works of his are cited in their judgment.[3] In the Outer House in 2019, in *Hamilton of Rockhall v Lord Lyon King of Arms*, Lady Wolffe described Learney as the "undoubted modern authority on the history of the Office of Lord Lyon".[4]

However, if instead one is familiar with the development of Scotland's law of arms since 1969, a more nuanced position might seem prudent. Numerous innovations and developments within the law introduced by Sir Thomas Innes of Learney (hereafter "Learney") have been disavowed and departed from by successive Lords Lyon King of Arms (hereafter "Lords Lyon"). Even the authoritativeness of Learney's historical scholarship has been called into question. Two years prior to judgment being handed down in *Hamilton of Rockhall v Lord Lyon King of Arms*, K. Stevenson expressed significant doubts on the accuracy of Learney's historical scholarship, among others'.[5] The disparity between his supposed authoritativeness, and his apparent lack thereof, shows the relevance and importance of critically examining Learney's reign. This paper seeks to contribute to the "ventilation" of Learney's legacy within Scottish heraldry and Scots law, a phrase introduced by Gaylor in one of the few other existing pieces of scholarship critically examining Learney.[6]

2. The Noblesse

From 1936 to 1941 the case of *Maclean of Ardgour v Maclean* became somewhat of a cause célèbre, being covered extensively by court reporters and the wider press.[7] The long-running dispute between both parties related to competing claims to the undifferenced arms of the Macleans of Ardgour, and therefore status as chief, or chieftain, of that clan.[8] Commentators appear to have been drawn to the image of Catriona Louise Maclean of Ardgour, one of the parties to the dispute, a young woman. However, less notice appears to have been given to Learney – counsel for Maclean of Ardgour. To one interested in Scots law as it relates to heraldry, this attention is perhaps misplaced, because the case allowed Learney to put a belief of his to the test before the Court of Session.

This belief was that armorial bearings marked their bearer as possessing a form of nobility. He described this status variably as

membership of the "Noblesse", or possession of *minor nobilitas* or gentility – the status of a gentleman.[9] Arms, a form of incorporeal property in Scots law, were in Learney's eyes the outward indicator of this status, and one restricted to those within it. As he believed that arms were the visible indicator of membership of this Noblesse, and as Lords Lyon hold the sole ability to grant arms under Scots law, Learney concluded that Lords Lyon *nobilitated* grantees. This 'nobilitation' was supposedly just as much a nobilitation as more conventional examples: such as the creation of a peerage, or a baronetcy.[10] While occasionally Learney presents this nobilitating power as merely recognising grantees' existing status within this Noblesse, the majority of his writing – and relevant judicial opinions and rulings – presents Lords Lyon as *conferring* this status themselves through the granting of arms.[11] *Maclean of Ardgour v Maclean* was not the first time Learney had expounded upon this belief, as it had formed a component of much his – extensive – legal writing since at least 1929, 16 years prior to his accession to the office of Lord Lyon.[12] The results of Learney's presentation of his thesis before the Court of Session were not entirely positive, however. In his judgment, Lord Mackay stated that he found Learney's argument "no doubt powerful", but he was "unwilling … to affirm that a grant of arms necessarily imports nobility in the grantee."[13]

Lord Mackay's lack of confidence in the Noblesse appears to have done little to shake Learney's faith in it. In 1944 and 1945, while Learney was Albany Herald, the early versions of the perhaps most well-known indication of the Noblesse's ascendancy – the

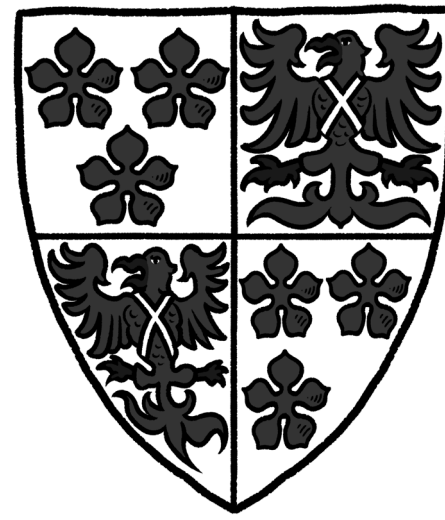

Fig. 1. Arms of the Borthwick of Borthwick. Image by Lucas Hofmann.

"Noblesse clause" – appeared. The two 'prototype' clauses, the first for a John Henry Stuart Borthwick of Borthwick and the second for an Andrew Wauchope of Niddrie, have a number of commonalities. The interlocutor for Borthwick of Borthwick, the holder of a Scottish feudal barony, declares that the relevant arms (*fig. 1*) are "*tesserae nobilitatis*" (tokens of nobility) and that the grantee is to be "received, and ranks" as a noble in Europe – with reference to the German concept of the Uradel.[14] The relevant extract from the Public Register of All Arms and Bearings in Scotland (hereafter 'the Public Register'), the register in which all legitimate armorial bearings in Scotland must be entered, uses similar language.[15] The interlocutor for Andrew Wauchope of Niddrie in early 1945 similarly references nobility elsewhere in

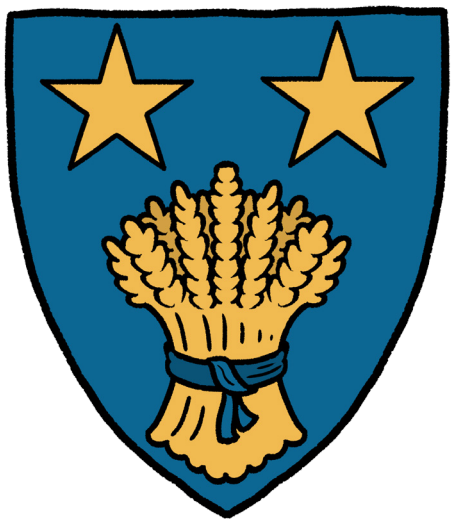

Fig. 2. Arms of Wauchope of Niddrie. Image by Lucas Hofmann.

Europe, similarly references a German nobiliary concept – that of the Hoch Adel – and states by "demonstration" of the arms (*fig. 2*):

> *…he, and his said son and heir apparent and their successors in the same are to be so accounted, taken, and received amongst all Nobles and in all places of Honour.*[16]

Later in 1945, when Learney's reign as Lord Lyon had begun, he instituted the inclusion of a phrase similar to these early examples into the activities of the Court of the Lord Lyon. This "Noblesse clause" stated that:

> *By demonstration of which Ensigns Armorial he and his successors in the same are, amongst all Nobles and in all Places of Honours, to be taken, numbered, accounted and received as Nobles in the Noblesse of Scotland.*

Specifics, such as the pronouns used, varied on the context at hand – as well as the substitution of "Incorporation Noble" for "Noble" where the grantee was a legal person rather than a natural person.[17] This clause remained in use by the Court of the Lord Lyon for the next 63 years, until it was removed by David Sellar as Lord Lyon in 2008.[18]

If one considers this period a sign of the length of time in which Learney's interpretation of the Noblesse bore influence, it touches upon over six decades – around four of which occurred following Learney demitting office as Lord Lyon. Learney's notion of the ties between the possession of arms and a form of nobility were therefore long-lasting and, by the nature of its implementation, a frequent staple of the Court of the Lord Lyon's practice. It also was a component in many of Learney's judgments and decisions as Lord Lyon. Evaluating the legal merit of the concept of the Noblesse is therefore significant in forming an evaluation of Learney's reign and legacy overall.

3. Redeemable Conveyances of Subsisting Rights to Arms

Among the limited existing literature critiquing the Noblesse, analyses of Learney's interpretation of statute and sources of Scots law are already represented. As part of contributing to its titular "ventilation", this paper seeks to instead present a number of new approaches unrepresented in the limited existing literature critiquing Learney. One

such new avenue for analysis is in relation to another innovation of Learney's, quite apart from the Noblesse: redeemable conveyances of subsisting rights to arms. This innovation allowed an armiger to give a differenced version of their arms to another entity, which could later be revoked at the armiger's will.

The interaction between Scots law as it relates to heraldry, and developing corporate and commercial practices, was a prominent subject across Learney's career, both during his time as an Officer of Arms and his reign as Lord Lyon. Early in his career, while Carrick Pursuivant, Learney represented the petitioners in *The Royal Warrantholders' Association v R F & J Alexander & Co Ltd*, a case before the Court of the Lord Lyon in 1933.[19] While the parties reached a settlement, his notes bound into the court records demonstrate Learney extensively considering the interactions between heraldry and commerce. This would go on to be a focus throughout Learney's reign as Lord Lyon, and led to his introduction of a number of innovations within Scotland's law of arms.

Setting aside the Noblesse, if 'one man, one coat' is a core tenet of Scots law as it relates to heraldry,[20] as expressed by the Lord Lyon Acts,[21] could a natural person bearing arms use their arms in connection with a company they owned? Arms belong only to the armiger individually, and the company is a separate legal person. From the letter of the law alone, the legal person would be in breach of the law if it were to use the natural person's armorial bearing. Yet, a solution endorsed by Learney was the concept of 'displaying' arms: to utilise armorial bearings with context, written or implicit, that they belonged to another.[22] A

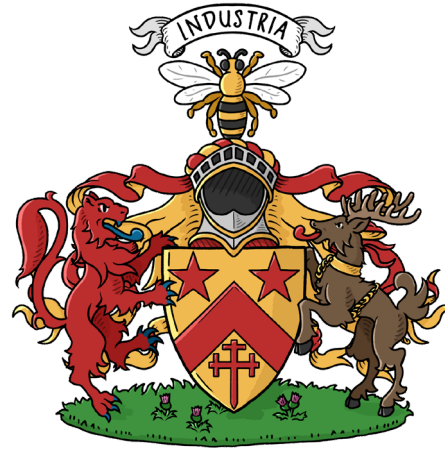

Fig. 3. Achievement of The Governors of the Fettes Trust. Image by Lucas Hofmann.

desire to register the arms as a trade mark posed further difficulties, however. Anyone seeking to register the arms of another as a trade mark (e.g. a company seeking to register the arms of its owner) would be to explicitly express 'ownership' over those arms, and therefore stray into *bearing* them, instead of merely displaying them.

Learney's solution to this conundrum was to institute the aforementioned redeemable conveyances of subsisting rights to arms. As property, the transfer of ownership of coats of arms is a largely uncontroversial, if infrequent, aspect of Scottish heraldic practice. While most examples of conveyances are between natural persons, conveyances between natural persons and legal persons did occur prior to Innes of Learney's reign: such as that between Sir William Fettes and The Governors of the Fettes Trust (*fig. 3*).[23] In conventional conveyances, the ownership of

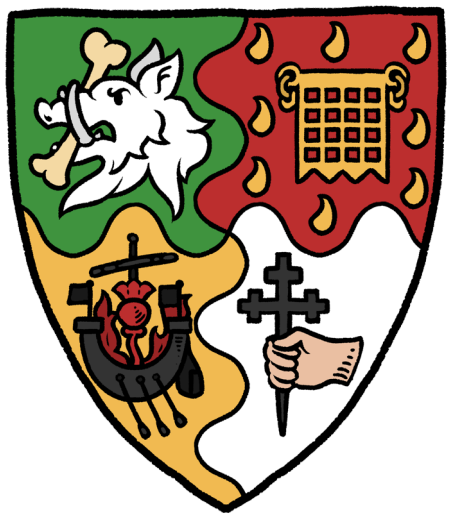

Fig. 4. Arms of The Drambuie Liqueur Company Ltd. Image by Lucas Hofmann.

the arms passes from one party to the other, with the disponer no longer being entitled to bear the arms conveyed – the principle that Lords Lyon cannot "give to one person the arms of another" is maintained.[24]

However, Learney's redeemable conveyances of subsisting rights to arms differed. Where Learney explained his reasons for approving such a conveyance (as armorial conveyances require the approval of the Lord Lyon to become operative),[25] it was to allow a company controlled by an armigerous natural person to bear *similar*, but distinct, arms to them – and to register those arms as a trade mark.[26] This could have been achieved by the company petitioning for and receiving arms in their own right. However, instead the companies – an example of which is The Drambuie Liqueur Company Limited (*fig. 4*) – received a temporary, conditional armigerousness, with the entry in the Public Register of All Arms and Bearings in Scotland being "cancelled and delete" at the will of the disponing armigerous natural person.[27]

If one considers this innovation of Learney's in conjunction with his belief in the Noblesse, a number of issues arise. If grants and matriculations of arms supposedly confer nobility, including to legal entities, it is not clear how a conditional grant of arms fits within this premise. It is especially unclear where these conveyances fall when the grant of arms relates to a *subsisting* right to another's arms. Learney appears to say nothing of whether the companies' nobility, as well as their arms, were conditional, or whether perhaps the companies and the associated armigers 'shared' this nobility, due to the subsisting right. According to Learney, the granting of arms by a Lord Lyon is just as nobilitating as the creation of a peerage or baronetcy, and should not be distinguished from those more conventional forms of nobilitation.[28] The potential for the nobility (the possession of arms) by these legal persons to be annulled, due to the conditional nature of their arms, is also problematic. Sir George Mackenzie of Rosehaugh, who is a source of Scots law as an institutional writer – and one whom Learney valued greatly[29] – defines explicitly the ways in which nobility may be lost.[30] Unsurprisingly, the annulment of a redeemable conveyance of arms (or anything analogous to it) does not feature among them.

While not explicitly redeemable conveyances of subsisting rights to arms, a number of specific grants made by Learney appear to potentially operate in a somewhat similar

manner. One such grant occurred in 1966, to a Patrick Ernest Stewart-Blacker *and* an associated legal entity – a firm called M. W. Stephens. This grant appears to limit the arms to the grantees, and any heirs, successors, and assignees, *while* "proprietors of the said firm", "to bear and use in a seal or otherwise for all business matters" – with the arms specifically granted "unto the Petitioner and his foresaids, including the firm of M. W. Stephens".[31] The warrant for letters patent describes the petitioners as "Stewart-Blacker, for himself personally, and on behalf of the firm of M. W. Stephens".[32] While not a redeemable conveyance of a subsisting right to arms, if this grant is viewed in conjunction with Learney's conception of the Noblesse, similar issues arise as those previously stated.

The inclusion of redeemable conveyances of subsisting rights to arms, and specific grants, such as those to Stewart-Blacker and M. W. Stephens, are valuable additions to the existing critique of Learney and his interpretation of the Noblesse. Despite Learney introducing these practices alongside his incorporation of the Noblesse, they appear to some extent incompatible, and he does not seem to offer an explanation as to how one should interpret this innately temporary, and conditional, "nobility".

4. "Incorporations-Noble in the Noblesse of Scotland"

Further questions should also arise in relation to the existence of "noble" legal persons at all. Grants to legal persons have occurred extensively throughout the history of Scottish heraldry, and long before Learney's appointment as Carrick Pursuivant or the beginning of his reign as Lord Lyon. From Learney's perspective, such armigerous legal persons, like the Scottish Association of Watchmakers and Jewellers (*fig. 5*), were "Incorporations-Noble in the Noblesse of Scotland."[33] A grant of arms to a legal entity "makes the corporation a corporate gentleman":[34] "…incorporations are merely legal persons who may acquire "nobility" (viz. the position of a gentleman), on obtaining a grant of armorial bearings for that corporation."[35] As observed previously, Learney was of the opinion that a grant of arms was just as nobilitating as the creation of a peerage or baronetcy – more conventional forms of nobility. The very existence of "noble" legal entities presents a potential flaw in the Noblesse, as there appears to be very little pre-

Fig. 5. Arms of the Scottish Association of Watchmakers and Jewellers. Image by Lucas Hofmann.

cedent for the notion in Scotland, or the United Kingdom, at all.

In light of this lack of precedent, more creative approaches may prove useful for analysis. One potential – though imperfect – route may be found in the considerations of the Court of Claims, an irregularly sitting court that adjudicates claims to perform duties at coronations.[36] Two claims before this Court may be pertinent: that of The Walker Trustees' to the role of the Scottish office of the Heritable Usher of the White Rod, made at the sitting of the Court in relation to the Coronation of Edward VII in 1902 (and at all subsequent sittings); and that of The London Fort George Land Company Ltd to the role associated with the Lordship of the Manor of Worksop, made at the sitting for the Coronation of the late Elizabeth II in 1953.

For the claim of The Walker Trustees, the Court of Claims allowed the entity to fulfil the duties of the Heritable Usher of the White Rod, which had been conveyed to it in 1877.[37] A core component of the success of the Trustees' claim was that the conveyance of the office was affected by a personal Act of Parliament.[38] The basis for the 1952 claim of The London Fort George Land Company Ltd to perform a duty (in their case, presenting the Coronation Glove to the Sovereign) was its possession of the Lordship of the Manor of Worksop, which had been conveyed to it from the Dukes of Newcastle-under-Lyne.[39] Unfortunately for The London Fort George Land Company Ltd however, the conveyance was not achieved by such exceptional circumstances as a personal piece of legislation. On that basis, the Court of Claims doubted whether The London Fort George Land Company was in an analogous position to The Walker Trustees', and the decision of the Court was to refuse the claim.[40]

If a principle can be garnered from these decisions, it might be that exceptional circumstances are required for a legal person to both possess a status such as a heritable office or a Lordship of the Manor, *and* exercise the associated duties at an event like a coronation. Such a principle is imperfect to apply to our question of whether legal persons can be noble, as it is unclear to what extent Learney viewed the status of Heritable Usher of the White Rod or a Lordship of the Manor as "noble". Lordships of the Manor, however, are to some extent similar to a status which Learney *did* consider noble, and did discuss frequently: Scottish feudal baronies.

Legal entities have been known to possess Scottish feudal baronies in a number of circumstances. The Abolition of Feudal Tenure etc. (Scotland) Act 2000 separated the dignity of a Scottish feudal barony from its associated land.[41] As such, Scottish feudal baronies may therefore be freely purchased and sold on as dignities in-and-of-themselves, and as there are companies dedicated to such sales one presumes that legal persons might have – if only temporarily – possessed such dignities. However, prior to that Act passing, when a legal person took possession of the land, or "caput", pertaining to a feudal barony, it also possessed the dignity linked to that land. Our inferred principle from the Court of Claims – that legal entities can only be "noble" in exceptional circumstances – might be tested in relation to the Noblesse if Learney *treated* legal persons possessing

Scottish feudal baronies as such heraldically. If Learney treated such legal persons as Scottish feudal barons, the idea of "Incorporations Noble" should appear more legitimate: as he would have treated legal persons as noble in relation to a form of nobility legal persons could freely come to possess. If Learney did *not* treat legal persons possessing Scottish feudal baronies as noble, the inverse would appear true: apart from Learney's claims about "Incorporations Noble", he did not view legal persons as noble even in possessing a form of nobility they were able to.

Thankfully, just such an occasion – the possession of a Scottish feudal barony by a legal person – did occur during Learney's reign as Lord Lyon. In the case *Kidston-Montgomerie of Southannan, Petitioner* the land relating to a Scottish feudal barony had been compulsorily acquired by the Corporation of Glasgow for the purposes of building a railway.[42] If Learney had suggested that the Corporation of Glasgow might, therefore, be considered a Scottish feudal baron, his proposition that grants of arms made legal persons "noble" would appear at least logically consistent. However, instead Learney described the barony as "a status which could be of no use or purpose to the Corporation".[43] The notion that grants of arms nobilitate legal persons, an idea reliant on the implication that legal persons *can* be "noble" in Scotland, is therefore less credible in that Learney did not recognise legal persons as noble in possessing a conventional form of nobility they *could* come to obtain. Our potential principle, that legal persons cannot be considered noble – outwith exceptional circumstances – therefore to some extent holds true, and the concept of the Noblesse appears deficient in that respect.

5. Precedence and Precedent

The final avenue through which this paper seeks to analyse the Noblesse, and Learney, is in relation to precedence. Precedence, or the proper ordering of persons in relation to their rank and status, was viewed by Learney as "essential to the dignified ordering of assemblies, and the making of social introductions."[44] If Lords Lyon had the power to nobilitate grantees in the granting of arms, logically – to Learney's eye – it should follow that Lords Lyon had jurisdiction over the precedence *between* those nobles.[45] Learney believed that the manner in which changes to the order of precedence would be achieved was in making grants of arms retroactive, so that their nobilitation – the granting of their arms – might be earlier than those granted otherwise. This jurisdiction over precedence from Learney's perspective is therefore significant in relation to the Noblesse, as it is inextricably linked to, and reliant on, the view that Lords Lyon can nobilitate in the first place.

However, Learney's interpretation of precedence, and therefore the Noblesse, faced a stumbling block. From 1901 to 1911, during the reign of Sir James Balfour Paul as Lord Lyon, a dispute over precedence had already arisen. Through an appeal, this dispute eventually came before the Court of Session in *Royal College of Surgeons of Edinburgh v Royal College of Physicians of Edinburgh*. The Court of Session's verdict was that it was uncertain as to whether there could be any real legal right to precedence, but if there was such a

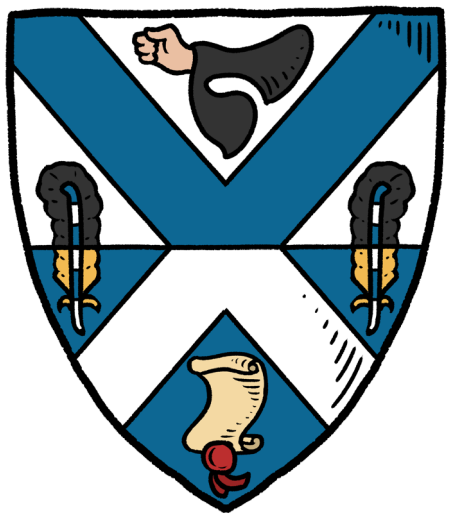

Fig. 6. Arms of the Law Society of Scotland. Image by Lucas Hofmann.

right, Lords Lyon and their Court had no jurisdiction over it – other than an ill-defined role in maintaining the *existing* order of precedence laid down by the Sovereign.[46] As precedent laid down by Scotland's highest civil court, decades before Learney assumed the office of Lord Lyon himself, this ruling therefore posed an obstacle to the a foundational belief of Learney's about the law of arms.

Learney's response to the ruling of the Court of Session in this matter was to attempt to discount it. He took issue with specific – and tangential – aspects of judicial opinion in the case. The Court of Session had suggested that the jurisdiction of the Court of the Lord Lyon was purely statutory.[47] This was incorrect, as observed, as the Court of the Lord Lyon did have a customary jurisdiction.[48] However, Learney does not appear to establish in his writing that the Court of the Lord Lyon had customary jurisdiction over *precedence* specifically. Learney also interpreted the judgment of the Court of Session as taking issue with the potential for a Lord Lyon to recognise precedence "for all time coming" – and ignoring the decision that Lords Lyon did not have a jurisdiction in relation to precedence (outwith the aforementioned purview in maintaining the existing order) in general.[49] Having identified these grounds, Learney held the view that the decision of the Court of Session in *Royal College of Surgeons of Edinburgh v Royal College of Physicians of Edinburgh* – despite being the decision of a court superior to the Lord Lyon's, and one which had never been overturned – could be discounted due to being based on "fundamental errors of fact".[50]

Rather than merely holding this view of the law, Learney decided to act upon it. Around a decade before acceding to the office of Lord Lyon, Learney suggested that the decision in *Royal College of Surgeons of Edinburgh v Royal College of Physicians of Edinburgh* should be "reconsidered" if a suitable case arose.[51] In 1952, now Lord Lyon, Learney had the opportunity to create just such a situation. In *Law Society of Scotland, Petitioner* Learney granted arms to the Law Society of Scotland (*fig. 6*), with the grant backdated to the 9th of March 1912, and describing them as being:

> *…taken, numbered, accounted and received as an Incorporation-Noble in the Noblesse of Scotland with precedence as of nine March One thousand Nine Hundred and twelve.*[52]

Learney further informed an existing armiger of his intention – the Royal Faculty of Procurators in Glasgow, granted arms on the 11th of May 1912 (*fig. 7*) – whose position in the order of precedence would be detrimentally affected by the imposition of the former above them.[53] It is possible that Learney hoped The Royal Faculty of Procurators in Glasgow might object to his actions, and attempt to appeal his decision to the Court of Session – where they might overturn their previous ruling. However, the Royal Faculty of Procurators in Glasgow did not, and the higher precedent of *Royal College of Surgeons of Edinburgh v Royal College of Physicians of Edinburgh* arguably still stands, despite Learney's efforts.

Fig. 7. Arms of the Royal Faculty of Procurators in Glasgow. Image by Lucas Hofmann.

It appears that Learney's conception of the Noblesse, and his belief that Lords Lyon possessed a jurisdiction over precedence, are strongly connected: he supposedly raised the Law Society of Scotland to the status of "Incorporation-Noble in the Noblesse of Scotland… *with* precedence as of…".[54] However, despite his actions, the precedent established by the Court of Session – that states that Lords Lyon do not have the jurisdiction over precedence Learney believed they did – still stood, and stands to this day.

6. Conclusion

This paper has attempted to contribute to the "ventilation" begun in the limited amount of existing literature critiquing the reign of Sir Thomas Innes of Learney as Lord Lyon. In critically examining a fundamental belief of Learney's about the law of arms in Scotland, it is hoped that light may be shed on the extent to which he should be viewed as authoritative in the present day. Learney's belief that the bearing of arms in Scotland in the 20th century was indicative of some noble status, and that in granting arms Lords Lyon nobilitated grantees, overall appears flawed. One of Learney's other, simultaneous innovations within the law of arms in Scotland – redeemable conveyances of subsisting rights to arms – appears to present significant, and unaddressed, flaws in the soundness of the Noblesse as a legal concept. The very notion that legal persons may be considered noble in Scotland appears to be doubtful, and the tentative principle proposed by this paper – that legal persons cannot be considered noble, outwith exceptional circumstances – is otherwise supported by Learney's own judicial decisions in relation to a

form of conventional nobility legal persons can feasibly come to possess. Finally, in relation to precedence, this paper explored its innate connection with Learney's interpretation of the Noblesse, and how, despite his efforts, he was subject to higher precedent from the Court of Session that undermined his interpretation of the law.

The treatment of Learney in recent judicial opinion, which suggests a somewhat limited degree of nuance, is perhaps therefore misguided. A ventilation, however, should not be an entirely destructive process: a number of Learney's contributions remain relevant and valuable to the law of arms in Scotland today. It is only by working to identify the merits, and detriments, of each aspect of Learney's legacy that a better understanding of Scots law as it relates to heraldry can be formed.

Notes

1 I would like to thank Professors Gillian Black and John Cairns for their supervision of my research at the University of Edinburgh, the Court of the Lord Lyon for making court records and documentation available to me, and Lucas Hofmann for his illustrations included in this paper.

2 Prior to his reign as Lord Lyon, Learney had served as Carrick Pursuivant (1926–1935) and Albany Herald (1935–1945), and following his reign served as Marchmont Herald (1969–1971). See: Mosley, C. (2003), *Burke's Peerage, Baronetage and Knightage*, 107th ed., Vol. 2, Wilmington: Burkes' Peerage & Gentry, p. 2053.

3 *Kerr v Advocate General* [2009] CSIH 61, at para 9.

4 *Hamilton of Rockhall v Lord Lyon King of Arms* 2019 S.L.T. 1380, at pp. 1384–1385.

5 Stevenson, K. (2009), "Jurisdiction, Authority, and Professionalism: The Officers of Arms in Late Medieval Scotland", In: K. Stevenson (Ed), *The Herald in Late Medieval Europe,* Woodbridge: The Boydell Press, p. 42.

6 Gaylor, J. H. (2005), *Scots Heraldry Visited,* Stroud: J. H. Gaylor, p. i.

7 See contemporaneous coverage in *The Scotsman:* e.g. *The Scotsman* (9 April 1936), "Macleans of Ardgour: Dispute over Chieftancy, Petition Lodged", p. 16; *The Scotsman* (20 July 1936), "Miss Catriona Louise Maclean of Ardgour", p. 10; *The Scotsman,* (5 July 1938), "Clan Dispute Before The Lyon Court", p. 7; *The Scotsman* (12 July 1941), "Macleans of Ardgour: Findings to be Adjusted, No Rehearing", p. 3; *The Scotsman* (19 July 1941), "Macleans of Ardgour: Six-Year-Old Arms Dispute, Court's Findings", p. 3.

8 *Maclean of Ardgour v Maclean,* 1941 S.C. p. 613.

9 Innes of Learney, T. (1939), *Report Concerning The Right of the Lord Provost of Edinburgh to the Prefix of "Right Honourable" to his Name,* Edinburgh: City and Royal Burgh of Edinburgh, p. 4.

10 Innes of Learney, T. (1939) "The Armorial House or Family and the Theory of Armorial Quartering in England", *Notes & Queries*, 177, pp. 164–165

11 E.g. Innes of Learney, T. (1939) "The Armorial House or Family and the Theory of Armorial Quartering in England", *Notes & Queries*, 177, pp. 186–187; Note, Interlocutor in the application of Squadron-Leader Duncan William Grinnell-Milne, 12th March 1951; Innes of Learney, T. (1939). *Report Concerning The Right of the Lord Provost of Edinburgh to the Prefix of "Right Honourable" to his Name,* Edinburgh: City and Royal Burgh of Edinburgh, p. 4.

12 Innes, T. (1929) "Heraldry", In: Dunedin, J. L. Wark, & A. C. Black (Eds.), *Encyclopaedia of the Laws of Scotland,* Volume VI, Edinburgh: W. Green & Son Ltd, p. 553.

13 *Maclean of Ardgour v Maclean,* 1941 S.C. p. 613, at p. 650.

14 Interlocutor in the Petition of John Henry Stuart Borthwick of Borthwick, the Laird of Borthwick in the County of Midlothian and 17th Laird of Crookston in the said County; claiming to be the 24th Lord Borthwick in the

Peerage of Scotland, Major, Royal Artillery, 25th July 1944. Edinburgh: Court of the Lord Lyon.

15 Extract of Matriculation of the Arms of Borthwick of Borthwick and Crookston, In: *Public Register of All Arms and Bearings in Scotland,* Vol. 35, f14.

16 Interlocutor in the Petition of John Andrew Andrew Wauchope of Niddrie, Baron of Niddrie-Merschell and Lochtour, 19th April 1945. Edinburgh: Court of the Lord Lyon.

17 E.g. Interlocutor in the Application of the Scottish Association of Watchmakers and Jewellers, 13th January 1954, Edinburgh: Court of the Lord Lyon.

18 Findlater, A. M. (2009), "In the Courts", *Somerset Heraldry Society Newsletter*, 15, p. 11.

19 This case was unreported. Documents from the case are to be found in a volume titled *The Royal Warrantholders' Association v R F & J Alexander & Co Ltd* in the records of the Court of the Lord Lyon.

20 Stevenson, J. H. (1926), "Memorandum on the Office and Court of the Lyon King of Arms and the Recent Appointment to it, December 1926", In: *To the Right Honourable Sir John Gilmour, Bt., D.S.O., etc., M.P., His Majesty's Secretary of State for Scotland. A Letter on the Office and Court of the Lord Lyon King of Arms and the Recent Appointment to it,* by J. H. Stevenson, M.B.E. K.C., p. 9.

21 The relevant sections of the Lyon King of Arms Acts relating to 'one man, one coat' are the requirement that Lord Lyon "distinguische and discerne" arms with "congruent differences" in the Lyon King of Arms Act 1592, and the Lyon King of Arms Act 1672's obligation that Lords Lyon "distinguish the saids Armes with congruent differences". See: Lyon King of Arms Act 1592, c.29 and Lyon King of Arms Act 1672, c.47.

22 E.g. The Lord Lyon King of Arms (1950), Lyon Court Rulings and Decisions: Misuse of Municipal Arms, *The Coat of Arms*, 1(3), pp. 81–82; The Lord Lyon King of Arms (1952), Court Rulings and Decisions from the Lord Lyon King of Arms, *The Coat of Arms*, 2(1), pp. 57–58.

23 Public Register of All Arms and Bearings in Scotland, (1916), The Governors of the Fettes Trust, Vol. 23, Fol. 11.

24 Stevenson, J. H. (1926), "Memorandum on the Office and Court of the Lyon King of Arms and the Recent Appointment to it, December 1926", In: *To the Right Honourable Sir John Gilmour, Bt., D.S.O., etc., M.P., His Majesty's Secretary of State for Scotland. A Letter on the Office and Court of the Lord Lyon King of Arms and the Recent Appointment to it,* by J. H. Stevenson, M.B.E. K.C., p. 9.

25 Lyon King of Arms Act 1672, c.47; *Stewart, Petitioner,* 1951 S.L.T. (Lyon Court) p. 3; Innes of Learney, T. (1940), "Armorial Tailizies in Scotland", *Notes & Queries*, 178, pp. 256–257.

26 *James B. Rintoul (Edinburgh) Ltd, Petitioner* (1950) S.L.T. (Lyon Ct.) p. 12.

27 Public Register of All Arms and Bearings in Scotland, (1948), James B. Rintoul (Edinburgh) Ltd, Vol. 37, f41; Public Register of All Arms and Bearings in Scotland, (1950), The Drambuie Liqueur Company Limited, Vol. 39, f99.

28 Innes of Learney, T. (1939), "The Armorial House or Family and the Theory of Armorial Quartering in England", *Notes & Queries*, 177, pp. 164–165.

29 Innes of Learney, T. (1941), "Sir George Mackenzie on Armorial Succession", *Notes & Queries*, 161, p. 2; Innes of Learney, T. (21 March 1936), "Mackenzie on Heraldry", *The Scotsman,* p. 17.

30 Mackenzie, G. (1680), *The Science of Heraudry,* Edinburgh: Heirs of Andrew Anderson, pp. 14–15.

31 Public Register of All Arms and Bearings in Scotland, Patrick Ernest Stewart-Blacker, Vol. 49, f20.

32 Warrant for Letters Patent from Lord Lyon King of Arms in the application of Patrick Stewart-Blacker, for himself personally, and on behalf of the firm of M. W. Stephens of date 16th December 1965.

33 Interlocutor in the application of the Scottish Association of Watchmakers and Jewellers, 13th January 1954. Edinburgh: Court of the Lord Lyon.

34 Innes of Learney, T. (1940), *The Law of Succession in Ensigns-Armorial,* Edinburgh: W. Green and Son, Limited, p. 22.

35 Innes, T. (1931), "Precedence", In: Dunedin,

J. L. Wark, & A. C. Black (Eds), *Encyclopaedia of the Laws of Scotland,* Volume XII, Edinburgh: W. Green & Son Ltd, p. 17.

36 For the Coronation of Charles III in 2023, the Court of Claims was not called to sit – instead substituted for a 'Coronation Claims Office' within the Cabinet Office.

37 Wollaston, G. W. (1910) *Coronation Claims,* London: Harrison & Sons, pp. 62–70; Coronation of Her Majesty Queen Elizabeth the Second: Minutes of the Court of Claims (1952), Great Britain: Privy Council, p. 16.

38 *Ibid*. pp. 62–70.

39 Coronation of Her Majesty Queen Elizabeth the Second: Minutes of the Court of Claims (1952), Great Britain: Privy Council, pp. 16–20.

40 *Ibid.* Although there were additional reasons for this decision: The London Fort George Land Company Limited had neglected to claim to perform the duty by deputy, and the Court of Claims noted that it would be impossible for the legal person to perform the duty otherwise.

41 Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp. 5.

42 *Kidston-Montgomerie of Southannan, Petitioner*, 1951 S.L.T. (Lyon Ct.) p. 3.

43 *Ibid*. p. 4.

44 Innes, T. (1931), "Precedence", In: Dunedin, J. L. Wark, & A. C. Black (Eds), *Encyclopaedia of the Laws of Scotland,* Volume XII, Edinburgh: W. Green & Son Ltd, p. 1.

45 *Ibid*. p. 21.

46 *Royal College of Surgeons of Edinburgh v Royal College of Phyisicans of Edinburgh* 1911 S.C. p. 1054, at p. 1060 and at p. 1064.

47 *Ibid.* See Lord Johnston's judgment at pp. 1061–1064.

48 Innes, T. (1931), "Precedence", In: Dunedin, J. L. Wark, & A. C. Black (Eds), *Encyclopaedia of the Laws of Scotland,* Volume XII, Edinburgh: W. Green & Son Ltd, p. 21.

49 *Ibid.* p. 20

50 *Ibid.* p. 2.

51 *Ibid*. p. 20

52 Interlocutor in the petition of the Law Society of Scotland, 11th November 1952. Edinburgh: Court of the Lord Lyon.

53 Interlocutor in the petition of the Law Society of Scotland, 10th October 1952. Edinburgh: Court of the Lord Lyon.

54 Interlocutor in the petition of the Law Society of Scotland, 11th November 1952. Edinburgh: Court of the Lord Lyon. Emphasis added by the present author.

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Scots Heraldry and the Law – Lessons from Grants of Arms 1976–2017

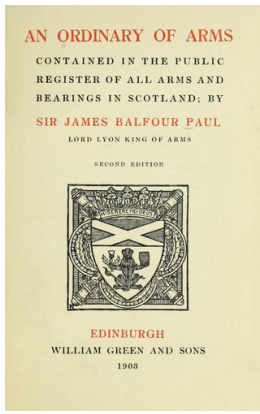
By Dr. Bruce Durie [1]

Abstract: The period 1971–2017 was remarkably fertile for Scottish Heraldry. Arms were granted or matriculated at a rate of almost 100 per year. There was an increase in the rising trend of non-Scots purchasing Scottish feudal baronies (and the associated ability to petition for Arms), the desire for clan and family societies to be accorded Arms, as well as various Bodies Corporate, the new Universities, new Chiefs of Name and Arms, local authorities (reflecting the changes to administration in those years), and even the governance of Scotland. The Scottish system of Arms – in essence always egalitarian – became even more widespread. This period covered the reigns of five Lords Lyon, each of whom added an individual flavour to the practice to the Lyon Court. This paper will also consider the influence of changes in Scots Law which affect the activities of the Lyon Court, including the formation of the Scottish Parliament and Scottish Government in 1999 and the effects of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 on Feudal Baronies and the associated Arms.

Résumé : La période 1971–2017 a été remarquablement fertile pour l'héraldique écossaise. Les armes étaient accordées ou immatriculées à un rythme de près de 100 par an. Il y a eu une augmentation de la tendance croissante des non-Écossais à acheter des baronnies féodales écossaises (et la possibilité associée de demander des armes), le désir pour les sociétés claniques et familiales de se voir accorder des armes, ainsi que divers organismes corporatifs, les nouvelles universités, de nouveaux chefs de nom et d'armes, des autorités locales (reflétant les changements d'administration au cours de ces années) et même la gouvernance de l'Écosse. Le système d'armes écossais – par essence toujours égalitaire – est devenu encore plus répandu. Cette période couvre les règnes de cinq Lord Lyon dont chacun ajoute une saveur particulière à la pratique de la Lyon Court. Cet article examinera également l'influence des changements dans la loi écossaise qui affectent les activités de la Lyon Court, y compris la formation du Parlement écossais et du gouvernement écossais en 1999 et les effets de la loi de 2000 sur l'abolition de la tenure féodale, etc. (Écosse) sur les Baronnies féodales et armes associées.

1. Introduction

This talk and the resultant paper came about through the opportunity offered by the publication of *An Ordinary of Arms Vol. III* by Bruce Durie (the present author) which brought together all Arms granted and matriculated in Scotland from 1971 to 2017 (*fig.*



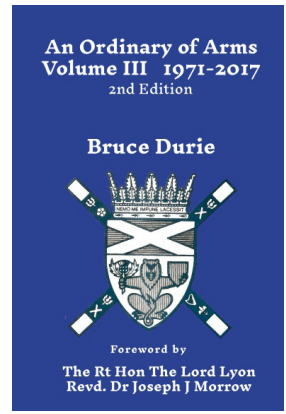


Fig. 1. Lord Lyon Sir James Balfour Paul published the first Ordinary of Arms as two editions (1893 and 1903) which covered all Arms granted up to just before those dates; Vol. II was published by David Reid of Robertland and Vivien Wilson in 1977 and continued Lord Lyon Paul's work up to part way through 1973; Vol. III starts at 1971 (to include some Arms omitted from Vol. II) and concludes in the early part of 2017. A Companion Volume is planned, covering Crests, Mottos, Supporters, Badges, Flags, etc. from 1971.

1). There was a chance to see the effects of changes in the thinking of successive Lord Lyons (*fig. 2*), and the impact of other legal changes on heraldic practice.

2. Scots Heraldry is governed by Statute Law

There are a few specific laws that govern heraldry, the position of the Lord Lyon and the operation of the Lyon Court. There are the Acts of Authority which set out the statutory basis for the jurisdiction of the Lord Lyon, mainly three Acts of the Scottish Parliament, of 1587,[2] 1592[3] and – crucially – 1672.[4] There is a subsequent 1867 Act of the British Parliament, but this mainly reorganized aspects of the Lyon Court and set the salaries of the Scottish officers of arms.

At the Act of Union of 1707 (Union of Parliaments), many of Scotland's institutions stayed separate from those of England and remain so today, such as: the Church of Scotland, the education, health and welfare systems, and the whole structure of laws, courts and justice. The Lyon Court is fully part of the Scottish judiciary and the Scottish legal system, with its origins in Roman Law (as opposed to England's Common Law-based system).

There have been minor changes to Lyon Court law, such as various repeals and amendments brought about by the *Statute Law Revision (Scotland) Act* of 1906, which was still partly in force in 2010.[5] And since then, there have been amendments to other Scots laws and some completely new laws enacted which have a bearing on heraldry and the operation of the Lyon Court.

The 1672 Act is considered the basis of Scots heraldry in the modern era, not least because it brought into existence the modern

incarnation of the Lyon Court and established the Public Register of All Arms and Bearings in Scotland, in which are entered extracts of all Patents of armorial bearings granted and matriculated since then to the present day.

The implication of all this is threefold:

1. Heraldic law in Scotland is not frozen in time, but amends itself to changing circumstances and legislative realities.
2. Some heraldic practices change with each Lord Lyon (and it is important to realise that no Lord Lyon is bound by the decisions and actions of any predecessor Lyon, or can bind future Lyons) – the heraldic practices respond to "case law" as the Lord Lyon, in his judicial capacity, hears and decides upon cases brought before the Lyon Court, and occasionally suffers appeals to higher courts.
3. Changes to other laws can affect heraldry – the law of heraldry does not exist in a vacuum but interacts with other statutes.

But first, an examination of Arms granted after 1971 shows some general trends.

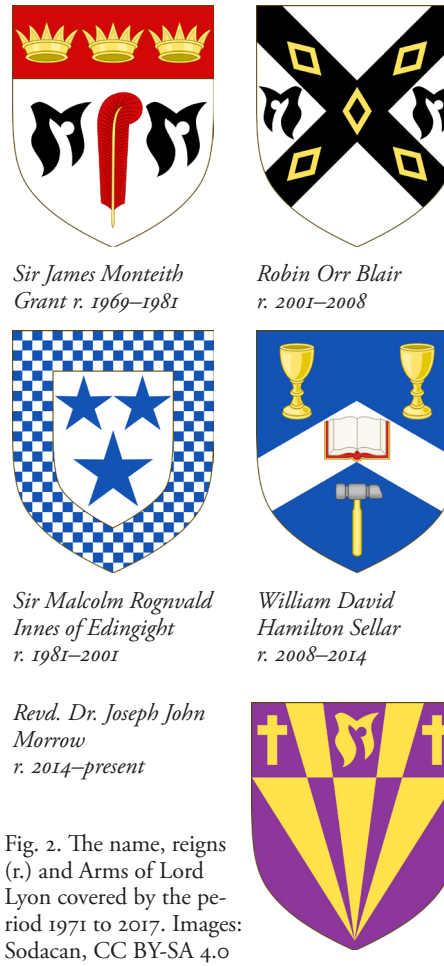


Fig. 2. The name, reigns (r.) and Arms of Lord Lyon covered by the period 1971 to 2017. Images: Sodacan, CC BY-SA 4.0

3. Trends in Scottish Arms 1971–2017

First, the number of Patents issued had grown from an average of 25 entries per annum in the period 1672 to 1903 to 100 entries *per annum* in 1902 to 1973, and this rate was maintained up to 2017. This means the Lyon Office was issuing Arms at the rate of two per week.

Next, Personal Arms now constitute over 75% of entries, but of these fewer than 50% are from petitioners resident in Scotland. Of the 25% corporate and non-personal Arms, 80% are from Scotland, only 7% from England (mostly English-based companies with a strong Scottish presence, such as banks) but 40 are from Canada (mainly townships and professional bodies, but before the esta-

Fig. 3. Scottish Parliamentary Corporate Body, *Purpure, a saltire equisée Argent; An ancient crown of the last (Purpure) jewelled Argent* 84/002, 2000 84/002, 2000.

blishment of the Canadian heraldic authority in *1988*).

Another trend – and an example of external changes which impact on heraldry – was subsequent to two changes in local government: the Local Government (Scotland) Act 1973 which abolished counties, burghs and (old) districts in favour of regions and (new) districts; and the Local Government (Scotland) Act 1994 which did away with regions and districts – less than 20 years old – in favour of 32 Unitary Authorities, with a lower tier of Community Councils and other local administration units. The disappearance of such bodies meant that their Arms disappeared, although the new entities were able to petition for Arms which in most cases reflected those of the predecessor organisations but with a newly-designed set of identifying coronets.

There were also several new universities formed in Scotland after 1971, some *de novo* and some amalgamations of previous institutions of learning. A small number of established organisations took the opportunity to update or refresh their Arms. The University of St. Andrews, Scotland's oldest, founded ca. 1410–1414, did have Arms, granted in 1905, but had never had a Crest and Supporters and so took the opportunity of its 600th anniversary to put that right. The University of Aberdeen, first established in 1495, commemorated its 500th year in 1995 with a grant of Crest and Supporters.

And finally, in 1999 we had the establishment of the return of a Scottish Parliament in 1999, and with it Arms for the Scottish Parliamentary Corporate Body (*fig. 3*).

4. Abolition of Feudal Tenure etc. (Scotland) Act 2000 (enacted 2004) – the effects on associated Arms

One of the major changes to law which affected heraldic practice was the discarding of (almost) the last vestiges of feudalism after almost 900 years. The Act had the effect of abolishing the Scottish Feudal Barony as a form of landholding. But thanks to some

inspired negotiating by Lyon Blair, the barony remained intact as a "dignity" and could still be bought and sold. (Lyon Blair pointed out, *inter alia* that if baronies were abolished wholesale, there might be 1,500 claims for compensation of £100,000, the typical current value of a baronial dignity on the open market, and the recently-revived Scottish Government did not want to face a possible bill for £150 million (€175m, US$190m).[6]

This, plus further refinements by Lord Lyons Blair, Sellar and Morrow, removed all baronial additaments from Arms – the naming of the Barony in the Letters Patent, the chapeau of maintenance and the feudo-baronial mantle (*Gules doubled of silk Argent, fur-edged on miniver, collar ermine and fastened on the right shoulder by five spherical buttons Or*). The gilded baronial helm remains to this day, as the only indicator of a baronial dignity.

Another "tradition" – really only in place since the reign of Lord Lyon Sir Thomas Innes of Learney (1945 to 1969) – was the use of the terms "noble", "nobility", "noblesse" etc. in Arms, except where these (properly) attached to a peerage title. This was discarded in the time of Lyon Sellar.

5. Territorial Designations – "of…"

Apart from a barony name no longer being in a blazon, recent Lyons have also tightened up on the recognition of territorial designations. Very few new territorial designations are made today. The criteria below are not a check-list as such, but a starting point, and each case is judged on its own merits:

- 5-year ownership of "substantial" property;
- possessed of 5 acres, with a dwelling (or the possibility of a dwelling);
- born in or long associated with the property/territory;
- property/territory must have a well-attested name.

There are some exceptions – for example Chiefs of Clans and Families will continue to be recognised as: Sir Malcolm MacGregor, Chief of Clan Gregor; Andrew Durie of Durie, Chief of Durie; and so on. And, of course, peers and some senior judges continue to have territorial designations, even where there is no actual "territory" or land ownership e.g., Lord Jauncey of Tullichettle.

6. Gender and Primogeniture, Adoption and Donor/Surrogacy laws

Scotland still has a presumption of Male Primogeniture – that the eldest male child will normally inherit regardless of an older sister – in four instances:

- Heritable titles (note: a feudal barony is not a title, nor is it heritable as such – it merely forms part of the overall estate on the death of the holder)
- Heritable Offices
- Coats of Arms
- To an extent, Chiefships of Clans/Families/Houses (but see below)

That is not to say a female cannot inherit any of these if there is no son, or if the current

female holder marries a husband not of her surname. However, these conditions will depend on the details of the original grant or charter of, for example, a peerage or an hereditary office, and also on the principle of the "entail" – a provision that some heritable benefice may only pass to some of the same surname, or of a certain religion, say, or to "heirs male of the body lawfully procreate". In truth, female inheritance of, for example, peerages is more common in Scotland than with peerages of England and Wales, of Great Britain and of the United Kingdom.

A good example was Diana Hay, 23rd Countess of Erroll. As the only child of Josslyn Hay, Earl of Errol, she inherited the hereditary position of Lord High Constable of Scotland. She married Sir Iain Moncreiffe of that Ilk, but in order that the earldom and the Arms passed to their son, he was surnamed Hay rather than Moncreiffe and became Merlin Hay, 24th Earl of Erroll and also Lord High Constable.

This is particularly an issue when a daughter inherits a Chiefship of a Clan, Family, House, Kindred, etc. She might be the only child; or, the Chief may have nominated her as successor. And since a Chief is (as far as the Lyon Court is concerned) Chief of Name and Arms, she may only inherit the undifferenced Arms so long as she retains the surname, and passes it to her offspring. There is actually no real problem during her lifetime as in Scotland woman bear two names, often known as "Mary Smith or Jones". But her children will bear her husband's surname, unless they make sure this is not the case, at least for the eldest child/heir. For example, Margaret Elliot, 29th Chief of Elliot, daughter of Sir Arthur Elliott, 11th Baronet, is married but gave the eldest son the Elliott surname. Thus, the Chiefship will endure, and the inheritance of the Arms, but Margaret Elliot did not inherit the Baronetcy as it was created for males only.

The stipulation that a Chief must bear the surname is sensible one – there is no problem with "Smith, Earl of Jones", but "Smith, Chief of Jones" would be a logical, legal, historical and heraldic impossibility. However, a Chief may direct the Chiefship to someone not his or her eldest son or heir, but this might result in a situation where the Chiefship and the undifferenced Arms are with different people.

Female Arms more generally are discussed below.

7. Succession to the Crown Act 2013

This whole area of male primogeniture is a perplexing state of affairs, especially as it has been tidied up for most form of inheritance (see below) but also for succession to the throne.

The Succession Act[7] came into force on 26 March 2015 and replaced male-preference primogeniture with absolute primogeniture for those in the line of succession born after 28 October 2011. Now, the eldest child, regardless of gender, precedes any siblings. There has not yet been a Royal succession affected by the new rule, and none is anticipated for a while – Prince William is next in line, and his eldest son, Prince George, probably won't marry until around 2035. Even

Arms of Lady Marion Anne Forbes or Fraser (83/008, 1998). Note the lozenge shield, and the helm, torse, mantling and crest.

Arms of Susannah Howard Henderson or Fawcett (76/118, 2000). Note the elliptical shield, no helm or mantling, but a torse and crest.

Arms of Beverly Patricia Bergman or Melville (88/118, 2015). Women need not have their Arms on a lozenge, ellipse or cartouche.

Fig. 4. Must females have their Arms on a lozenge, ellipse or cartouche? Obviously not. Many females have a crest, and independently a helm? Evidently so.

if he has a daughter first, she will not inherit until after the death of both her grandfather William (born 1982) and her father George (born 2013), so it could even be well into the 22nd Century.

However, people do die young, fail to marry, or have no issue. Currently, George's younger sister, Princess Charlotte of Wales, is fourth in line to the throne. But there could be other unintended consequences. For example, had there been strict Salic Law in force in the United Kingdom when King William IV died, the throne might have gone, not to his niece Victoria, but to a son of one of the six surviving sons of King George III, younger brothers to the Prince Regent (who became George IV).

And had male primogeniture not been the law when Victoria died, the crown would have gone next to her firstborn child, Victoria, Princess Royal (1840 – 5 August 1901). She lived only a few months after her mother's death, so would have been succeeded by Wilhelm, the son born to Princess Victoria and her husband Frederick III, German Emperor. That son was to become Kaiser Wilhelm II (1859–1941) and had he also been King of the United Kingdom and head of the Empire, the whole history of the 20th Century might have been very different indeed.

8. Female Arms

"The idea that a woman cannot represent an armigerous family appears to me to be a mediaeval notion, appropriate perhaps to ages

Heather Campbell (66/114, 1984)

Ardoch Management Co. Ltd. (90/065, 2013)

Susannah Howard Henderson or Fawcett (76/118, 2000)

Fig. 5. Examples of a crest without a helm.

of savagery, but having no relation to the realities of the modern world." Judgment in the case of *Maclean of Ardgour v. Maclean* 1941 S.C. 613.

As already stated, women keep their maiden surnames in Scotland, may be Chiefs and peeresses, and in most ways are heraldic equals to their male counterparts. The idea that a female may not have a heater-shaped shield, or a helm and crest, is a nonsense, in Scotland at least. The illustrations below make the case (*fig. 4*), and also settle another heraldic canard – "there cannot be a Crest without a Helm" (*fig. 5*).

And frankly, is the helm at all necessary in modern Heraldry, in these days when so very few of us engage in mediaeval combat or take part in jousts at tourneys? Churchmen have galeros and mitres, so could a lawyer or judge not be granted a wig, an academic a tam or cap, a soldier a Glengarry?

9. Future issues for Scots Heraldry…

There are several aspects of heraldry which go against the general tenor of law. Male primogeniture is ended for most forms of inheritance, but not for Arms. Adopted children are in every way the legal heirs of their adoptive parents, but not for titles, honours and dignities or Arms. Illegitimacy now has no place in Scots Law, except for titles, honours and dignities or Arms. Children born by egg or sperm donation or via surrogacy are legally the children and heirs of the

non-biological parent(s), but there is an exception for titles, honours and dignities or Arms. There is a pattern here – lawmakers have failed to grasp the nettle (thistle?) and address such questions, but have merely avoided the issues and consigned them to a clause at the end of the relevant legislation.

Professor Gillian Black has a deeper discussion of such issues in her article in this volume.[8]

Other things Scots heraldry may choose to address, or have forced upon it, include the following:

- Will the sale and purchase of feudal baronies be entirely abolished by a future Scottish Government regardless of the cost?
- What is the actual definition of "heir male" – any heir, if male, or necessarily descent through the male line only?
- Will a future Scottish government abolish the monarchy in Scotland, in if so, what status will the Lyon Court have?
- Could changes to privacy law close the Public Register of All Arms and Bearings in Scotland?
- Will there be further changes to land law and inheritance law, and to considerations of citizenship and nationality?
- Will there be more reliance on Y-DNA as objective and probative, as in most other fields of law?

On the last point – Y-DNA: it is said to be "disruptive technology", but so was the printing press, the automobile, cheap and widespread electricity, television, e-commerce, online news and many another pillar of modernity. Documents can be lost, found, altered, forged, misleading, capable of misinterpretation or just plain wrong. DNA evidence is objective, un-fakeable, good enough for a murder conviction or acquittal and increasingly affordable. The best approach is obviously a sensible combination of both, but at present DNA is little regarded in heraldry.

Notes

1 Bruce Durie, BSc (Hons.), PhD, FIGRS, email: gen@brucedurie.co.uk, web: www.brucedurie.co.uk. The author thanks the National Records of Scotland and the Lyon Office for the use of some images.

2 *Act for reformation of the extraordiner nowmer and monyfauld abuses of officiaris of Armes* (1587 cap. 46)

3 *Act concerning the office of lyoun king of armes and his brether herauldis* (1592 cap. 127)

4 *Act concerning the priviledges of the Office of Lyon King at Armes* (1672 cap. 47)

5 *An Act to further promote the Revision of the Statute Law by repealing Enactments which have ceased to be in force or have become unnecessary* (1906, 6 Edw. 7 c. 38); this was further amended, but not substantially insofar as Scots heraldry was concerned, by the *Statute Law Revision Act* 1927 (17 & 18 Geo. 5. c. 42), the *Statute Law Revision Act* 1950 (14 Geo. 6. c. 6), the *Statute Law Revision Act* 1953 (2 & 3 Eliz. 2. c. 5), the *Statute Law (Repeals) Act* 1998 (c. 43) and section 109(3) of, and Schedule 10 to the *Courts Act* 2003 (c.39).

6 Conversion rates as at November 2023.

7 *An Act to make succession to the Crown not depend on gender; to make provision about Royal Marriages; and for connected purposes* (2013 c. 20). This Act also repealed the *Royal Marriages Act* of 1772, ended disqualification from succession of a person who married a Roman Catholic, and removed the requirement for those outside the first six persons in line to the throne to seek the Sovereign's approval to marry.

8 See pp. 443–454.

Participants during the visit in the Main University Building. Photo: Selma Rosenfeld.

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Pp. 399–403

Académie Internationale d'Héraldique

Symbols of Law in Historical Personal Arms in Sweden

By Magnus Bäckmark, a.i.h.

Abstract: In this article is described which symbols men of law used in personal arms in Sweden from the dawn of heraldry and up to the 19th century to emphasize their legal role and merits. The scales of Justitia, or the Lady of Justice herself, in a range of versions, are the predominant symbols for lawmanship, but more obscure symbols are also used, like the level (vattenpass), and heraldic references to areas of jurisdiction.

Résumé : Cet article décrit les symboles utilisés par les hommes de loi dans leurs armoiries personnelles en Suède, depuis l'aube de l'héraldique jusqu'au XIX^{e} siècle, pour souligner leur rôle et leurs mérites juridiques. La balance, ou la Dame de Justice elle-même, dans une série de versions, sont les symboles prédominants de la profession d'avocat, mais des symboles plus obscurs sont également utilisés, comme le niveau (vattenpass), et des références héraldiques à des domaines de compétence.

1. Introduction

In Sweden, the use of symbols of law in personal arms coincides closely with the adaptation – in all kinds of art – of imagery inspired by antiquity. The latter phenomenon is a hallmark of the renaissance period in art history. That period begins in Sweden, like in the rest of northern Europe, much later than south of the Alps. A popular view is that especially King Erik XIV during his short reign (1560–1568) aspired to lift Sweden up to more modern standards of culture and art. Hence, in Swedish he is often labelled as a renaissance prince (*renässansfurste*). In heraldry, he created higher ranks of nobility, with quarterings of shields and coronets of rank, but the charges used in new arms during his and his successors' period were still of medieval character – austere images from animal, plant and war life.

The breakthrough of heraldic charges of classical style came in Sweden first during the first half of the 17th century. The earliest instance of Fortuna, the goddess of luck, is from 1602, in the letter patent for the noble family later called Hästesko af Målagård. The use of laurel, more precisely a branch of lau-

Fig. 1. Nicolas Vallari, "Lycksalighetens Ähre-Pracht" (detail), 1650. Photo: Timo Syrjänen 1979 (two subsequent photos are here joined into one picture). The National Museum of Finland.

Fig. 2. Coat of arms of count Christoph Carl Schlippenbach, 1654. Painting in the Great Hall of the House of Nobility in Stockholm. Photo: Gabriel Hildebrand, from the book *Riddarhusets vapensköldar*, 2019.

Fig. 3. Coat of arms of Carl von Christierson, district judge (*häradshövding*) in Åkerby and Skinnskatteberg districts (*härader*), 1720. Painting in the Great Hall of the House of Nobility in Stockholm. Photo: Gabriel Hildebrand, from the book *Riddarhusets vapensköldar*, 2019.

rel, appears in the patent from 1647 for the noble Lagergréen family (the image is associated to the at the same time adopted new family name meaning 'branch of laurel'). A thunderbolt, depicted in the way Jove's thunderbolt has in Roman art, was chosen some-

time before 1653[1] as the charge in the shield in the seal of a commoner with the name Blix (meaning 'lightning').

By this time, the mid-17th century, admiration of ancient Rome had really skyrocketed. It was now fashionable amongst the powerful to be portrayed in Roman attire. During Queen Christina's coronation in 1650 the spectators were amazed by a whole parade of gallant men and women in Roman costumes, not the least an automobile constructed by a mechanic in Nuremberg. The slowly self-driving chariot was decorated with both Amor and Fortuna – typical figures of renaissance art – as you can see on the drawing shown in *fig. 1*.

Fig. 4. Justitia with sword and scales in the shield of Olof Holmquist, city court judge (*rådman*), Strömstad, seal imprint from taxation roll (*mantalslängd*) in Riksarkivet (the National Archives), 1755. Photo: Magnus Bäckmark.

2. Scales

This rise of classical, or Roman, inspiration is the background of the introduction of the today most well-known and obvious symbol of law, namely *scales* – the primary attribute of Justitia. They are found, together with her sword, already in the seal which was made in 1562 for the supreme court ("Höga nämnden").[2] The first appearance in personal arms dates from 1653, when a baronial coat of arms was created for Filip von Scheiding, president of the court of appeal in Dorpat (present-day Tartu in Estonia). We see an arm clad in armour holding both a sword and scales. In the letters patent the scales are called "een wichte skaall" (in modern Swedish: "en viktskål"). The form of the word is in singular, not in plural like in present-day Swedish ("viktskålar"). To Swedish-speakers might be of interest that the singular form was used for this image at least up to the mid 19th century.[3] Hence, it is the singular form that are found in the following dozen-or-so letter patents with arms containing scales from the 17th and 18th centuries.

Scales combined with a lot of other items inspired of antiquity are found already the year thereafter, 1654, in the arms of count Schlippenbach (*fig. 2*). He was a lord chamberlain and colonel, not a man of law. The scales held by a maiden in one of his new crests does thus not, in this case, associate to his profession, but to law or justice in the sense that he assisted the Queen with advice concerning her abdication that year. The overwhelming reason behind the choice of scales in new coats of arms for noblemen during the 17th and 18th centuries is nevertheless law as a profession, such as in the coat of arms of Carl von Christierson (*fig. 3*). I also show two examples of Justitia and/or scales being heraldically used by commoners (*fig. 4–6*).

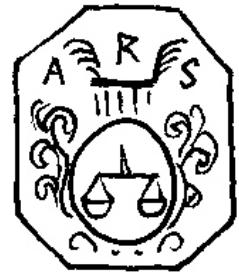


Fig. 5. and 6. Scales in the shields in the seals of the lay assessors (*nämndemän*) and brothers Johan Rasmusson of Grösäter in Ör parish and Anders Rasmusson of Lerkvilla in Lerdal parish, both in Dalsland in the west part of Sweden. Their crest is a pair of wings. From taxation rolls (mantalslängd) in Riksarkivet (the National Archives), 1744 and 1752. Photo and drawing: Magnus Bäckmark.

Fig. 7. Coat of arms of Justus Ludwig von Olthoff, councillor in Swedish Pomerania (*regeringsråd*), 1707. Painting in the Great Hall of the House of Nobility in Stockholm. Photo: Gabriel Hildebrand, from the book *Riddarhusets vapensköldar*, 2019.

3. Fasces

Another loan from the Romans are the fasces. They were introduced in Sweden as symbols of law enforcement in the emblem of the Chancellor of Justice (*Justitiekanslern*) in 1719. From 1850 the police has used fasces, since 1953 crossed behind the lesser coat of arms of Sweden (earlier instead in the middle of the shield).[4]

The earliest instance of fasces in personal arms in Sweden predates those examples. Fasces is namely found in the baronial coat of arms from 1675 of Mathias Palbitzki, president at the pomeranian government, although in the letter patent not called fasces but instead securis or axes ("*Secures* eller bilor"). Fasces, explicitly called the old Romans' fasces ("de gamble Romares *fasces*") are mentioned in letters patent in 1707 (*fig. 7*). Later during the 18th and early 19th century, fasces are almost as common as scales especially in arms created for provincial governors (*landshövdingar*).

4. Level

A third prominent way of alluding to law in personal coats of arms, after using scales and fasces, was from the mid-18th century the use of the level. In its conventional heraldic form

Fig. 8. Baronial arms for Daniel Edelcreutz, provincial governor (*landshövding*) of Stockholms län, 1816, show in the second quarter both fasces and two levels. Painting in the Great Hall of the House of Nobility in Stockholm. Photo: Gabriel Hildebrand from the book *Riddarhusets vapensköldar*, 2019.

in Sweden the level is a triangular wooden board, with a pendant hanging from the top end, but variations[5] occur. When placing the level on a surface, you can be sure it is horisontal when the pendant hangs exactly outside the middle of the board. The Swedish word used for the instrument in letter patents is always "vattenpass" (*water level*), which is odd since any liquid is not involved. The explanation is probably that the term is referring to the result the instrument is providing; horisontality, like the surface of water. Or did the word water level, being such a superior instrument of its type, overspread to include also the oldtime wooden boards? Anyhow, an inventory[6] written in Växjö in 1784 and mentioning a "Wattnpass med sin Kula" (a water level with its plumb) indicates that wooden boards without any liquid, but with a plumb instead, were in use here and there still in the 18th century.

Notes

1 The image is known from a seal impression made in 1653, but the initials of the seal reveal that it was made for another member of the family than the member making the impression, so the seal was in 1653 not very new. Magnus Bäckmark, 'En blixtrande historia', in *Släktforskarnas årsbok* 2003, p. 104.

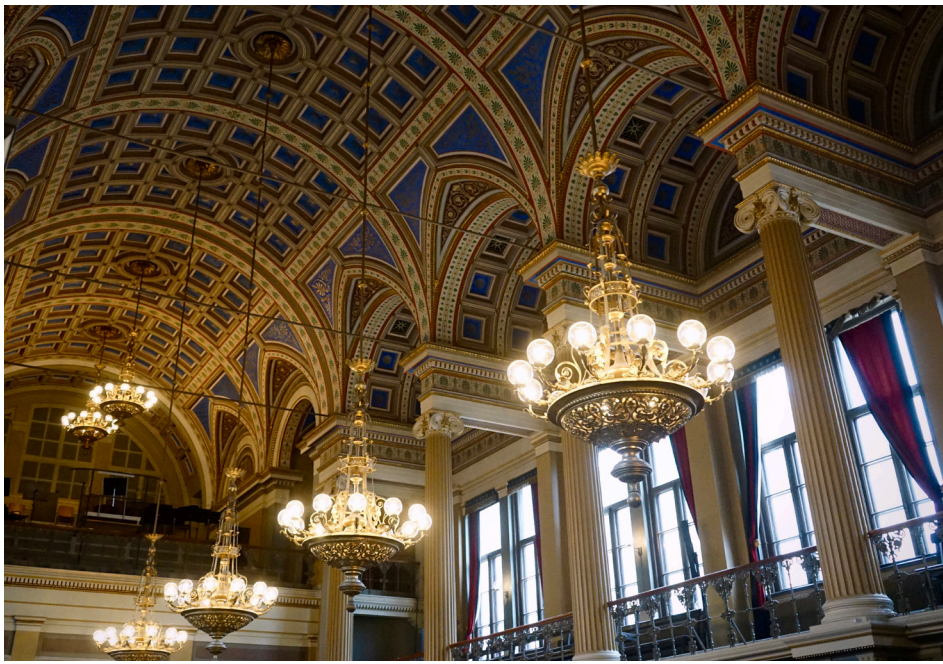
2 Martin Sunnqvist, 'Insignia of Independence or Subordination? The Iconography of the Seals of the Svea Court of Appeal', in Mia Korpiola et al., *The Svea Court of Appeal in the Early Modern Period: Historical Reinterpretations and New Perspectives*, 2024, p. 358.

3 Svenska Akademiens ordbok, the article 'Vikt', 2017.

4 Olof Petersson and Jonas Fredén, *Statens symboler*, 1987, p. 60–61.

5 For example, in the crest of the noble Rosenstam family (arms created in 1743), the board of the level is not triangular, but at least in the painting in the Great Hall of the House of Nobility it has a shape somewhat like an arrow directed upwards.

6 Svenska Akademiens ordbok, 'Vattenpass, 2)', 2014.



The ceiling in the University Main Building. Photo: Selma Rosenfeld.

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Signs of Themis in Lithuanian Heraldry

By Dr. Agnė Railaitė-Bardė, A.I.H.

Abstract: Regarding the early heraldry of Lithuania, we can barely discuss the existence of Themis, legal regulation or strict order, in the creation of heraldry. In the Grand Duchy of Lithuania, the legal treatment of heraldry was conceived very liberally. The official granters of coats of arms were the rulers who issued privileges, or grants and charters. At the same time, we can talk about the individual desires of nobles done at their discretion in depicting coats of arms and changing their charges or other elements. There were also unwritten rules for combining marshalled coats of arms. We see a clearer order in the heraldry of courts and court officials, or more precisely in their armorial seals.

From the middle of the 16th century to the end of the 18th century coats of arms of cities were legitimized through the charters granted by rulers with the coats of arms given to the city painted on the document. The same applies to grants of naturalization and noble title. These grants and charters even specified in brief where the coat of arms being granted could be used. After the Third Partition of Poland and Lithuania the Grand Duchy of Lithuania became part of Tsarist Russia. As a result, more than a hundred years of Lithuanian statehood along with the development of heraldry and law were discontinued.

While Lithuania took the lead in Europe by approving its first legal code in 1529, we should note that before the period between the two world wars, there were no efforts made in Lithuania to formulate detailed legal regulation of procedures for the granting of coats of arms and other heraldic signs and their legitimate use. Before World War II there were attempts to regulate state symbols in somewhat greater detail in law, but when the global situation changed drastically and Lithuania again disappeared from the European political map for fifty years, these never had a chance to be implemented.

After the restoration of Lithuanian independence, active creation of a legal foundation for regulating various spheres of Lithuanian life resumed. We can say legal regulation of heraldry has been very active in recent decades, although it has faced specific challenges and there are still gaps. Currently there is a basic law on heraldry which regulates the creation, approval, use and maintenance of the coat of arms of the state, the coats of arms of cities, towns, villages and heraldic signs of state institutions. The legal procedure is that the coats of arms of localities are approved by the Lithuanian Heraldry Commission and officially approved by decree by the President of the Republic of Lithuania. Recently the Lithuanian Heraldry Commission has begun publishing decisions in the register of legal acts. The Commission has the power to adopt legal acts and regulations of a normative nature. The legal framework related to heraldry is constantly being updated but requires changes to solve old problems and adapt to today's realities.

Résumé : En ce qui concerne les débuts de l'héraldique en Lituanie, nous pouvons à peine discuter de l'existence de Thémis, d'une réglementation légale ou d'un ordre strict dans la création de l'héraldique. Dans le Grand-Duché de Lituanie, le traitement juridique de l'héraldique était conçu de manière très libérale. Les pourvoyeurs officiels d'armoiries étaient les souverains qui délivraient des privilèges, des concessions et des chartes. Dans le même temps, il est possible d'évoquer les désirs individuels des nobles qui décident de représenter les armoiries et de modifier leurs charges ou d'autres éléments. Il existait également des règles non écrites pour la combinaison des armoiries marquées. L'héraldique des cours et des fonctionnaires de la cour, ou plus précisément de leurs sceaux armoriés, présente un ordre plus clair.

Du milieu du XVI^{e} siècle à la fin du XVIII^{e} siècle, les armoiries des villes étaient légitimées par les chartes accordées par les souverains, les armoiries de la ville étant peintes sur le document. Il en va de même pour les concessions de naturalisation et les titres de noblesse. Ces concessions et chartes spécifiaient même brièvement où les armoiries concédées pouvaient être utilisées. Après le troisième partage de la Pologne et de la Lituanie, le Grand-Duché de Lituanie a été rattaché à la Russie tsariste. En conséquence, plus de cent ans d'existence de l'État lituanien, ainsi que le développement de l'héraldique et du droit, ont été interrompus.

Si la Lituanie a pris l'initiative en Europe en approuvant son premier code juridique en 1529, il convient de noter qu'avant l'entre-deux-guerres, aucun effort n'a été fait en Lituanie pour formuler une réglementation juridique détaillée des procédures d'octroi des armoiries et autres signes héraldiques, ainsi que de leur utilisation légitime. Avant la Seconde Guerre mondiale, il y a eu des tentatives pour réglementer les symboles de l'État de manière un peu plus détaillée dans la loi, mais lorsque la situation mondiale a changé radicalement et que la Lituanie a de nouveau disparu de la carte politique européenne pendant cinquante ans, ces tentatives n'ont jamais eu l'occasion d'être mises en œuvre.

Après la restauration de l'indépendance de la Lituanie, la création active d'une base juridique pour réglementer les différentes sphères de la vie lituanienne a repris. On peut dire que la réglementation juridique de l'héraldique a été très active au cours des dernières décennies, bien qu'elle ait été confrontée à des défis spécifiques et qu'il y ait encore des lacunes. Il existe actuellement une loi fondamentale sur l'héraldique qui régit la création, l'approbation, l'utilisation et l'entretien des armoiries de l'État, des armoiries des villes, des villages et des signes héraldiques des institutions de l'État. Selon la procédure légale, les armoiries des localités sont approuvées par la Commission héraldique lituanienne et officiellement approuvées par décret par le Président de la République de Lituanie. Récemment, la Commission héraldique lituanienne a commencé à publier ses décisions dans le registre des actes juridiques. La Commission a le pouvoir d'adopter des actes juridiques et des règlements de nature normative. Le cadre juridique relatif à l'héraldique est constamment mis à jour mais nécessite des changements pour résoudre d'anciens problèmes et s'adapter aux réalités d'aujourd'hui.

1. Introduction

Although Lithuanian heraldry traces its history back to the 14th century when the armorial seals of Lithuanian rulers, princes and nobles appeared and specific Lithuanian linear heraldic signs, state and land heraldry were formed, heraldry was not regulated directly by law. Lithuanian heraldry remains a little-studied area in the field of law.[1] Re-

garding early Lithuanian heraldry, we can barely discuss the existence of Themis, legal regulation, or a strict order in the creation of heraldry. The point of the first part of this paper is not to show the inseparable connection between heraldry and law, but rather its non-existence. In the Grand Duchy of Lithuania, the legal concept of heraldry was understood quite freely. Heraldry and law were essentially unrelated in the Grand Duchy. The granting of coats of arms was the jurisdiction of the ruler. There were unwritten rules for the creation of marshalled coats of arms. The appearance of one or another element in a coat of arms could be the result of inheritance, marriage, a new post, a change in social rank or simply personal ambition.[2] We see a slightly more stable and clearer order in the heraldic seals of legal institutions and court officials. Armorial seals are the primary source of research on the heraldry of these institutions and officials.

This paper will follow, if somewhat sporadically, in the footsteps of Themis, the Greek goddess of divine order, law and custom, during the period of the Lithuanian Grand Duchy, presenting several examples of the privileges promulgated by the rulers of Lithuania and some seals of the nobility and courts which contain supporters. Given the limited scope of this paper, these several subjects have been selected as the most interesting and illustrative in helping shed light on the topic. The second part of this work is dedicated to the interwar period and modern times. It is at this time, following painful occupations, changes in state order and society, that the regulation of heraldry in the country assumed a wholly different character. This will be demonstrated by an analysis of the constitutions, laws and other legislation and regulations adopted.

2. Traces of Law in Heraldry in the Grand Duchy of Lithuania

2.1 Charters and grants issued by rulers

Starting at the beginning, we have very little information about heralds in Lithuania. During the era of Grand Duke Vytautas the Great of Lithuania (1392–1430) – at the beginning of the 15th century – we know of two heralds who were active then. According to our renowned modern heraldist Edmundas Rimša: "Afterwards, there were no official positions concerned with coats of arms. Until the end of the 18th century clerks of the state office usually performed these functions, and, partially, issuers of armorials, who had insufficient knowledge in this field".[3]

One of the most law-related examples of the use of heraldry are the grants and charters, i.e., the privileges issued by the rulers. From the middle of the 16th century to the end of the 18th century the coats of arms of the cities were legitimized by the privileges from the rulers, with the coats of arms painted on the documents for the city to which they were granted. This same method applies to grants of naturalization and ennoblement. The privileges even provided brief instructions on the appropriate venues and use for the coat of arms in question. When King of Poland and Grand Duke of Lithuania Stanislovas Augustas Poniatovskis (King II August, a.k.a. Stanislaus II Augustus, a.k.a. Stanisław

Fig. 1. Fragment of a document of the King of Poland and Grand Duke of Lithuania Mykolas Kaributas Višnioveckis confirming all the privileges granted to the city of Vilnius and its inhabitants by his predecessors, 1669. Lietuvos nacionalinė Martyno Mažvydo biblioteka, F101-82. Photo: Evaldas Lasys.

August Poniatowski, 1732–1795) issued a grant of noble title in 1774, he bestowed it to the man and his descendants for use in perpetuity on shields, flags, paintings, in their homes, on their tombs, on rings and on all their property, in keeping with the practice of the nobility of Poland and Lithuania.[4] Another example is the privilege where the heraldry is visible as decoration on the manuscript and represents the origin of the ruler and the capital Vilnius. Analysing the manuscripts of Mykolas Kaributas Višnioveckis (a.k.a. Michał Korybut Wiśniowiecki), the ruler's document from 1669 catches the eye (*fig. 1*), reconfirming all the rights and privileges granted to the city of Vilnius and its inhabitants by his predecessors.[5] This manuscript is decorated with several coats of arms. In the middle we see the ruler's arms. On the dexter side the pillars of Gediminaitis (Gediminids) are depicted on a shield, above which is placed the ducal cap. This latter is depicted in a strange manner. It is interesting the same cap is depicted in the coat of arms of Vilnius drawn on the sinister. It should be noted that in the Grand Duchy of Lithuania the ducal cap was basically used in the heraldry of nobles and rulers. Its placement above the coat of arms of the city, the capital of Lithuania, indicates the place of residence of the rulers of Lithuania. This is reinforced by the display of the pillars of Gediminaitis. They emphasize the importance of the Gediminid dynasty to the state and its capital, Vilnius. Of course all of this is reflected in the text of the document which relates directly to Vilnius. The significance and importance of Mykolas Kaributas Višnioveckis as a descendant of the Gediminid dynasty is reflected at the same time. His origin from Lithuanian Grand Duke Gediminas is emphasized strongly in the sources regarding the genealogical representation of this ruler.[6]

Regarding the documents issued by the rulers, it is also important to mention the charters conferring *indygenat* (naturalization) as well as the practice of sealing important documents in general. Examples are the copy of a pedigree document[7] of a Prussian nobleman issued in 1741 to Henrik Loenhoeffel of Loewensprung (grandfather of Joachimas Lelevelis[8]) and a document by which King Stanislovas Augustas Poniatovskis grants Polish indigeneity to Karol Loenhoeffel of Loewensprung and his descendants and con-

Fig. 2. Coats of arms of Henrik Loenhoeffel of Loewensprung (later Lelevelis), 1741 and 1775, respectively. Vilniaus universiteto biblioteka, F12-29 and F12-5.

firms the Polish surname and coat of arms of Lelewel, which he had until then as a Brandenburg nobleman, issued in 1775.[9] Both documents show the same coat of arms of the aforementioned family (*fig. 2*), but in the later document the graphic execution of the coat of arms lacks heraldic excellence. The shield is parted per fess. The charges are a black eagle wing and a double-tailed golden lion holding a pot with a plant. The same lion is shown in the crest. It is also important to note that there are three seals affixed to the document, i.e., those of the Kingdom of Poland, the Grand Duchy of Lithuania and the sovereign himself.

Another type of useful source for our topic are the privileges for Magdeburg Charter rights to cities and towns. Aside from the older privileges, we have a whole bundle of the ruler's late 18th-century charters to the cities of the Lithuanian Grand Duchy granting them the status and rights of a free city. One

Fig. 3. Coat of arms of Josvainiai in the privilege of the Grand Duke of Lithuania Stanislovas Augustas Poniatovskis, 1792. Lietuvos mokslų akademijos Vrublevskių biblioteka, F1-360.

Fig. 4. Some examples of the recreation of the old civic coats of arms of Kėdainiai, Žemaičių Naumiestis, Šeduva, Vabalninkas and Liudvinavas. Fragment of a plate preserved by the Lithuanian Heraldry Commission.

example is the privilege issued by Grand Duke of Lithuania Stanislovas Augustas Poniatovskis granting Josvainiai the status of a free city and a coat of arms. In the text of this charter, as in all similar privileges of the late 18th century, the coat of arms of Josvainiai (*fig. 3*), which depicts an armoured mounted knight holding up a sword, is round. It resembles a drawing rather than a coat of arms, however because of its overly realistic expression. The equestrian is depicted riding through a meadow with a variety of terrain and low greenery.[10] All of the old city coats of arms for which we have surviving images from the privileges were recreated in modern times using the same symbols and colours, but employing fine heraldry standards (*fig. 4*).

Other interesting examples are the privilege of Augustus II, King of Poland and Grand Duke of Lithuania, issued in 1718;[11] and the privilege of Augustus III, King of Poland and Grand Duke of Lithuania, issued in 1744,[12] which confirms the rights granted to Gardinas (Grodno) by the ruler's predecessors, Aleksandras (Alexander) and Žygimantas Senasis (a.k.a. Zygmunt I Stary, a.k.a. Sigismund I the Old). These privileges are the first known documents to depict the city's coat of arms, whereas documents issued by earlier rulers only hinted at the existence of the coat of arms but didn't provide any specific information on their appearance, neither verbally nor visually.[13] In the privilege of 1718 the initial letter *O* is used to represent the seal of Grodno, where the oval of the letter is used to inscribe the seal legend [SIGILLUM CIVITATIS GRODNENSIS], and inside it we see a shield, the shape of which is somewhat reminiscent of the early Renaissance shield. The latter depicts a stag leaping over a fence with a cross between its horns. The letter being discussed here is the seal of the town, decorated on both sides with palm branches and at the bottom with a ribbon.

Fig. 5. Armorial symbolism of Gardinas (Grodno) city in the decoration of the initial letter, 1744. Lietuvos mokslų akademijos Vrublevskių biblioteka, F1-334.

Above the initial letter there is an additional representation of a knight galloping, holding a sword in his right hand and a shield with the double cross of the Jagiellons in his left. Similarly, the same initial letter *O* (*fig. 5*) is depicted in a later privilege issued by Augustus III in 1744, but the deer is not represented on a shield. The decoration of the letter in this case is more like a floral cartouche with architectural elements. One such element is superimposed at the top of the letter with the figure of a knight which, unlike in the previous privilege, is drawn in a more statuesque and heraldic manner, reminiscent of the heraldic figure or symbol depicted in the helmet decoration. Given that in this privilege the first letter *A* of the sovereign's name is decorated with a white eagle[14] representing Poland, with the symbolism of the Saxon dynasty on the shield on the bird's chest, and with the orb and the sceptre in its talons, we can assume the knight above the aforementioned letter *O* must have been a representation of the Grand Duchy of Lithuania and of the city of Gardinas, a.k.a. Grodno, which belonged to the Grand Duchy.

2.2. Specific features of the use of supporters in Lithuanian heraldry

Supporters are one of the most beautiful elements of the coat of arms. Their regulation in Western Europe was quite strict. The same cannot be said for the Grand Duchy of Lithuania. Laws and regulations regarding this were a vacuum. It is therefore interesting to analyse how supporters were used in Lithuania.

Fig. 6. Seals of clerks of Ukmergė Castle Court (left) and Land Court (right), 18th century. Lietuvos nacionalinė Martyno Mažvydo biblioteka, F94-1125, and Lietuvos nacionalinis dailės muziejus, LNDM MPM 604. Photo: Jogailė Butrimaitė.

The collected data suggest that the nobility in the Grand Duchy of Lithuania mainly used animals as the supporters on their armorial seals. It is noteworthy that there were no legal regulations in the Grand Duchy of Lithuania regarding the use of supporters in the nobility's heraldry. All supporters can be further categorized: 1) personal (intentional), 2) related to one's office, 3) related to a special occasion and 4) inherited.[15] This paper discusses the first two and the last category in more detail.

The very first example is the coats of arms of Leonas Sapiega (a.k.a. Lew Sapieha), the Grand Chancellor of Lithuania, and his wife (1599). It is likely that the lions entered Sapiega heraldry through marriage. The first to use the lion in a crest was the famous Radvila (a.k.a. Radziwiłł) family; later it became one of the supporters as a pair with a griffin. Lions occur in the Sapiega heraldry only after marriage with a member of the Radvila family.[16] The available sources suggest the coat of arms in question from 1599 was not the only case in the history of the Sapiega family where lions were assigned the role of supporters. The title page of the thesis of Jonas Počapovskis, a graduate of the Vilnius University, published in 1643 featured the marshalled coat of arms of his patron, Kazimieras Leonas Sapiega (a.k.a. Kazimierz Leon Sapieha), at the top of the page, surrounded by a laurel wreath which was held by two lions (both lions rampant coward).[17] This nobleman, marshal of the Lithuanian manor, was a son of the above-mentioned Leonas Sapiega. Hence, he took over the supporters from his father's heraldry as if by inheritance[18].

Supporters are quite often found in the seals of the court officials of the Grand Duchy of Lithuania. Especially in the sphra-

gistics of castle and land court officials.[19] For instance, the two seals of clerks of Ukmergė Castle Court, Marcijonas Morikonis, and the Land Court, Pranciškus Morikonis.[20] As we can see from the surname, they belonged to the same family, Morikonis. Examining the seals (*fig. 6*), we see they used different supporters. The first one used a lion and an eagle, and the second one used just one supporter on the sinister. This was a flagman. This is most likely in reference to another post held by the armiger. As for the lion and the eagle, no specific connections can be made. We can only guess they were chosen in order to raise the armiger's status in society: these animals were used by the highest-ranking Lithuanian nobility.[21]

Equally relevant to our topic are the three seals of Kaunas Land Court official Simonas Sirutis.[22] Comparing these sources with one another, we spot the differences. Nonetheless, lions remained as supporters on all seals. Changes were affected by new posts and awards. The armiger was awarded the Order of the White Eagle which can be seen on the third seal. Although the field for the coat of arms was decreasing on the seal, there remained the need to depict the supporters.[23] It should be added that supporters were not particularly common in Lithuanian heraldry, but perhaps it should not be assumed either that people connected with the courts used them proportionally more often. Further research is needed to clarify that assumption.

This study is complemented by a particularly interesting seal[24] of the Supreme Tribunal of Lithuania which is damaged, unfortunately. Despite that, the enlarged version suggests the coat of arms at the bottom is almost identical to the arms of the Grand Treasurer of the Grand Duchy of Lithuania.[25] In this case the bear, the sinister supporter, is actually related to the legend of the origin of the family among the Romans. The armiger derived his name from Ursinus who, together with the legendary Palemonas, came to Lithuania from Rome and used the coat of arms of the Bear. In addition, the coat of arms of the Italian Orsini and the Rosenberg families were also depicted in this marshalled coat of arms. There is no substantiated evidence that the holder of the coat of arms and the aforementioned families were related by blood. This only reinforces the mythological genealogical identity of Jonas Mikalojus Davaina Sologubas as reflected in his heraldry.[26]

To conclude on the period of the Lithuanian Grand Duchy, another example is worth mentioning. Although the footsteps of Themis are quite difficult to follow, she was nevertheless found in one armorial seal, in the role of a supporter. It is the seal of the Žemaitija (Samogitia) castle court with the coat of arms (*fig. 7*) of Antanas Anupras Gelgaudas displayed on it.[27] Themis, the sinister supporter, is a symbol of the armiger's position in the legal field. Considering the heraldry of the officials of the Lithuanian Court of Justice does not designate their office with specific symbols, the seal in question is unique, standing out from the general context of the heraldry used by the officials of the Lithuanian Court.

There is another interesting fact. It is not related to supporters but nevertheless is worth mentioning. Sometimes the seal of a Lithuanian nobleman was used by more than one person of the same family. For instance,

Fig. 7. Seal of the Žemaitija (Samogitia) Castle Court with the coat of arms of Antanas Anupras Gelgaudas. Themis, the sinister supporter, is a symbol of a position in the legal field, 1784. Lietuvos valstybės istorijos archyvas, F. 1671, ap. 4, b. 297, l. 503r.

in 1614 Vilnius Archdeacon Svencickis donated a village to the Vilnius Capitular. This document is authenticated by four seals. The two people who sealed the document belonged to the Korsakas family: Jonas, a judge of the Ašmena Land Court, and Kristupas, a pantler from Polotsk. We see the same oval seal without a legend next to both of their names, the same coat of arms symbols are used and the size of the seals is the same.[28] The letters *I* and *K* appear above the shield next to the helmets, so we can assume that the seal of Jonas Korsakas was used in this case. In this manner the judge's seal also served the needs of another relative in the validation of the document. We cannot say, however, that only the judge's armorial seal might have been used in this way. In the Grand Duchy of Lithuania there was more than one case where the same seal was used by more than one relative.[29]

3. Legal framework related to heraldry in Lithuania in the XX–XXI centuries

3.1 Attempts to incorporate heraldry into the Lithuanian legal system during the interwar period

After the Third Partition of Poland and Lithuania the Grand Duchy of Lithuania became part of Tsarist Russia. As a result, more than a hundred years of the evolution of Lithuanian statehood and the development of heraldry and law were discontinued.

Although Lithuania took the lead in Europe by approving the first legal code in 1529, we should note that before the interwar period in Lithuania there were no attempts to provide detailed legal regulation of the procedures for granting coats of arms and other heraldic signs and their use. Before the start of World War II there were attempts to regulate state symbols in somewhat finer detail in law, but when the global situation changed drastically and Lithuania again disappeared from the European political map for fifty years, these never had a chance to be implemented. In the following section we present the above-mentioned attempts to incorporate heraldry into the Lithuanian legal system in more detail, analysing constitutions, draft legislation etc.

The 1922 Constitution[30] of Lithuania only recognized the tricolour (without the moun-

ted knight) and called it the Flag of State, while the State Flag used for several hundred years in the past – red with a white knight – was excluded from or at least remained outside the highest law of the land.[31] In the interest of truth, we should point out an interesting detail in the text of the constitution. The word *flag* does not appear there. Only three state colours are listed: yellow, green and red.[32] In the interwar period two more constitutions were adopted, in 1928[33] and 1938[34] respectively, but the word *flag* did not appear in them either in terms of defining what it looked like. Only in the 1938 constitution did the terminology change, i.e., the state colours were replaced by national colours. The term *flag* does appear in regard to its proper use in another section of the same chapter.

All the other constitutions are missing not just the term *flag* but also *coat of arms*, because the coat of arms is not referred to as a coat of arms but as a sign of the state, indicating that a white knight is depicted on a red field.[35] It should be noted that there is a supplement to text of the 1938 Constitution with slightly more detailed heraldic regulation. It states that the state sign, the national flag and their use shall be regulated by law, while the regions and cities of Lithuania may have their own signs which are also to be regulated by law. This addition demonstrates a much deeper understanding of the scope of heraldry and signals a significant shift in the socio-cultural and political outlook of society over twenty years of Lithuanian independence. The need to regulate not just the main symbols of state (the coat of arms and the flag) but also the heraldry of the regions and the cities suggests such processes were already coming to maturity and possibly already happening in society. This is particularly relevant for municipal heraldry. Unfortunately, laws regulating these heraldic objects (their creation and use) were not adopted. The geopolitical situation in Europe soon became highly unfavourable for Lithuania, resulting in the country's occupation, only to regain independence fifty years later. The lack of legal regulation also led to practical problems which led to further difficulties, for example, in 1938 the Lithuanian Ministry of Foreign Affairs appealed to the Government with a request from the Norwegian envoy to send him reproductions or drawings of Lithuanian state seals in various sizes. At the same time it was noted that, in the absence of law or regulations specifying the types and sizes of state seals, the Ministry of Foreign Affairs instead should have approached the other ministries and institutions, asking them to send reproductions of the seals they actually used. From the samples sent back, it was evident the seals depicted very different renderings of the Lithuanian knight. That caused an inconvenience in responding to the foreign diplomatic missions, since it was considered unseemly to report to them that Lithuania which was then celebrating twenty years of independence still didn't have a set standard for its official state seal[36]. Surviving examples show the Lithuanian knight depicted on the aforementioned seals were in fact of very different styles, even when used at the same institution.[37] In some seals the *vytis* (Lithuanian knight) was combined with the Pillars of the Gediminids under his horse. This seal was used by the Chancellor of the Lithuanian Orders.[38] Sur-

viving documents do suggest, however, that Lithuanians were concerned with the regulation of state symbols. There was also an effort to use the best practices of foreign countries. For instance, in 1925 the legal advisor to the Government writing to the prime minister said German laws of a similar nature had been used for the construction of the draft law on the Lithuanian state sign and flag.[39] That same year the Lithuanian prime minister also obtained the texts of Finnish laws and visual material related to Finnish flags.[40] Thus it is evident that the drafting of legislation related to heraldry was approached in seriousness and responsibly with a view towards adapting European experience and practices as Lithuanian legislation when it was appropriate.

As far as draft laws on state symbols and heraldry go, only two examples, dated 1926 and 1934, have been found so far among archival documents. There is a strong possibility the 1926 source isn't even complete. This draft Law on the Lithuanian State Symbol and Flags describes the state coat of arms in some detail. It describes the direction faced by and the posture of the *vytis* and the white colour of the horse, but does not specify the colour of the knight himself. The knight's shield is described as red and the double cross it bears gold.[41]

The later draft Law on the State Emblem, Seals and Flags is first of all surprising because the state coat of arms is described in great detail, including all the features: colours, the appearance of the knight and horse, the sizes of discrete components and their placement on the arms in relationship to other elements. This description is almost two pages long. It is interesting to note the knight is named as argent (including his face) and the horse as white. A golden double cross is depicted on the knight's shield, and a golden Pillars of the Gediminids is depicted below the knight. This draft law provides for the appropriate venues where the state emblem may be used. It prescribes that in prints, seals, articles and etc., the coat of arms may be plain and used without a shield. It also called for the Government in the future to prepare rules defining when, how and under what circumstances the state coat of arms could be used by the state, the municipalities and self-governing bodies.[42]

Another matter is also interesting. In Lithuania, as mentioned previously, there was a variety of seals of state institutions. New designs were also proposed.[43] Seals and their use had not been regulated anywhere. One proposal envisages a state seal 7 centimetres in diameter. It depicts the coat of arms of the state surrounded by a wreath of oak leaves, and between their non-connecting inferior ends *Lithuania* was written. Seals were also proposed for the most important state institutions: the Office of President, the Government, the parliament, the state council, the supreme tribunal, the ministries and state audit. They were required to depict the coat of arms of the state and the name of the institution. The seals of other institutions differed only in their size and the fact that the Lithuanian knight was not depicted on a shield. It is important to note this draft legislation contained language providing for the municipalities to use their own coats of arms on their seals rather than the state coat of arms. There were not, however, any wider provisions for the regulation of municipal

heraldry, its development or appropriate use.[44]

Regarding flags, the flag of the state and of the president of the Republic was supposed to be red with the Lithuanian knight mounted on it and the Pillars of the Gediminids depicted below. It is interesting that during the interwar period the president used the historical flag of Lithuania with the mounted knight, while the reverse side of the flag featured the Pillars of the Gediminids. The tricolour was named the national and the trade flag of Lithuania. Military flags were also part of the project. The Lithuanian military flag was supposed to be the national tricolour on which was depicted a double yellow cross on a red shield.[45]

This draft legislation was not in its final stages: it contains underlining, question marks and handwritten comments. At this time we have no information on whether the laws governing the use of coats of arms, seals and flags were ever actually adopted. We can only assume that the lengthy process of drafting and coordinating and the outbreak of World War II prevented refinement of the text and its passage into law.

3.2 Law and heraldry at the end of the 20th century/beginning of the 21st century

In the mid-1970s Lithuanian intellectuals decided to revive the historical cultural heritage: the distinctive symbols of cities and towns, their coats of arms. In 1966, the Ministry of Culture established the Republican Heraldry Commission headed by the deputy minister of culture. It was the first official institution to deal with heraldry matters. Over a period of several years, from 1968 to 1970, the Commission confirmed 46 city and town coats of arms. Some of them were old and some entirely new. The use of coats of arms in Lithuania had been abolished in 1970 by the Soviet government. After the 1970 Song Festival (the participants of the Song Festival held the coats of arms of their native towns and cities), at the initiative of second secretary of the Central Committee of the Lithuanian Communist Party of Lithuania V. Kharazov, the Heraldry Commission was accused of propagating bourgeois nationalism and was abolished, and the use of the new symbols was practically forbidden. It has been said that there were only 15 coats of arms in the Soviet Union, the number of the constituent Soviet republics. Attempts to revive the Heraldry Commission were made in 1971 and 1980–1981 but did not meet with success. The Commission had drawn up rules for the creation of heraldry but these regulations did not carry the force of law.[46]

The Heraldry Commission of the Republic was reinstated in 1987. In 1990 it was transformed into the Lithuanian Heraldry Commission under the Presidium of the Supreme Council of Lithuania. From 1995 it was subordinated to the Office of President of the Republic of Lithuania. The Commission according to its statute and regulations, approves standards for arms, municipal armorial flags, armorial seals and other heraldic insignia.[47] Municipal coats of arms become legal and official after the president issues a decree approving them. Municipal heraldry must be created in accordance with the "Rules for the Creation of Coats of Arms,

Armorial Flags, Armorial Seals and Armorial Signs" approved by the Lithuanian Heraldry Commission.[48]

The guidelines for the protection and use of these coats of arms are laid down in the Law on the State Coat of Arms, Other Coats of Arms and Armorial Signs of the Republic of Lithuania. The procedure for the use of municipal, city, town and village coats of arms is further determined by municipal councils, while the procedure for the use of the coat of arms of an ethnographic region is determined by the Council for the Safeguarding of Ethnic Culture.[49]

Since 1991 the Lithuanian Heraldry Commission has been in charge of approving all distinctive and promotional signs, symbols and logos of state institutions and officials which depict state and municipal heraldry. The Commission is composed of nine members. The chairperson and deputy chairperson of the Commission are appointed by presidential decree for a term of six years and the members for a term of five years. According to law the Lithuanian Heraldry Commission is a state institution accountable to the president of the Republic of Lithuania.[50] It is not, however, a legal entity.

The Heraldry Commission has been in charge of the proper legalization of Lithuanian state symbols since the regaining of national independence. The commission sought to have the historical flag of Lithuania with mounted knight recognized in the Constitution as the state flag and the tricolour as the national flag. It also stipulated Lithuania should have the greater and minor coats of arms of state as well as the presidential flag depicting a symbol similar to the greater coat of arms. Unfortunately, the Commission's opinion was not heeded in the Lithuanian constitution adopted in 1992, which legalized the tricolour as the state flag of Lithuania, and the white mounted knight the state coat of arms.[51]

The old armorial flag of Lithuania was legalized only in 2008 when the Law on the State Flag and Other Flags of the Republic of Lithuania was amended.[52] Great efforts were made by the heralds to accomplish this, although at first it was met with much resistance, since the colour red was associated for many with extremely negative experiences experienced during the Soviet era. It took almost twenty years for the public attitude towards the colour red to change. Even after that, though, for example, in the creation of municipal coats of arms, communities did not always want red in their coats of arms. Precisely for the above-mentioned reasons, the association with the Soviet Union.[53]

Lithuania currently has two state flags: the tricolour and the historical (armorial) flag. The tricolour was adopted as the national flag in the constitution of the Republic of Lithuania in 1992 two years after the restoration of Lithuania's independence. It is also defined in the Law on the Flag of the Republic of Lithuania and Other Flags. Following an amendment to this law in 2008, the state flag with the Lithuanian knight used in the times of the Grand Duchy of Lithuania was recognised as the historical (armorial) flag of the Lithuanian State. The state flags are described in the law.[54] That same year the historical national symbols of Lithuania, the double cross and the Pillars of the Gediminids, were also included in the law.[55]

Regarding the relevant laws, in principle

all cases for the use of the state coat of arms and the flag are provided for in: (1) the Law on the State Coat of Arms, Other Coats of Arms and Armorial Signs of the Republic of Lithuania and (2) the Law on the Flag of the Republic of Lithuania and Other Flags. The Lithuanian criminal code specifies penalties for the desecration of state symbols.[56] As far as coat of arms standards are concerned, the Lithuanian legal framework is quite strict. The coat of arms must always correspond to its visual standard. Thus, there is little room for flexibility.[57]

It's worth noting that in 2012 the Constitutional Law on the List of Constitutional Laws of the Republic of Lithuania was issued. The purpose of this law is to create the legal preconditions for the adoption of constitutional laws in accordance with the requirements laid down in Article 69(3) of the constitution of the Republic of Lithuania. It stipulates that the Law on the State Coat of Arms, Other Coats of Arms and Armorial Signs of the Republic of Lithuania and the Law on the State Flag and Other Flags of the Republic of Lithuania together with seven other laws must be constitutional.[58] The aim is to adopt these constitutional laws and to update other heraldry-related legislative frameworks. In that case, the legalization of the Lithuanian greater coat of arms could come up for consideration again.

4. Concluding remarks

Although heraldry, coats of arms and other heraldic signs and their use were not subject to legal regulation in the Grand Duchy of Lithuania, other examples of heraldry and law have survived to the present day. The privileges issued by the rulers served as a legal tool for granting a coat of arms or confirming other important matters, and as a source depicting the coat of arms. In these documents, heraldry was depicted not only as the main visual source symbolizing the beneficiary, but also as a reflection of the ruler who granted the privilege. Coats of arms were not only depicted in the text of the privileges but also in their decoration. Their presentation also varied, from standard heraldic depictions to realistic drawings, and decoration of initial letters.

The seals of courts and court officials are another reflection of heraldry as it relates to law. An analysis of the available sources suggests that court officials depicted on their seals both the coat of arms of their kin as well as marshalled coats of arms revealing a broader genealogical, sometimes even legendary, identity. We do not find on their armorial seals any specific symbols, however, indicating their status as court officials. So far we know of only one case where a court official used Themis as a supporter for his coat of arms. As far as the use of supporters is concerned in the heraldry of the nobility of the Grand Duchy of Lithuania in general, we can say this was completely unregulated.

The interwar period is interesting in that in the end they tried to include heraldry within the legal system. The three constitutions which were adopted incorporated the main objects of state heraldry into the legal system. Draft laws on heraldry and other symbols suggest there was a growing need in society to regulate the creation and use of heraldry in greater detail. After Lithuania

regained independence in 1990 the most important laws regulating heraldry were adopted very quickly and over the years they were constantly supplemented and adjusted, taking into account the processes underway in the country and the initiatives and needs of society. The Lithuanian Heraldry Commission was re-established in 1987 and actively participated and continues to take part in the legislative process, making proposals and providing conclusions on heraldry. The Commission also makes decisions of a normative nature and prepares rules for the creation of heraldic objects which are recognized as legal acts. At present, there awaits an important step in the field of heraldry: the adoption of constitutional laws related to heraldry. In this way the heraldic legal framework would be revisited and updated.

Notes

1 Edmundas Rimša conducted a fundamental study of the seals of the cities of the Grand Duchy of Lithuania. Among other abundant sources on this subject were the seals of magistrates and the grants and charters – *privilegijos* – issued by rulers. See: Rimša, Edmundas, *Lietuvos Didžiosios Kunigaikštystės miestų antspaudai*, Vilnius, 1999. Heraldry in its legal aspect has been studied essentially through sphragistics, i.e., the armorial seals of various judicial institutions and officials. The first to systematically study the sphragistics of judicial institutions in one region of Lithuania was Gitana Zujienė in her master's thesis. See: Zujienė, Gitana, Žemaitijos *Kunigaikštystės teisminių institucijų sfragistika 1565–1795 m.*: master's thesis, Vilnius 1998. Another, larger work is that of Justina Sipavičiūtė whose dissertation explored seals in the court system of the Grand Duchy of Lithuania in the 16th–18th centuries. See: Sipavičiūtė, Justina, *Antspaudas Lietuvos Didžiosios Kunigaikštystės teismų sistemoje XVI–XVIII a.*, doctoral thesis, Vilnius 2020. Individual cases of heraldry research in relation to law can be found in works by the author of this paper. See: Railaitė-Bardė, Agnė, *Origo et arma. Kilmė ir herbas Lietuvos Didžiojoje Kunigaikštystėje XVI–XVIII amžiuje*, Vilnius 2020.

2 Railaitė-Bardė, Agnė, *Origo et arma...*, pp. 189–324.

3 Rimša, Edmundas, *Heraldika. Iš praeities į dabartį*, Vilnius, 2004, p. 14.

4 Privilege of Stanislovas Augustas Poniatovskis, 1744, Biblioteka Książąt Czartoryskich – Muzeum Narodowe w Krakowie, 1159 Perg., vol. VIII/22.

5 A document of the King of Poland and Grand Duke of Lithuania, Mykolas Kaributas Višnioveckis, confirming all the privileges granted by his predecessors to Vilnius and its inhabitants, Lietuvos nacionalinės Martyno Mažvydo bibliotekos Retų knygų ir rankraščių skaitykla (Rare Books and Manuscripts Section of the Lithuanian National Library, hereinafter LNMMB RKRS), F101-82.

6 Railaitė-Bardė, Agnė, "The Rise of Genealogical Manifestation after the Election of the Ruler of Poland and Lithuania in 1669" in *Genealogica & Heraldica. Influence on Genealogy and Heraldry of Major Events in the History of a Nation: Proceedings of the XXXI International Congress of Genealogical and Heraldic Sciences*, editor Elin Galtung Lihaug, Oslo 2015, pp. 305–313.

7 Copy of the pedigree document of a Prussian nobleman issued in 1741 to Henrik Loenhoeffel of Loewensprung, Vilniaus universiteto biblioteka (Vilnius University Library, hereinafter VU biblioteka), F12-29.

8 Joachimas Lelevelis (1786–1861) was a theoretician of auxiliary historical sciences and a professor at the universities of Vilnius, Cracow and Brussels.

9 Privilege of Stanislovas Augustas Poniatovskis issued in 1775, VU biblioteka, F12-5.

10 Privilege of Grand Duke of Lithuania Stanislovas Augustas Poniatovskis, 1792, Lietuvos mokslų akademijos Vrublevskių bibliotekos Rankraščių skyrius (Manuscripts Department of the Vrublevskiai Library of the Lithuanian Academy of Sciences, hereinafter LMAVB

RS), F1-360.

11 Privilege of Augustus II, King of Poland and Grand Duke of Lithuania, 1718, LMAVB RS, F1-314.

12 Privilege of Augustus III, King of Poland and Grand Duke of Lithuania, 1744, LMAVB RS, F1-334.

13 Rimša, Edmundas, *Lietuvos Didžiosios Kunigaikštystės miestų...*, pp. 223–224.

14 The eagle is usually depicted with a crown in the decoration of the manuscripts of the rulers, but sometimes without. In this case, the bird is crowned with an unusual ducal crown.

15 Railaitė-Bardė, Agnė, *Origo et arma...*, p. 321.

16 *Ibid.*, pp. 307–309.

17 Liškevičienė, Jolita, "Vilniaus universiteto ginamieji darbai: tezių grafika" in *Meninis Vilnius:* įtakos *ir* įvaizdžiai. *Artistic Vilnius: Influences and Images*, Vilnius, 2010, pp. 56–58.

18 Railaitė-Bardė, Agnė, *Origo et arma...*, p. 308.

19 After the judicial reforms of 1564–1566 which were introduced by the Second and Third Statutes of Lithuania (in 1566 and 1588 respectively), the Land Court and the Castle Court, among others, began operation. The former dealt with the civil cases of the nobility and the latter with criminal cases of the nobility. The Land Court consisted of a judge, a deputy judge and a clerk (or secretary). They were appointed for life by the Grand Duke from among candidates elected by the nobility at the county dietine (four for each post). The Castle Court was headed by the county elder appointed by the Grand Duke (or, in the case of a county in which the seat of a voivodeship was located, by the voivode), who then appointed the other members of the court: his deputy, the castle magistrate and the clerk/secretary.

20 Seal of clerk of the Ukmergė Castle Court Marcijonas Morikonis (1797), LNMMB RKRS, F94-1125; seal of the clerk of the Ukmergė Land Court Pranciškus Morikonis (18th century), Lietuvos nacionalinis dailės muziejus (Lithuanian National Museum of Art), inv. Nr. LNDM MPM 604.

21 Railaitė-Bardė, Agnė, *Origo et arma...*, pp. 304–305.

22 Seal of Simonas Sirutis, elder of Kaunas (1744). He used this seal in his position as an officer of the court, LNMMB RKRS, F94-1679; seal of Simonas Sirutis, swordsman of the Grand Duchy of Lithuania (1755), LNMMB RKRS, F99-1365, l. 4r; seal of Simonas Sirutis, castellan of Vitebsk, elder of Kaunas (1763), LNMMB RKRS, F94-1703.

23 Railaitė-Bardė, Agnė, *Origo et arma...*, pp. 312–314.

24 Seal of the Supreme Tribunal of Lithuania (1757), Nacionalinis M. K. Čiurlionio dailės muziejus (M. K. Čiurlionis National Museum of Art), ČDM Tkr 532.

25 Seal of Jonas Mikalojus Davaina Sologubas, Grand Treasurer of the Grand Duchy of Lithuania (1746), LMAVB RS, F31-581, l. 1r.

26 Railaitė-Bardė, Agnė, *Origo et arma...*, pp. 318–319.

27 Seal of Žemaitija (Samogitia) Castle Court (1784), Lietuvos valstybės istorijos archyvas (Lithuanian State History Archive), F. 1671, ap. 4, b. 297, l. 503r.

28 Seal of Jonas Korsakas, 1614. LMAVB RS, F43-6051, l. 1v.

29 Railaitė-Bardė, Agnė, *Origo et arma...*, pp. 203–204.

30 The Constitution was adopted by the Constituent Seimas (Parliament) on August 1, 1922.

31 Rimša, Edmundas, *Heraldika. Iš praeities į dabartį...*, p. 83.

32 Constitution of the State of Lithuania 1922, Article 7. Access via internet: < https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/77e174b051171ie5a4ad9dd3 e7d17706? positionInSearchResults=1&searchModelUUID=7f87d2be-f754-468d-907f-ac9070c8d300/>.

33 Constitution of the State of Lithuania 1928, Article 8. Access via internet: < https:// e-seimas.lrs.lt/portal/legalAct/lt/TAD/6309c2605b0b11e58de4e93684f3437f?positionInSearchResults=3211&searchModelUUID=99038210-ce9a-49d7-85e4-5c705668bffe>.

34 Constitution of the State of Lithuania 1938, Article 8. Access via internet: < https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/18e16d-8067b011e5b316b7e07d98304b?positionInSearchResults=3210&searchModelUUID=990382l0-ce9a-49d7-85e4-5c705668bffe>.

35 See footnotes 23–25.

36 Appeal of the Ministry of Foreign Affairs of

Lithuania to the Government of January 15, 1938, Lietuvos centrinis valstybės archyvas (Lithuanian Central State Archive, hereinafter LCVA), F. 923, ap. 1, b. 1600, p. 454.

37 Examples of armorial seals used by Lithuanian institutions during the interwar period, F. 923, ap. 1, b. 1600, p. 456–461, 463–468.

38 *Ibid.*, p. 456.

39 Letter from the Legal Advisor of the Government to the Prime Minister, August 20, 1925, LCVA, F. 923, ap. 1, b. 431, p. 5.

40 Letter to the Prime Minister, August 12, 1925, LCVA, F. 923, ap. 1, b. 431, p. 21–26, 31e–31s ap, 49.

41 Draft Law on the Lithuanian State Emblem and Flags, 1926, LCVA, F. 923, ap. 1, b. 462, p. 16.

42 Draft Law on the State Symbol, Seals and Flags, 1934, LCVA, F. 923, ap. 1, b. 1600, pp. 448–450.

43 Sketch of the seal of the president of Lithuania created by Mstislavas Dobužinskis, 1934, LCVA, F. 923, ap. 1, b. 1600, p. 394.

44 Draft Law on the State Symbol, Seals and Flags, 1934, LCVA, F. 923, ap. 1, b. 1600, pp. 450–451.

45 *Ibid.*, pp. 451–453. In 2018 the authentic flag of the Lithuanian warship Prezidentas Smetona was returned to Lithuania from the USA where it had been kept in a private collection.

46 Mažeikienė, Ona, "Šiuolaikinė heraldika. Paroda, skirta Lietuvos valstybės atkūrimo 90-mečiui" in *7 meno dienos*, 2008, Nr. 796; Rimša, Edmundas. *Lietuvos heraldika...*, pp. 9–10; Access via internet: <https://www.7md.lt/archyvas.php?leid_id=796&str_id=8213>; Archival documentation of the Lithuanian Heraldry Commission.

47 Statute of the Lithuanian Heraldry Commission. Access via internet: <https://www.e-tar.lt/portal/lt/legalAct/TAR.656C8A8B3D12/asr>.

48 Rules for the creation of coats of arms, armorial flags, armorial seals and armorial signs. Access via internet: < https://www.e-tar.lt/portal/lt/legalAct/622e4e20d2b811ec8d9390588bf2de65/asr>.

49 Law on the State Coat of Arms, Other Coats of Arms and Armorial Signs of the Republic of Lithuania. Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.36/asr>.

50 *Ibid.*

51 Constitution of the Republic of Lithuania, 1992. Access via internet: <https://www.e-tar.lt/portal/lt/legalAct/TAR.47BB952431DA/asr>.

52 Law amending Articles 1 and 2 of the Law on the State Flag and Other Flags of the Republic of Lithuania and supplementing the law with Article 10(1). Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.318093?jfwid=-pfb3vy3gu>.

53 Minutes of the Lithuanian Heraldry Commission.

54 Law on the State Flag and Other Flags of the Republic of Lithuania. Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1488/asr>.

55 Law amending the Law of the Republic of Lithuania "On the Coat of Arms of the State of Lithuania". Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.318092?jfwid=-pfb3vzjux>.

56 Law on the Approval and Entry into Force of the Criminal Code of the Republic of Lithuania. Lithuanian Criminal Code Article 127. Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555>.

57 Law on the State Coat of Arms, Other Coats of Arms and Armorial Signs of the Republic of Lithuania, Article 3, Part 2. The same applies to armorial flags, armorial signs and armorial seals.

58 Constitutional law of the list of constitutional laws of the Republic of Lithuania. Access via internet: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.420310?jfwid=32wf6lrn>.

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Symbole des Rechts in Wappen

Eine Bestandsaufnahme von Waldeckische Wappen mit Rechtssymbolen

Von Klaas Padberg Evenboer, a.i.h.[1]

Zusammenfassung: Die Grafschaft Waldeck, seit 1712 Fürstentum, hatte seit dem Mittelalter unterschiedliche Rechtssysteme. Diese Rechtssysteme hatten ihren Ursprung im sächsischen und fränkischen Recht. Es gab das Stadtgericht für die Bürger einer Stadt, ein Landgericht für die Bauern und das kirchliche Gericht (Sendgericht/Sinode). Darüber hinaus kannte man in den ländlichen Gebieten die unabhängigen Gerichte Gogericht und Freigericht. Der Gograf führte den Vorsitz im Gogericht und der Freigraf im Freigericht. Ihnen standen Schöffen beziehungsweise Freischöffen zur Seite. Aus dem hochmittelalterlichen Freigericht, das innerhalb einer Freigrafschaft Gerichtsbarkeit hatte, entwickelten sich die berüchtigten Vehmegerichte. In dieser Untersuchung diskutiere ich die Rechtssymbole in Wappen und das Vorkommen dieser Symbole in den Wappen der Richter, Gografen, Freigrafen und Schöffen in Waldeck.

Abstract: The county of Waldeck, a principality since 1712, had different legal systems from the Middle Ages. These legal systems had their origins in Saxon and Frankish law. There was the City Court (Stadtgericht) for the citizens of a city, a Land Court (Landgericht/Burgericht) for the farmers, and the Ecclesiastical Court (Sendgericht/Sinode). In addition, the independent courts Gogericht and Freigericht were known in the rural areas. The Gogericht was presided over by the Gograf and the Freigericht by a Freigraf. They were assisted by aldermen (Schöffen and Freischöffen). The infamous Vehmic Courts (Vehmegericht) developed from the High Medieval Freigericht, which had jurisdiction within a 'Free County' (Freigrafschaft). In this research I discuss the symbols of law in coats of arms and the occurrence of these symbols in the coats of arms of judges, Gografen, Freigrafen and aldermen in Waldeck.

1. Einleitung

Die Grafschaft Waldeck, seit 1712 Fürstentum, hatte seit dem Mittelalter unterschiedliche Rechtssysteme. Diese Rechtssysteme hatten ihren Ursprung im sächsischen und fränkischen Recht. Es gab das ursprünglich sächsische Gogericht, und das Freigericht, das ursprünglich fränkisch war. Dem Gogericht stand der Gograf vor und dem Freigericht ein Freigraf. Der Gograf und Freigraf wurden von Schöffen beziehungsweise Freischöffen unterstützt.

Die Gografen hatten anfangs nur nieder-

gerichtliche Aufgaben und Rechte. Sofern jemand auf frischer Tat bei einem schweren Vergehen ertappt wurde, durften sie aber auch unmittelbar die Blutgerichtsbarkeit ausüben. Im Laufe der Zeit konnten Sie immer mehr hochgerichtliche Befugnisse an sich ziehen.

Zu jeder Freigrafschaft gehörten ein oder mehrere Gerichtsstätten unter freiem Himmel, Freistühle genannt. Der Freigraf wurde vom Stuhlherrn mit der Freigrafschaft belehnt. Das Freigericht war unter anderem zuständig für Streit über Eigentum an Grund und Boden von freie Bauern – daher auch für die Beurkundung von Eigentumsübertragungen – und für todeswürdige Verbrechen.

Diese Freigerichte gewannen dann vor allem im 14. und 15. Jahrhundert als sogenannte Heimliche Gerichte oder Femegerichte zeitweise erheblichen Einfluss auf die Rechtsprechung. Teilweise wird dies darauf zurückgeführt, dass 1371 Kaiser Karl IV. den Stuhlherren, Freigrafen und Freischöffen die Durchsetzung des Landfriedens übertrug, sodass in der Folge des Landfriedensbruchs Angeklagte in ganz Deutschland vor ein Freigericht geladen und bei Ausbleiben in die Acht erklärt werden konnten.[2]

Das Amt der Schöffen und Freigrafen war teilweise erblich, und gingen auf den ältesten Sohn über. Sie wurden oft auf Lebenszeit ernannt.

In Waldeck gab es auch das Stadtgericht. Im Stadtgericht bildeten der Bürgermeister mit der Ratsmänner das Gerichtskollegium.[3]

In diesem Kapitel möchte ich auf die Symbole des Rechts in Wappen und das Auftreten dieser Symbole in den Wappen der Go- und Freigrafen, Schöffen, Richtern und andere Justizbeamten im ehemaligen Landkreis Waldeck eingehen.

2. Freigrafschaften in Waldeck[4]

2.1 Freistühle innerhalb des heutigen Waldeck und ihre frühere Lage.

1. Elleringhausen (Twistetal) – ‘unter dem Hagedorn’.[5]
2. Freienhagen – ‘an den Schybelscheide’ bei Sachsenhausen ‘zu Ruwen Affoldern’ (= rauwen oder wilden Apfelbäumen), später ‘unter der Linde’, ‘vor dem Steinborn’ oder ‘vor dem unteren Tore auf den Steinen’ genannt. In 1371 war die Hälfte des Freistuhles an den Landgrafen von Hessen abgegeben.[6]
3. Fürstenberg – Der Freistuhl war anfänglich ein Vogteistuhl des Klosters Corvey.[7]
4. Korbach – Zwei Dingstätten oder Freistühle: ‘unter der Linde vor dem Enser Tor’ (Altstadt) und ‘auf der Windmühle bei der Porten im Lengefelder Tor’ (Neustadt). Beim schlechtem Wetter benutzten die Altstädter das Weinhaus (Alte Waage).[8] Als Zeichen ihrer Gerichtshoheit besaß der Stadt eine Rolandstatue die ursprünglich vor der Alten Waage stand. Dieser Statue galt als Symbole der Gerechtigkeit und des Blutbannes.[9]
5. Landau – ‘bei den Damm’ oder ‘unter dem Hagedorn vor den Damm’.[10]
6. Lichtenfels [vorher Freigrafschaft Münden] – Zwei Freistühle: zu Lichtenfels ‘unter der Linde’, ‘unter dem Stern’, ‘auf

Abb. 1. Gerichtslinde in Mengeringhausen, um 1970 (W. Hellwig, *Korbach. Waldeckische Landeskunde*, Arolsen, 1971).

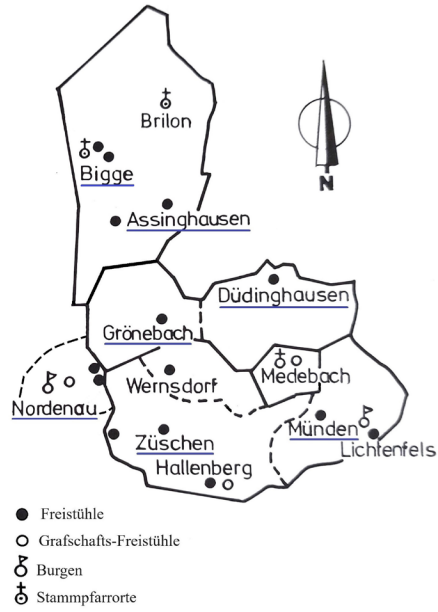


Abb. 2. Waldeckische Freistühle im westfälischen Sauerland, um 1450. Nach Albert K. Hömberg.

dem Grashof', und zu Neukirchen.[11]

7. Mengeringhausen. Nach 1535 wurden die Freistühle Elleringhausen, Freienhagen, Landau, Sachsenhausen und Twiste vereinigt zum Freistuhl Mengeringhausen – 'vor der Stadt unter der Linden' oder 'im Schützenhove'.[12] (*Abb. 1*)
8. Sachsenhausen – 'an den Schybelscheide', welche Dingstätte erst zu Freienhagen gehörte.[13]
9. Usseln – 'an dem hohen Pöne bei de Linden, wo man nach Titmaringhausen geht' oder 'vor dem Steinborn'.[14]
10. Schweinsbühl. Mit der Freistuhl zu Usseln hatten die ihre Herkunft aus das alte Gogericht Flechtdorf.[15]
11. Külte und Reigerlütersen, eine Dorfwüstung in der Gemarkung von Külte, im Bereich des alten Gogerichts Mederich.[16]
12. Eilhausen – 'auf den Steppeln'.[17]
13. Twiste – Dieser Freistuhl wurde in 1349 vom Kloster Corvey errichtet.[18]

2.2 Waldeckische Freistühle im westfälischen Sauerland und ihre frühere Lage (Abb. 2).

1. Grund Assinghausen. Zum Freibann Assinghauser Grund gehörten die Freigrafschaften Bigge, Olsberg, Grönebach, Rüdenberg (im Elpetal) und Nordenau. Der Freistuhl befand sich auf dem Hofe des Fronboten, dem Pothofe, 'auf dem

Blaumenbuske' südlich der Pfarrkirche St. Katharina in Assinghausen. Auch in Wiemeringhausen und Wulberinghausen wurde das Freigericht abgehalten.
2. Düdinghausen – 'auf der Lindenwiese am Fuße der Kraunknapp'.[19] Patrimonialgerichte gab es zu Niederschleidern und Deifeld.[20]
3. Züschenau – Innerhalb dieser Freigrafschaft gab es zwei Freistühle. 'Hohlenarn oder Holenor' und 'unter der Linde hinter der Kirche'.[21]
4. Nordenau – 'vor dem alten Turm'.[22] Dieser Freigrafschaft wurde später mit der Grund Assinghausen zusammengefasst.
5. Wernsdorf – 'neben der Esche' oder 'unterm Asche'. Dieser Freigrafschaft lag im Orketal, mit den Dörfer Eckeringhausen, Vilden und Medelon. Nach dem aufgeben von Wernsdorf, Vilden und Eckeringhausen kurz nach 1500, folgten die wenigen Einwohner den Freistuhl im Assinghauser Grund.[23]

Die Eingesessenen der Freigrafschaft Grönebach folgten ans Gogericht Medebach. Da die Grafschaft keinen Freistuhl besaß gingen sie 1559 zum Freistuhl zu Nordenau und 1570 zum Freistuhl im Grund Assinghausen. Seit 1453 war der Grafschaft Grönebach hessisches Lehen der Adelsfamilie von Gaugreben, deren Name aus ihrer Amtsbezeichnung als Gograf abgeleitet ist.[24]

3. Die alte Gogerichte

A. Medebach, ab 1172 urkundlich erwähnt, umfasste im 16. Jahrhundert große Teile der Ämter Lichtenfels und des Eisenbergs.[25]

B. Flechtdorf, urkundlich erwähnt ab 1311. Nach der Korbacher Fehde 1414 mit den Herren von Padberg fiel das Gogericht an Waldeck.

C. Marsberg, seit 1323. Das Gogericht dass die Herrschaft Canstein und das Amt Eilhausen umfasste, war strittig zwischen Köln und Waldeck.

D. † Mederich [Ortswüstung 3 km westlich der Stadt Volkmarsen], seit dem 12. Jahrhundert. Es war das wichtigste Gogericht für das Waldecker Land, mit drei Dingstätten. Zu † Mederich, Massenhausen und † Eissinghausen.[26]

4. Ämter innerhalb des heutigen Waldeck[27]

Das Amt war ab dem Spätmittelalter eine Institution mit der Aufgabe, herrschaftsgebundene Rechte des Landesherrn zu verwalten. Die Bezeichnung ging auch auf die entsprechenden Gebiete selbst über, teilweise auch auf den Sitz des Amtes. Dabei ging es nicht nur um Eigentumsrechte der Herrschaft, sondern auch um die regionale Gerichtsbarkeit.

1. Rhoden.
2. Arolsen / Mengeringhausen.
3. Landau.
4. Wetterburg.
5. Korbach bzw. Eisenberg.
6. Lichtenfels.
7. Sachsenberg.
8. Fürstenberg.
9. Waldeck.
10. Wildungen.
11. Züschen.

5. Vergleichende Forschung

5.1 Niederlande – Über 1800 Siegel und Wappen

Anfangs habe ich eine vergleichende Recherche durchgeführt in den Niederlanden. Hierzu habe ich mehr als 1800 Siegel und Wappen von Richter, Ratsherren, Schöffen und Schultheißen in den ehemaligen Grafschaften und Herzogtümer Gelre, Holland, Zeeland, Brabant und dem Bistum Utrecht untersucht.[28]

In 38,5 % dieser 1834 Siegel und Wappen befanden sich folgende Symbole:

Löwe	108
Adler	54
Lamm Gottes	9
Lilie	151
Rose	95
Baum	25
Jakobsmuschel	14
Stern	91
Mühleisen	69
Schere	43
Militärische Attributen	47

Nur vier dieser genannten Wappenbilder gelten als Rechtssymbole. Mit den Symbolen Lilie, Lamm Gottes, Baum und Militärische Attributen sind wir bei 12,7 % welche einen direkten Bezug zu Recht haben.

Das Lamm Gottes für Jesus erscheint im Johannesevangelium mit der ersten Verkündigung: 'Siehe, das Lamm Gottes, das die Sünde der Welt trägt'. Das soll darauf hinweisen, dass die irdische Rechtsordnung auf dem Willen Gottes basiert und das irdische Gericht ein 'Spiegelbild' des Urteils Gottes ist – schließlich ist das Lamm ein apokalyptisches Bild, das mit der Erwartung des Gerichts verbunden ist.

Die Lilie wurde von vielen mittelalterlichen Herrschern als Symbol ihrer Autorität verwendet. Es symbolisiert auch die bewaffnete Autorität und das Justizsystem.

Der Baum kann mit dem öffentlichen 'Ding' in Verbindung gebracht werden. In Deutschland und im sächsischen Teil der Niederlande werden Linde und Eiche mit den Freigerichten in Verbindung gebracht. Die Linde als christlicher Symbolbaum hat in Waldeck meist der Eiche ersetzt, aber man tagte auch unter dem Hagedorn (Ellerinhausen) und der Esche (Wernsdorf).

Militärische Waffen, insbesondere das Schwert, sind in Wappen mit richterlicher Konnotation häufig anzutreffen. Der Ausdruck 'Schwert der Gerechtigkeit' weist auf die wichtige Rolle als Anklage in der Heraldik hin.

5.2 Rechtssymbole in der Heraldik der ehemaligen Grafschaft Waldeck

Für Waldeck habe ich Siegel und Wappen von Richtern (Freigraf, Gograf, Landrichter, Burrichter), Schöffen, Schultheißen, Notaren und einigen Anwälten recherchiert.

Ein Unterschied zu den Niederlanden besteht darin, dass die Siegel der Schöffen sehr selten sind. Nur der Richter, manchmal mit Unterstützung einiger niederadliger Personen, siegelten die Urkunden.

Dass das Amt des Richters erblich war, lässt sich mitunter daran erkennen, dass es viele Personen mit demselben Nachnamen gab, die als Richter fungierten. Insbesondere

die Familie Knipschild hatte von 1518 bis 1682 sechs Richter. Diese einzelnen Personen sind alle genealogisch verwandt. Das gilt auch für das Korbacher Patriziersgeschlecht Leusmann, die von 1480 bis 1666 mit fünf Justizbeamten nachweisbar sind.

Die Tatsache, dass Personen auf Lebenszeit ernannt wurden, zeigt sich an der langen Zeit, die einige Richter ihr Amt ausübten. 25 Jahre sind keine Ausnahme. Johann Knipschild war 48 Jahre, von 1522 bis 1570, Freigraf im Grund Assinghausen und Mengeringhausen.

Kilian Hamel studierte 1490 in Erfurt, und war von 1510 bis 1546 Richter – 36 Jahre! Er bekleidete das Amt von Freigraf in sieben Freigrafschaften. Von 1510 bis 1683 waren vier Mitglieder der Familie Hamel Richter oder andere Justizbeamte.

Einige Richter studierten Rechtswissenschaften in Marburg, Erfurt, Köln, Münster, Gießen, Herborn, Jena, Heidelberg oder Helmstedt.

5.2.1 Lilie

Nolden[29] – Barthold Nolden studierte 1581 in Helmstedt, war Advokat in Nieder-Marsberg, 1597–1617 Amtmann auf dem Eisenberg. Sein Sohn Josias I studierte 1611 in Gießen, Jena, 1614 Marburg, 1617 Köln und 1619 in Basel, und war 1626–1629 Hofgerichtsassessor in Korbach. Dessen Sohn Franz Nolden war Stadtrichter in Korbach und 1659–1666 Amtsverwalter für Düdinghausen und Assinghausen. Zacharias Nolden, 1640–1652 Amtsverwalter für Düdinghausen und Assinghausen. Josias II Nolden studierte 1650 in Gießen, 1653 in Marburg und Heidelberg. Er war 1663–1685 Stadtkommissar und Hofgerichtsassessor in Korbach. Schild: Geteilt, unten zwei Schrägbalken oben eine Lilie (Nolden I); Eine Lilie (Nolden II).

Limperg[30] – Johan Limberg war 1555 Student in Marburg und um 1562 Rechtsanwalt in Korbach. Schild: Eine Lilie beseitet von zwei Waldecker Sternen.

Waas[31] – Johann Nikolaus Waas war 1722–1728 Amtmann zu Arolsen. Schild: Ein Balken, oben zwei Lilien, unten ein Waldecker Stern.

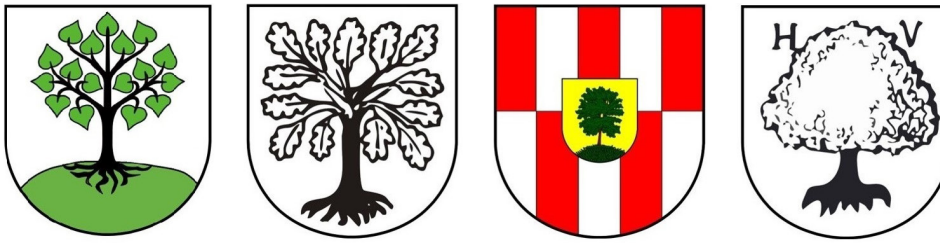
Ludowig[32] – Hermann Conrad Ludowig aus Polle wo er 1626–1647 Amtmann war, 1709 bis 1712 Amtsverwalter zu Waldeck. Schild: Ein Schrägbalken belegt mit drei Lilien, beiderseits begleitet von einem sechsstrahligen Stern.

Drebes[33] – Niclas Trebes war ab 1663 mehrere Generationen ehrenamtlich Dorfgrebe (Bürgermeister) in Bringhausen.[34] Schild: Oben ein Andreaskreuz, unten ein aus dem Schildfuß wachsender Lilienstab. Der Lilienstab deutet auf das Grebenamt.

5.2.2 Baum

Siehe *Abb. 3*.

Pape[35] – Johann Heinrich Pape war 1713 Student in Jena, 1715 Advokat in Waldeck, 1728–1731 Amtmann im Amt Waldeck und 1731–1766/1770 Stadt- und Landschultheiß zu Wildungen. Friedrich Julius Pape war 1720 Student in Jena, Advokat, 1731–1741



Pape **Reins** **Schmieding** **Ulner**

Abb. 3. Wappen mit Bäumen als Rechtssymbol.

Amtmann im Amt Waldeck. Schild: Eine Linde auf einem Berg.

Reins[36]– Bernhard Reins war um 1750 Richter in Wrexen. Schild: Eine Eiche.

Schmieding[37] – Nach der Familientradition war einer Vorfahr Freigraf. Schild: In fünfmal gespaltenem und halbgeteiltem Schild ein Herzschild mit einer Linde.

Ulner[38] – Hermann Ulner war 1532 Student in Marburg, 1555–1560 Amtmann zu Naumburg und seit 1559 Hessischer Rat und Hofgerichtsbeisitzer in Marburg. Schild: Eine ausgerissene Ulme und den Buchstaben H V. Ein redendes Wappen.

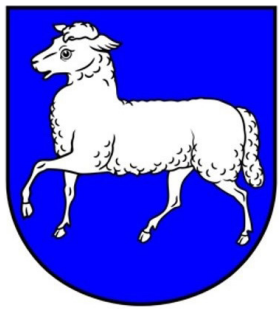
5.2.3 Lamm Gottes / Osterlamm

Gottschalk[39] – Johann Gottschalk war 1680–(1686) Amtsschreiber und Landrichter zu Wetterburg. Er siegelte 1680. Er war wahrscheinlich Sohn von Henrich Gottschalk, Amtmann zu Canstein. Schild: Ein schreitendes Gotteslamm mit Fahne.

Bintzer[40] – Christian Bintzer (1726–1777) Advokat und Kammerkonsulat in Arolsen. Sein Bruder Ludwig Hartmann Bintzer war 1760 Rat und Landrichter zu Mengeringhausen. Schild: Geteilt, oben ein schreitendes Gotteslamm mit Fahne, unten ein aus dem linken Schildrand vorragender Arm mit drei Palmblätter in der Hand.

Hartwig[41] – Henrich Christoph Hartwig (1736–1778) war amtlicher Notar, und Advokat. Schild: Ein schreitendes Gotteslamm mit Fahne, oben die Buchstaben H C H.

Hamel[42] – Kilian Hamel studierte 1490 in Erfurt, wurde 1510–1511 Freigraf zu Lichtenfels, 1532–1537 zu Mengeringhausen, 1533–1535 zu Sachsenhausen, 1533–1536 zu Korbach, 1532–1538 zu Usseln, 1532 zu Schweinsbühl, 1532–1533 zu Assinghausen und 1532–1546 zu Düdinghausen. Ambrosius Hamel war 1564–1565 Grundvogt zu Assinghausen. Conrad Hamel (um 1595–1648) war Stadtrichter in Sachsenberg. Johann Adam Hamel war 1675 Student in Gießen, und 1681–1683 Registrator und Stadtrichter in Waldeck. Schild: Ein schreitendes Schaf. Ein redendes Wappen. Das Siegel von Kilian Hamel zeigt einen aus dem unteren Schild-



Hamel

Kilian Hamel 1535

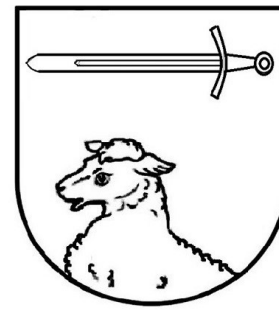


Abb. 4. Siegel von Kilian Hamel, Freigraf 1535 (Hessisches Staatsarchiv Marburg, Urk. 85, Nr. 4004).

rand vorragenden Torso eines Schafes und im Schildhaupt ein Schwert. (*Abb. 4*)

Hesporn[43] – Johann III Hesporn war Notar und 1627–1637 Stadtrichter in Korbach. Schild: Ein schreitendes Schaf.

Meyer[44] – Jonas Meyer studierte 1597 Jura in Herborn, war Diener der Herren von Padberg, und 1604–1623 Stadtrichter in Freienhagen und 1618–1627 Gerichtsschultheiß in Meineringhausen. Schild: Ein Schaf das über einen Stab läuft.

5.2.4 Zepter / Richterstab

Graff[45] – Christoph Graff (1633–1705) war 1655 Richter in Nieder-Waroldern. Der Sohn Henricus Graff (1675–1741) war Dorfrichter ebenda. Richterstab. Schild: Ein Balkenkreuz belegt mit sich kreuzenden Richterstäben und einem Herzschild mit Waldecker Stern.

Pulnen[46] – Johann Pulnen war 1465 geschworener weltlicher Richter in Kortbach. Schild: Geteilt, oben ein wachsender Richter mit Buch und Richterstab, beseitet von zwei Waldecker Sternen, unten ein halber Waldecker Stern.

Pohlmann[47] – Das Amt des Richters war in der Familie Pohlmann erblich. Johann Matthias Pohlmann (1678–1742) war Gerichtsschöffe des Amtes Eisenberg und Richter in Rhenegge. Jacob Bernhard Pohlmann war 1791 Richter. Schild: Hausmarke – zwei gekreuzten Haken und ein Richterstab.

Hacke[48] – Johann Hacke war 1544–1555 Amtmann zu Naumburg und 1559–1561 zu Wildungen. Sein Sohn Joachim war 1514–1544 Kanzler des Grafen zu Wildungen. Er siegelte mit ein ähnliches Wappen. Ein Henselin Hacke war 1559–1578 Vogt zu Düdinghausen und Assinghausen. Schild: Eine Haspel mit drei Lilienzepter.

Hacke[49] – Heinrich Hacke, Sohn des Amtmanns Johann Hacke zu Wildungen, studierte 1560 zu Marburg und war 1574–1582

Amtmann zu Naumburg. Schild: Eine Melusine mit Lilienzepter in der rechten Hand.

Manhof[50] – Johann Manhof wurde 1431 von Kaiser Sigismund mit den Freistühlen in der Grafschaft Waldeck belehnt. Er war 1431–1458 Freigraf zu Sachsenhausen. Zu seinem Bereich gehörten auch die Freistühle zu Korbach, Mengeringhausen, Schweinsbühl, Elleringhausen und Freienhagen bis 1458, mit Ausnahme von Lichtenfels wo 1437–1439 Reinhard von Dalwigk richtete. Außerdem wurde er 1458 von den hessischen Landgrafen mit dem hessischen Teil der Freistuhl Freienhagen belehnt. Schild: Richter mit Stab und Buch.

5.3 Militärische symbole als Rechtssymbole

5.3.1 Schwert

Eine Reihe von Siegeln, insbesondere solche mit einem oder zwei Schwertern oder mit einer bewaffneten Figur, werden oft als Amtszeichen bezeichnet. Diese tragen jedoch alle eine persönliche Umschrift, und wurden ebenfalls vererbt. Sie werden daher hier als Familienwappen aufgeführt.

Nolten[51] – Henricus Nolten, geb. 1655 war Hauptmann, Amtsperson mit besonderen Vollmachten. Schild: Schwert und Buchstaben H N.

Berthold[52] – Johann Berthold (1545–1620) war 1578, 1581 und 1591 Ratmann in Korbach. Er war Oberförster im Amt Eisenberg. Schild: Hausmarke – Schwert mit zwei gekreuzten Haken.

Löseken[53] – Hermann Löseken war 1406–1439 Freigraf zu Nordenau und Assinghausen. Konrad Löseken war Freigraf 1419–1437 zu Lichtenfels. Hermann II Löseken war 1427–1439 Freigraf zu Wünnenberg und 1437–1439 zu Lichtenfels. Johann Löseken war Freigraf 1445–1454 zu Lichtenfels. Werner Löseken war 1529–1533 Amtmann zu Eilhausen. Schild: Schwert. (Siegel von 1410, 1415.)[54]

Kerstian[55] – Heinrich Kerstian, Freigraf 1422–1446, zu Nordernau and Assinghausen. Schild: Schwert.[56]

Isken[57] – Johann Isken, Freigraf 1476–1501 zu Lichtenfels und Fürstenberg, zu Wernsdorf, 1490 zu Nordenau und Assinghausen. Schild: Schwert, schrägrechts.[58]

Salentin[59] – In 1410 ernannte der römisch-deutscher König Ruprecht den Henne Salentin zum Freigrafen zu Holenor in der Freigrafschaft Züschenau. Er war bis 1439 Freigraf der Grafen von Wittgenstein auf dieser Freistuhl. Schild: Schwert, schrägrechts.[60]

Günste[61] – Patriziergeschlecht aus Fritzlar. Henricus Günste war 1326 Schöffe in Treysa. Johann Reinhard Günste (1708–1797), Erbund Mittgerichtsherr zu Schiffelbach. Schild: Zwei gekreuzte Schwerter.[62] (*Abb. 5.*)

Münch[63] – Konrad Münch war seit 1564 Notar, und geschworene Richter in Korbach. Sein Grossvater Henrich Münch war 1498 Landvogt des Amts Arolsen/Mengeringhau-

Abb. 5. Wappen Günste (W. Wessel, *Hessisches Wappenbuch* (Kassel 1623) Nr. 43).

sen und 1514 Burgvogt auf dem Eisenberg. Schild: Ein Waldecker Stern zwischen zwei nach oben gekreuzten Schwertern.

Wilhard[64] – Cort Wilhard war 1419–1420 Stadtrichter in Korbach. Schild: Zwei gekreuzten Schwerter über einem Waldecker Stern.

Meissenhenn[65] – Bertold Meissenhenn war 1479–1501 Freigraf zu Fürstenberg, 1508–1531 zu Assinghausen du Nordernau. Schild: Zwei gekreuzte Schwerter.[66]

Meissenhenn[67] – Matthias Meissenhenn war bis 1571 Amtmann und Landrichter auf den Eisenberg und 1557–1571 Gogrebe zu Flechtdorf. Sein Sohn Jakob Meissenhenn war 1597 Stadtrichter in Korbach. Schild: Zwei aufwärts gekreuzte Schwerter.

Mitzenheim[68] – Mitzenheim/Meisenhenn, Siegel von 1593. Schild: Zwei aufwärts gekreuzte Schwertern und drei Kugeln.

Henne[69] – Steffan Henne war um 1640 Leutnant der Stadtmiliz in Korbach. Sein Sohn Johannes Henne war 1688 Stadtkapitän. Schild: Zwei gekreuzten Schwerter, dazwischen, oben und unten eine Blume.

Adorf [70] – Conrad Adorf war 1403 Richter zu Berge im Assinghauser Grund. Schild: Zwei Schwerter.

Pauly[71] – Georg Pauly war 1570–1572 Landknecht oder Landvogt (= Polizeibeamter) zum Eisenberg. Sein Sohn Enoch Pauly war von 1600 bis 1622 Landknecht und Holzförster im Amt Eiseberg, und dessen Sohn Johann Pauly war auch Landknecht. Schild: Geteilt, oben ein Vogel mit einem Zweig im Schnabel, unten zwei gekreuzte Schwerter.

Leusmann[72] – Curt II Leusmann war Jurist und wurde 1480 Bergmeister des Goldbergwerkes auf dem Eisenberg. Kurt/Wedderolt Leusmann war 1519–1526 Freigraf zu Korbach, 1523–1525 zu Freienhagen und Usseln, und 1526 zu Düdinghausen. Heinrich II Leusmann war 1554–1557 Amtmann der Herrschaft Itter. Curt III Leusmann studierte von 1585 bis 1592 in Marburg, Wittenberg, Helmstedt und Heidelberg. Er war 1597–1615 Landrichter zu Korbach und bis 1607 ver-

Abb. 6. Siegel von Wedderolt Leusmann, Freigraf 1526 (Hessisches Staatsarchiv Marburg, Urk. 85, Nr. 4003).

waltete er auch die Ämter Landau und Wetterburg. Georg Eberhard Leusmann war 1635 Student in Gießen, 1658–1666 Landrichter zu Korbach. Schild: Zwei gekreuzte Schwerter über einem Waldecker Stern (1522); Drei gekreuzte Schwertern, garbenweise (1523) (*Abb. 6.*).

Weber[73] – Hans/Henne Weber war 1472 Freigraf zu Düdinghausen, 1474 zu Ellerinhausen, 1475–1481 zu Landau und 1481–1490 zu Canstein. Sein Sohn Henne Weber war 1512–1521 Freigraf zu Landau. Schild: Geteilt, oben Buchstabe W, unten ein Schwertarm.

Schneidewind[74] – Heinrich Schneidewind war 1464–1494 Notar in Wildungen. Jobst Schneidewind studierte 1555 in Marburg und war 1566–1567 Amtmann zu Naumburg. Sein Sohn Hans Georg Schneidewind war 1601–1607 Amtmann zu Schwalenberg und siegelte mit diesem Wappen. Schild: Im rechten Obereck eine aus einer Wolke hervorbrechende Sonne; aus dem linken Untereck reicht ein geharnischter Schwertarm. Ein redendes Wappen.

Steinweg[75] – Stephan Steinweg war 1488–1492 Freigraf zu Korbach. Schild: Justitia mit Schwert, beseitet von zwei Schildchen mit der Waldecker Stern.

Götze[76] – Johann Jakob Götze war 1687 Notar. Schild: Mann mit Waage und Schwert in der Hand.

Engelhard[77] – Johannes Engelhard war mehrfach Ratmann in Korbach, 1515–1516. Sein Enkelsohn Jost Engelhard (1534–1614) war Ratmann und Unterbürgermeister. Schild: Hausmarke – Sparrenkopf mit beiden Seiten schräg durchschnitten von Kopfkreuzsprossen (Schwerter); Helmzier: Ein Engel mit Schwert und Waage.

Engelhard[78] – Johannes Engelhard (1668–1741) war mehrfach Ratmann in Korbach. Schild: Ein Engel mit Schwert und Waage; Helmzier: Der Engel aus dem Schild.

Beckmann[79] – Heinrich Beckmann war [1508] 1519–1533 Freigraf zu Medebach und 1526 zu Hallenberg. Unter seinen Vorsitz fanden zu Winterberg um 1522 die ersten Hexenprozesse des kurkölnischen Sauerlandes statt. Ein Johann Beckmann war 1544 Freigraf zu Mengeringhausen. Schild: Schwert und Lilie. Zwei Rechtssymbole.[80]

Knipschild[81] – Johann Knipschild war in Münster zur Schule gegangen. Er war 1546–

Abb. 7. Siegel von Johann von Holte, Freigraf 1559. (Hessisches Staatsarchiv Marburg, Urk. 85, Nr. 11018); Siegel von Johann Knipschild, Freigraf 1568 (Hessisches Staatsarchiv Marburg, Urk. 85, Nr. 1244).

1554 Kurfürstlicher Kölnischer Gograf zu Medebach und gleichzeitig Freigraf zu Nordenau, Düdinghausen und Assinghausen. Als Frei- und Gograf führte er noch in 1562 ein Hexenprozess in Winterberg durch.[82] Vor 1522 bis 1574 wurde er von den waldeckischen Grafen zu Mengeringhausen eingesetzt. Sein Sohn Bernhard Knipschild war 1580–1596 Gograf zu Medebach und auch dessen Sohn Arnold Knipschild. Schild: Ein stehendes Schwert vor einem Richterstuhl. In sein Schild stehen die Buchstaben R Z M (= Richter zu Medebach) (*Abb. 7*).

von Holten[83] – Johann von Holten, Bürger und Freigraf zu Soest, wird am 1. November 1557 zum Freigraf zu Sachsenhausen angenommen von den Vettern Philipp der Ältere und Wolrad, Grafen zu Waldeck.[84] Freigraf und Richter der Freistühle zu Korbach, Sachsenhausen, Usseln und Schweinsbühl.[85] Schild: Richter mit Schwert, auf einem Richterstuhl sitzend. (*Abb. 7*)

5.3.2 Pfeil / Bogen

Cuntze[86] – Johann Christoph Cuntze war 1720 Student in Jena, 1727 Hofgerichtsadvokat in Korbach um 1728–1757 Dalwigk'scher Samtrichter (= Amt Lichtenfels). Sein Sohn Johann Heinrich Christoph Cuntze war 1757–1792 Dalwigk'scher Samtrichter, und dessen Sohn Georg Anton Wilhelm Cuntze folgte ihm in diesem Amt 1792–1826. Schild: Zwei gekreuzte Pfeile, zeigend nach links unten und links oben.

Petri gen. Ramm[87] – Jacob Petrus genannt Ramm studierte 1595 in Marburg, und war 1598–1610 Landrichter in die Ämter Landau, Wetterburg und Waldeck. Schild: Drei

gekreuzte Pfeile, garbenweise, begleitet von zwei Kugeln. Ab 1600 ohne die zwei Kugeln.

Vierordt[88] – Stephan Vierordt war 1604 Student in Marburg, 1623–1625 Amtmann zu Landau und Wetterburg. Sein Sohn Engelbert Vierordt (1623–1675) war 1665–1668 Forstmeister und Rentmeister der Ämter Landau und Wetterburg. Schild: Hausmarke – Schaft mit Sparrenfuß und Sparrenkopf (Pfeil), mit Mittelkreuzsprosse.

Severin[89] – Der Familie Severin stammt aus der Grafschaft Mark und waren Richter in Hattingen. Seit 1715 ansässig in Waldeck. Schild: Severin II – Ein Pfeil mit Buchstaben; III – Eine Meerjungfrau mit Pfeil.

Weitzel[90] – Johann Weitzel (1553–1623) war in Hessen-Darmstadt Landrichter und Johann Daniel Weitzel Landschultheiß. Durch Heirat kamen die nach Waldeck. Schild: Ein Ring von dem drei Pfeile ausstrahlen.

Happel[91] – Ditmar Happel studierte 1550 in Marburg, war 1567 Rentschreiber und 1568–1575 Amtmann des Amts Eilhausen. Er war der Sohn von Joachim Happel aus Biedenkopf der 1536 in 2. Ehe Appolonia Leusmann, Tochter des Korbacher Richters Tilemann Leusmann, heiratete. Siegel von 1540. Schild: Drei um ein Dreieck gesetzte Pfeilen.

Böger[92] – Die Familie Böger übernahm das Wappen von Jordan Cole, 1354 Richter zu Lemgo! Der Familie kommt um 1800 nach Waldeck. Schild: Ein Bogen mit aufgelegtem schwarzen Pfeil.

Hofmann[93] – Johann Friedrich Hoffmann war ständiger Vertreter Waldecks am Reichskammergericht in Wetzlar. Siegel von 1723. Schild: Ein Bogenschütze der einen Bogen und drei Pfeile hält.

Eisenberg[94] – Albrecht Eisenberg war 1656–1682 Landrichter zu Landau. Ein Hans Isenbergs war 1527 Schöffe am Freigericht zu Düdinghausen. Schild: Ein stehender Mann der zwei Pfeile hält.

5.3.3 Keule

Der Keule ist ein seltenes Wappenbild. Es galt als Symbol der Gerichtsbarkeit.[95] Der Adelsgesellschaft der Bengler trugen das Symbol der Keule auf ihrer Brust. Dieser politisch-militärisches Bündnis wurde 1391 gegründet und hatte viele Mitglieder in Westfalen und Hessen. Ihre Hauptziele waren die Landgrafschaft Hessen und das Bistum Paderborn.[96]

von Sudeck[97] – Hans von Sudeck war Freigraf 1492–1499 zu Düdinghausen, 1492–1526 zu Sachsenhausen, 1511 zu Lichtenfels, 1520 zu Freienhagen und in Korbach. Schild: Drei Keulen.

Titmaringhausen[98] – Johann von Titmaringhausen Ratmann in Medebach 1280. Ab 1450 waren die ansässig in Korbach. Schild: Zwei gekreuzte Keulen (*Abb. 8*).

Martini[99] – Jonas Martini war 1569–1596 Stadtrichter in Freienhagen. Schild: Zwei Keulen.

Rasor[100] – Andreas Rasor studierte 1577 in Marburg. Er war Schultheiß der Herrschaft Itter. Schild: Sechs Keulen, sternförmig.

5.3.4 Stangenwaffen

Kellner[101] – Dipel Kellner war 1411 Stadtschulheiß in Wildungen. Schild: Zwei gekreuzte Streitgabel.

Tamme[102] – Hans Tamme war 1376–1397 und 1423 bis 1430 Schultheiß, 1383 bis 1387 Amtmann zu Wildungen. Schild: Zwei gekreuzte Streitgabel, in der Mitte mit einem schmalen Querschindel versehen.

Schmallkalder[103] – Johann Schmallkalder studierte Jura in Helmstedt, Advokat, seit 1617 Assessor am Reichskammergericht zu Speyer. Sein Sohn Georg Friedrich (1610–1679) war 1637–1645 Amtsschreiber zu Rhoden und Eilhausen, Hofgerichtssekretär zu Korbach, nach 1655 Hofgerichtssekretär und Landreceptor. Schild: Geteilt, darin zwei gekreuzte Hellebarden.

5.4 Schildhalter

von Sudeck – Sehe unter Keule. Schild: Schild mit drei Keulen. Schildhalter, Richter mit Schwert.[104]

Leusmann – Sehe unter Schwert. Schild: Drei gekreuzter Schwertern, garbenweise (1523). (*Abb. 6.*)

Lorinden[105] – Regenhard Lorinden der Ältere war Freigraf 1457–1473 zu Elleringhausen und Freienhagen, 1459–1467 Schultheiß zu Wolfhagen und hatte dort einen Burgsitz. Silvester Lorinden, Sohn von Regenhard Lorinden der Ältere, war Freigraf 1489–1521 zu Landau und bis 1500 zu Volksmarsen. Schild: in der linken Hand ein Schild mit drei Haken im Dreipaß, deichselförmig.[106]

Steinweg[107] – Stephan Steinweg war Freigraf 1488–1492 zu Korbach. Schild: Mann in Rüstung, in der rechten Hand ein Schwert, in der linken Hand ein Schild mit der Waldecker Stern. Unten eine Hausmarke.[108]

Schmidt[109] – Heinrich Schmidt war 1468–1488 Freigraf zu Elleringhausen, 1480–1481 zu Korbach, bis 1488 zu Landau, 1461–(1500) zu Volksmarsen und zu Wünnenberg. Schild: Mann in Rüstung in beide Hände das Schwert haltend, unten eine Hausmarke.[110]

Rosen, oder Roven, Rüben[111] – Conrad Rosen war Freigraf 1408–1424 zu Lichtenfels. Schild: Mann in Rüstung, in der rechten Hand ein Schwert.[112]

Weber[113] – Konrad Weber war 1458–1460 Freigraf zu Elleringhausen. Hans/Henne Weber war 1472 Freigraf zu Düdinghausen, 1474 zu Elleringhausen, 1475–1481 zu Landau und 1481–1490 zu Canstein. Schild: Mann in Rüstung, in der rechten Hand mit erhobenen Schwert, unten eine Waldecker Stern.[114]

Einige der hier besprochenen Familienwappen mit Rechtssymbole werden noch heute von Familien, die ihre Wurzeln in der Grafschaft Waldeck haben, verwendet. Vereinzelt finden sich diese Symbole auch noch in

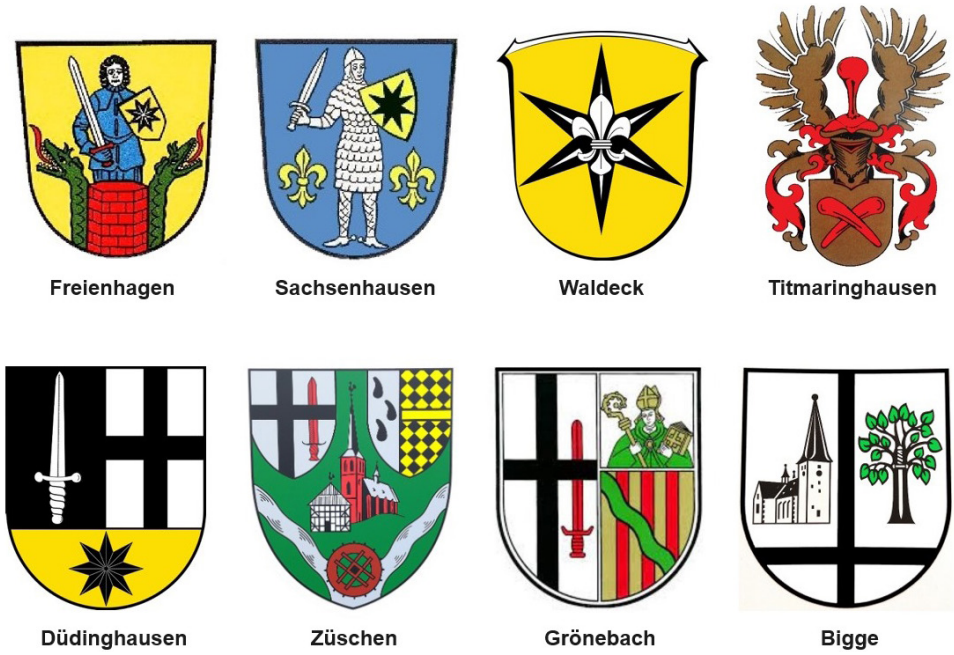


Abb. 8. Kommunale Wappen mit Rechtssymbole in Waldeck und die ehemaligen Territorien.

Kommunale Wappen in Waldeck und die ehemaligen Territorien.

5.5 Kommunale Wappen und Dorfwappen mit Rechtssymbole in Waldeck und die ehemaligen Territorien

Siehe *Abb. 8*.

5.5.1. Wappen im Landkreis Waldeck-Frankenberg, Nordhessen.

Freienhagen[115] – Das Siegel von 1253 bezieht sich auf das Freigericht. Der Richter sitzt auf einem Klappstuhl mit Drachenköpfen. Im rechten Arm hält er ein Schwert und im linken den Waldecker Stern. In dieser Wappendarstellung steht der Richter, und der Klappstuhl ist nicht erkennbar. Die ehemalige Stadt Freienhagen wurde 1974 als Stadtteil in die Stadt Waldeck eingemeindet.

Sachsenhausen[116] – Das Siegel von 1270 zeigt einen Ritter mit einem Schwert in der rechten Hand und einem Schild mit dem Waldecker Wappen in der linken. Auf beiden Seiten ist eine Lilie abgebildet. In der Beschreibung werden sie als Lilien des Gesetzes

bezeichnet. Sie weisen als Symbol für Gerechtigkeit auf die eigene Gerichtsbarkeit hin. Die ehemalige Stadt Sachsenhausen ist seit 1971 ein Stadtteil von Waldeck.

Waldeck[117] – Das Wappen der ehemaligen Stadt Waldeck mit der sechsstrahlige Stern. Die Lilie stammt aus das Wappen Sachsenhausen. Das Wappen wurde am 9. Juni 1972 durch das Hessische Ministerium des Innern genehmigt.

5.5.2 Wappen im Hochsauerlandkreis, Westfalen.

Düdinghausen[118] – Das Dorfwappen zeigt das Kölner Kreuz, ein Schwert und den Waldecker Stern. Das Schwert verweist auf die ehemalige Freigrafschaft und ihren Freistuhl, den Gerichtsort. Düdinghausen ist ein Stadtteil von Medebach.

Titmaringhausen[119] – Das Dorfwappen zeigt das Wappen der gleichnamigen Familie. Titmaringhausen ist ein Stadtteil von Medebach.

Grönebach[120] – Das Dorfwappen zeigt im rechter Hälfte das Kölner Kreuz und ein Schwert. Grönebach ist ein Stadtteil von Winterberg.

Züschen[121] – Das Dorfwappen zeigt rechtsoben das Kölner Kreuz und ein Schwert. Züschen ist ein Stadtteil von Winterberg.

Bigge[122] – Der schwarze Stamm der grünen Linde mit dem silbernen Schwert im Wappen des Dorfes symbolisiert Bigge als einstigen Sitz eines Freigerichts.

6. Abschluss – Fazit

Die Rechtssymbole in den Wappen der Gerichtsbeamten in der ehemaligen Grafschaft Waldeck unterscheiden sich von denen in den Niederlanden. Am beliebtesten waren militärische Symbole, insbesondere das Schwert. In den Niederlanden erfreute sich die Lilie größerer Beliebtheit

In der ehemaligen Grafschaft Waldeck stehen Symbole wie das Schwert, das Zepter und der Baum in direktem Zusammenhang mit der Rechtsprechung des Freigerichts.

Eine Reihe von Wappen, insbesondere solche mit einem oder zwei Schwertern oder mit einer bewaffneten Figur, werden oft als Amtszeichen bezeichnet. Diese waren jedoch alle mit einer persönlichen Umschrift und teilweise mit einem persönlichen Wappen versehen.

Noten

Abkürzungen

GFW	H. Steinmetz, 'Die Waldeckischen Beamten vom Mittelalter bis zur Zeit der Befreiungskriege', in *Geschichtsblätter für Waldeck*, Band 44 (Arolsen, 1952), 45 (1953), 46 (1954), 47 (1955), 49 (1957), 50 (1958), 51 (1959), 56 (1964), 60 (1968),61 (1969/70), 64 (1952) und 68 (1980).
UFG	F.Ph. Usener, Die Frey- und heimlichen Gerichte Westphalens (Frankfurt, 1832)
WW I	H. Nicolai, *Waldeckische Wappen,* Teil 1 (Arolsen, 1985).
WW II	H. Nicolai, *Waldeckische Wappen,* Teil 2 (Arolsen, 1987).
WW III	H. Nicolai, *Waldeckische Wappen,* Teil 3 (Arolsen, 1991).

1 Dieser Vortrag mit dem Titel 'Waldecker Familienwappen mit Rechtssymbolen' fand

auch im Rahmen der Jahrestagung des Waldeckischen Historischen Vereins e.V. statt am 17. September 2023 in Diemelsee-Flechtdorf.

2 Hessisches Staatsarchiv Marburg, Bestand Urk. 85, Nr. 599.

3 GFW 50 - 43, 45.

4 U. Bockshammer, *Territorialgeschichte der Grafschaft Waldeck (*Marburg 1958) S. 268–270

5 GFW 50 - 48.

6 GFW 50 - 47; H. Baum, *Freienhagen,* Waldeckische Ortssippenbücher Band 47 (Arolsen, 1993) S. 11–18.

7 GFW 50 - 46.

8 GFW 50 - 44–45; W. Medding, *Korbach. Die Geschichte einer deutschen Stadt* (Korbach, 1988) S. 57.

9 Medding, Korbach, S. 58–59.

10 GFW 50 - 47.

11 GFW 50 - 45–46.

12 GFW 50 - 47.

13 GFW 50 - 48.

14 GFW 50 - 44; F. Born, W. Saure und E. Wilke, *Usseln,* Waldeckische Ortssippenbücher Band 78 (Arolsen, 2005) S. 14–15.

15 GFW 50 - 44; K. Thomas und K. Schultze, *Schweinsbühl,* Waldeckische Ortssippenbücher, Band 67 (Arolsen, 2002) S. 35–36.

16 GFW 50 - 46.

17 GFW 50 - 47.

18 GFW 50 - 47.

19 Informationstafel am Freistuhl zu Düdinghausen, 16. September 2023.

20 A. Finnemann, *Düdinghausen. Geschichte eines Grenzdorfes* (Düdinghausen, 1992) S. 79; H. Claßen und J. Padberg, Chronik des Dorfes Deifeld, 1237–1987 (Deifeld, 1987) S. 33–36.

21 H. Dobbener, *Geschichte der Freigrafschaft, der Gemeinde und Pfarrei Züschen, Kr. Brilon* (Züschen 1967) S. 70; Informationstafel am Freistuhl zu Züschen, 18. September 2023.

22 Dieser Turm war Teil der um 1200 gebaute Burg Norderna von den Edelherren von Grafschaft.

23 R. Oberschelp, 'Die Edelherren von Büren bis zum Ende des 14. Jahrhunderts', in *Geschichtliche Arbeiten zur westfälischen Landesforschung*, Band 6 (Münster, 1963) S. 5; H. Klueting (Hrsg.), *Geschichte von Stadt und Amt Medebach (Hochsauerland)* (Medebach, 1994) S. 58, 116 und 238; J. Quick, *Winterberg im Wandel der Jahrhunderte* (Winterberg, 1983) S. 103–110.

24 K. Hogrebe, *Die Sauerländer Gogreven* (Bigge, 1939) S. 21. Nicht im Jahr 1423 sondern 1453.

25 GFW 50 - 45.

26 GFW 50 - 46.

27 Bockshammer, *Territorialgeschichte der Grafschaft Waldeck*, S. 272–275.

28 H. Brugmans, *Corpus Sigillorum Neerlandicorum* ('s-Gravenhage,1940); J.H. de Vey Mestdagh, J.A. de Boo, *Liber sigillorum : de zegels in het archief van de Ridderlijke Duitsche Orde, Balije van Utrecht, 1200–1811*, 2 Bände (Utrecht, 1995); P.A.J. van den Brandeler, 'Zegels van leenmannen, en van schepenen van Breda', in *De Nederlandsche Heraut,* Jhrg. 4 (1887) S. 106–166; C.C. Hesselink-Melchior, *De Zwolse Schepenzegels* (Zwolle, 2000); W.J.F. Juten, Ch.C.V. Verreyt, 'Noordbrabantsche Zegels', in *Taxandria. Tijdschrift voor Noordbrabantsche Geschiedenis en Volkskunde* (1895–1918); B. de Keizer, H. den Hertog, De schepenzegels van Gorinchem, 1326–1807 (Hilversum, 2015); K. Schilder, *Zegels aan charters in het oud-archief van Kampen 1251–1781* (Kampen, 2012); A.C. Zeven, *Wapenboek Vereniging Veluwse Geslachten* (Wassenaar, 2021) revised edition.

29 WW II - Nr. 308/309, Nolden I und II, 283–284; GFW 46 - 46-49; GFW 47 - 93–97; GFW 56 - 87; GFW 61 - 63, 79.

30 WW II - Nr. 263, Limperg, 256; GFW 56 - 129–130.

31 WW II - Nr. 479, Waas, 382; GFW 45 - 158–159.

32 WW II - Nr. 269, Ludowig, 260; GFW 47 - 79.

33 WW II - Nr. 92, Drebes, 174.

34 Greve (oder auch Grebe, Grefe oder Gräffe) war in manchen Gegenden Deutschlands die Amtsbezeichnung eines Dorfvorstands, Schultheißen oder Dorfrichters. Der Greve unterstand dem Gerichtsherren des jeweils übergeordneten Amtes.

35 WW II - Nr. 317, Pape I, 287–288; GFW 47 - 83-84; GFW 51 - 81.

36 WW III - Nr. 483, Reins, 327.

37 WW II - Nr. 393, Schmieding, 329–330.

38 WW III - Nr. 645, Ulner II, 402; GFW 49 - 14; GFW 56 - 103.

39 WW II - Nr. 142, Gottschalk II, 198; GFW 45 - 140.
40 WW II - Nr. 39, Bintzer, 148-149; GFW 51 - 65.
41 WW III - Nr. 226, Hartwig IV, 213.
42 WW II - Nr. 156, Hamel, 205; WGF 49 - 113; WGF 51 - 45–46; WGF 64 – 47; UFG 283–284.
43 WW II - Nr. 179, Hesporn VI, 216; GFW 64 - 20–22.
44 WW III - Nr. 399, Meyer VII, 287; GFW 51 - 50.
45 WW II - Nr. 143, Graf, 198-199.
46 WW III - Nr. 467, Pulnen, 318.
47 WW III - Nr. 462, Pohlmann IV, 316; GWF 46 - 63–64.
48 WW III - Nr. 203, Hacke I, 203; Nr. 204, Hacke II, 203; GFW 47 - 12-13; GFW 49 - 14, 113; GFW 51 - 75: GFW 56 - 73, 102, 122–123.
49 WW III - Nr. 205, Hacke III, 204; GFW 47 - 12–13; GFW 49 - 15-16.
50 WW III - Nr. 369, Manhof, 274; GFW 51 - 42; UFG 276, 287.
51 WW III - Nr. 436, Nolten III, 303.
52 WW III - Nr. 39, Berthold II, 127-128; GFW 56 - 90–91.
53 WW III - Nr. 360, Löseken III, 270; GFW 44 - 52; GFW 49 - 68; GFW 51 - 42–43; UFG 282, 285.
54 UFG Nr. 1.
55 UFG 285.
56 UFG Nr. 21.
57 WW III - Nr. 276, Isken I, 232; Nr. 227, Isken II; GFW 51 - 44; UFG 279, 283, 290.
58 UFG Nr. 12 und 26.
59 UFG 278; Dobbener, *Geschichte der Freigrafschaft Züschen,* S. 84.
60 T. Ilgen, 'Die Siegel von Adligen, Bürgern und Bauern', in: *Die westfälischen Siegel des Mittelalters,* Heft 4 (Münster, 1894–1900) S. 55, Tafel 210-9.
61 WW II - Nr. 150, Günste I, 201–202.
62 W. Wessel, *Hessisches Wappenbuch* (Kassel 1623) Nr. 43.
63 WW III - Nr. 418, Münch I, 295; GFW 45 - 144.
64 WW III - Nr. 699, Wilhard, 427.
65 WW III - Nr. 381, Meissenhenn II, 280; UFG 279.
66 UFG. Nr. 16.
67 WW III - Nr. 383, Meissenhenn IV, 280, 281; GFW 46 - 40-41; GFW 49 - 94.
68 WW II - Nr. 287, Mitzenheim, 269–270.
69 WW III - Nr. 245, Henne, 219–220.
70 WW III - Nr. 3. Adorf II, 3.
71 WW II - Nr. 321, Pauly, 289; GFW 46 - 42, 46, 50.
72 WW II - Nr. 261, Leusmann, 255; GFW 47 - 79; GFW 49 - 5–7, GFW 51 - 45, 48-49, 52; GFW 56 - 115–116.
73 WWB III - Nr. 672, Weber II, 415; GFW 51 - 43–46; UFG 282.
74 WW II - Nr.395, Schneidewind, 331; GFW 47 - 22.
75 WW III - Nr. 600, Steinweg II, 381.
76 WW II - Nr. 135, Götze I, 195.
77 WW II - Nr. 103, Engelhard I, 180; GFW - 71–74.
78 WW II - Nr. 104, Engelhard V, 180; GFW - 71–74.
79 UFG 285.
80 UFG Nr. 17 und 18.
81 WW III - Nr. 316, Knipschild II, 251–252; GFW 51 - 46–48.
82 Klueting, *Geschichte von Stadt und Amt Medebach*, S. 238.
83 GFW 51 - 45.
84 B. Kröpelin, *Korbacher Urkunden, Regesten,* Band 2 (Korbach, 2002) Nr. 748, 1557 Nov. 1.
85 B. Kröpelin, *Korbacher Urkunden, Regesten,* Band 5 (Korbach, 1998) Nr. 11018, 1559 Sept. 27.
86 WW II - Nr. 83, Cuntze III, 170; GFW 49 - 30- 34. WW II - Nr. 83, Cuntze III, 170; GFW 49 - 30- 34.
87 WW II - Nr. 323, Petri I, 290; II - Nr. 324, Petri II, 291; GFW 45 - 110–112; GFW 51 - 68-69, 88.
88 WW III - Nr. 651, Vierordt II, 405–406; GFW 45 - 106, 113, 136, 139-140; GFW 64 - 67, 91.
89 WW III - Nr. 578, Severin II, 370-371; WW III - 579, Severin III, 371.
90 WW II - Nr. 492, Weitzel, 391.
91 WW III - Nr. 217, Happel I, 209; GFW 44 - 53; GFW 49 - 68.
92 WW II - Nr. 44. Böger, 151–152.
93 WW II - Nr. 186, Hofmann II, 219.
94 WW II - Nr. 101, Eisenberg, 179; GFW 51 -

69–70; GFW 64 - 90–91.
95 G. Oswald, *Lexikon der Heraldik* (Leipzig, 1984) S. 223.
96 H. Kruse, W. Paravicini und A. Ranft (Hrsg.), *Ritterorden und Adelsgesellschaften im spätmittelalterlichen Deutschland* (Frankfurt am Main, 1991) S. 149–155.
97 WW I - Nr. 187, v. Sudeck, 235; GFW 51 - 45–46; UFG 276, 278, 283, 287.
98 WW II - Nr. 456, Titmarkhausen IV, 366–367.
99 WW III - Nr. 376, Martini IV, 278; GFW 47 - 65–66.
100 WW III - Nr. 472, Rasor, 320.
101 WW III - Nr. 298, Kellner, 243.
102 NWW III - Nr. 621, Tamme, 392; GFW 47 - 8; GFW 51 - 74.
103 WW II - Nr. 390, Schmallkalder, 328; GFW 44 - 35, 55; GFW 47 - 35; GFW 61 - 80–81.
104 Ilgen, 'Die Siegel von Adligen, Bürgern und Bauern', S. 64, Tafel 218-5. Es sind keine Kegel im Wappen, und es ist keine 'männliche Figur, die ein Saiteninstrument spielt'.
105 WW III - Nr. 361, Lorinden, 270-271; GFW 51 - 43–45; UFG 277–278, 282.
106 UFG Nr. 7 und 27.
107 WW III - Nr. 600, Steinweg II, 381; GFW 51 - 44; UFG 276.
108 UFG Nr. 15.
109 GFW 51 - 44; UFG 276-277, 279, 282, 288, 290.
110 UFG Nr. 9 und 10.
111 GFW 51 - 42; UFG 282.
112 UFG Nr. 20.
113 WWB III - Nr. 672, Weber II, 415; GFW 51 - 43–46; UFG 277, 282.
114 UFG 29; Ilgen, 'Die Siegel von Adligen, Bürgern und Bauern', 2, Tafel 218–4.
115 WW III, 22-27; H.-J. von Brockhusen, 'Siegel und Wappen der Stadt Freienhagen', in *Geschichtsblätter für Waldeck,* Band 45 (Arolsen, 1953) S. 30–34.
116 WW III, 22–27.
117 https://de.wikipedia.org/wiki/Waldeck_(Stadt) - 14.12.2023.
118 *Alte Grenzen die uns verbinden. Die Geschichte der Freigrafschaft Düdinghausen* (Medebach-Düdinghausen, 2013) S. 26.
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122 K.-H. Förster, W. Hüttemann, *Bigge im Strom der Zeit - Teil II* (Bigge, 2005) S. 43.

The University's sceptres (top) and the Vice-Chancellor's chain (bottom). For both pictures, see description on page 16. Photos: Selma Rosenfeld.

Colloquium Lund 2023
Pp. 443–454

Académie Internationale d'Héraldique

Succession to Arms: Contemporary Challenges and Traditional Solutions?

By Professor Dr. Gillian Black, Carrick Pursuivant

Abstract: Family law has changed beyond recognition in the last 40 years across much of Europe. In Scotland, the legal concept of illegitimacy has been abolished and, for the last 15 years, more children have been born outside of marriage than within it (on average 50% – 54% each year). Likewise, conception has changed, with the law recognising donor conception (using sperm or egg donation, or double donation), IVF, and surrogacy. Same sex marriage is now accepted and legally recognised. The contrast between the inclusive development of family law in this time stands in stark contrast to the rules in heraldry. Succession to coats of arms is still guided by the principles at the heart of a traditional patrilineal culture, where succession passes from father to eldest son based on genetics and legitimacy. In Scotland, illegitimate and donor-conceived children are legally excluded from the succession to arms, and are required to add marks of difference to the arms they bear to denote their birth status. Arms may transmit to a female heir, but in all circumstances, a son will displace a daughter. In this chapter, I consider whether reform is required, to bring heraldry in line with the legally and socially accepted standards in family law. I have addressed these issues previously, and continue to advocate for reform in heraldry, to ensure an inclusive, non-discriminatory, and welcoming tradition. However, reform will be most successful if it is supported and endorsed by those active in the field. It is therefore imperative that these topics are discussed and debated, so that consensus as to a way forward can emerge.

Résumé : Au cours des 40 dernières années, le droit de la famille s'est profondément modifié dans une grande partie de l'Europe. En Écosse, le concept juridique d'illégitimité a été aboli et, au cours des 15 dernières années, davantage d'enfants sont nés hors mariage que dans son cadre (en moyenne 50 % – 54 % chaque année). De même, la conception a changé, la loi reconnaissant la conception par donneur (par don de sperme ou d'ovules, ou double don), la FIV et la maternité de substitution. Le mariage entre personnes de même sexe est désormais accepté et légalement reconnu. Le contraste entre l'évolution inclusive du droit de la famille à cette époque contraste fortement avec les règles de l'héraldique. La succession aux armoiries est toujours guidée par les principes au cœur d'une culture patrilinéaire traditionnelle où la succession passe du père au fils aîné sur la base de la génétique et de la légitimité. En Écosse, les enfants illégitimes et ceux conçus par un donneur sont légalement exclus de la succession d'armes et doivent ajouter des marques de différence aux armoiries qu'ils portent pour indiquer leur statut de naissance. Les armoiries peuvent être transmises à un héritier de sexe féminin, mais dans tous les cas, un fils supplante une fille. Dans ce chapitre, j'examine si une réforme est néces-

saire pour mettre l'héraldique en conformité avec les normes juridiquement et socialement acceptées en matière de droit de la famille. J'ai déjà abordé ces questions et je continue à plaider en faveur d'une réforme de l'héraldique, afin de garantir une tradition inclusive, non discriminatoire et accueillante. Cependant, la réforme sera plus efficace si elle est soutenue et approuvée par ceux qui sont actifs dans ce domaine. Il est donc impératif que ces sujets soient discutés et débattus, afin qu'un consensus sur la voie à suivre puisse émerger.

1. Introduction

Family law, and family life, have seen far-reaching changes over the last 40 years, and these changes are reflected across Europe. Family law has developed from a regime which promotes certain family forms, to one which promotes social protection, and supports families based on their needs and the functions they perform. Professor Masha Antokolskaia, a leading family law scholar, has demonstrated that these changes have happened throughout Europe, generally progressing from the north to the south.[1] These new developments have extended to recognising civil partnerships and same sex marriage; giving rights to couples who cohabit and live together without getting married; and moving from fault-based divorce centred on adultery or unreasonable behaviour, to no-fault and consensual divorce. Family law has also evolved in relation to children, with the doctrine of illegitimacy being abolished in many jurisdictions. In respect of the parent/child relationship, law also now makes provision for children conceived through assisted reproduction, including egg and sperm donation and, in some jurisdictions, by surrogacy. The focus of child law has typically shifted from the actions or desires of the parents, to consider what is in the best interests of the child.

Cumulatively, family law has seen enormous changes in the last four decades, reflecting extensive social change. But what does any of this have to do with heraldry? The answer lies in the increasing divergence between family law and heraldic law: the new, inclusive, model of family law has not been mirrored by similar developments in the field of arms. Instead, heraldry remains committed to concepts of legitimacy and the bloodline, through patrilineal succession, centred on the male ancestry. In this article, I will explore the ways that Scots law treats the heir to arms, and contrast this to the recognition of children as heirs in the general law. I will conclude by suggesting possible options for law reform, drawing on existing principles and practice in heraldry, in the hope that traditional solutions can be found to these contemporary challenges.

2. Scots Law: Illegitimacy

Illegitimacy has been accommodated by Scottish heraldry for generations. A natural child cannot succeed to the plain, undifferenced arms of the father. Instead, a mark of difference to denote this illegitimate status is

added to the arms, typically a baton sinister, or a bordure compony (*fig. 1*).[2]

However, the legal status of illegitimacy in Scotland has been abolished: there is no longer any doctrine of illegitimacy in law. Reform initially came in 1986, with the Law Reform (Parent and Child) (Scotland) Act 1986, which removed the legal effect of illegitimacy:

> *The fact that a person's parents are not or have not been married to one another shall be left out of account in establishing the legal relationship between the person and any other person.*

While this wording achieved legal equality, it did not actually remove the status of illegitimacy. That was achieved through further reform in 2006, when the 1986 Act was amended to read instead:

> ***No person whose status is governed by Scots law shall be illegitimate;*** *and accordingly the fact that a person's parents are not or have not been married to each other shall be left out of account.*[3]

This legal change reflects the reality of life in Scotland, where over 50% of children are born to unmarried parents, and this has been the case every year since 2008.[4] Moreover, it is a welcome change, since illegitimacy and its consequences punish the child for circumstances far beyond his or her control: no child chooses the circumstances in which he or she is born.

Thus, since 2006, the doctrine of illegitimacy has – as this wording clearly shows – been abolished. Presumably, against that background, there is now no barrier to an heir born to unmarried parents inheriting the parental arms, undifferenced?

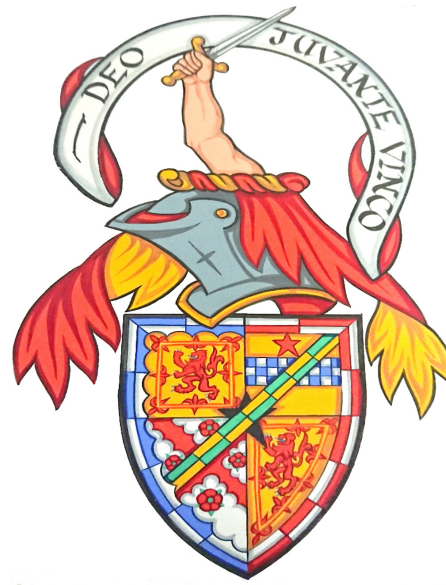

Fig. 1. Arms of James Stuart. The Lyon Office, The Public Register of All Arms and Bearings in Scotland, Vol. 54, fol. 59.

In fact, although the 1986 Act removed first the legal consequences and then the very status of illegitimacy, the Act specifically excluded from its scope the succession to coats of arms, and titles. Thus, section 9 of the 1986 Act originally read, and still reads, as follows:

> *Nothing in this Act shall […] apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof.*

So, the heir to a coat of arms, or to a title, honour, or dignity, must still be legitimate, that is they must still be born to married parents. This is the only exception to the abolition of illegitimacy.

However, as long ago as 1992, this differential treatment of children in relation to coats of arms was queried by the then Lord Lyon King of Arms, Sir Malcolm Innes of Edingight. The Scottish Law Commission conducted a review of family law, and reported that:

> *The Lord Lyon suggested to us that this [exclusion] was unreasonable and unnecessary and that the reference to coats of arms in section 9(l)(c) of the Law Reform (Parent and Child) (Scotland) Act 1986 should be repealed.*[5]

Despite this clear position, the law has never been reformed and section 9 continues to apply the doctrine of illegitimacy to heirs in relation to coats of arms, titles, honours, and dignities.

Illegitimacy, which has been otherwise abolished in Scotland, thus remains legally relevant in heraldic law, and operates to exclude heirs from succeeding to the undifferenced arms of their parents. It is not that children born to unmarried parents *cannot* inherit arms, it is rather the case that the law requires them to add a mark of difference to the arms. They are therefore treated differently from other heirs, based solely on their birth status, which constitutes discrimination unless it can be justified.[6] Since over 50% of children are now born to unmarried parents in Scotland, this will affect increasing numbers of children in the years to come.

In practical terms, I understand that the current practice is not to add such a mark, and I am further aware that some heirs relish bearing such a mark of difference on their arms, particularly if it refers to ancestors several generations in the past. Regardless of these very pragmatic considerations, the law on the statute books perpetuates this differential treatment based on birth status in the case of succession to arms, when the policy decision has been otherwise to abolish illegitimacy altogether.

3. Scots Law: A Break in the Bloodline

Children born to unmarried parents are excluded from succeeding to the undifferenced arms because of illegitimacy, although they are nevertheless full genetic children of those parents. However, what is the legal position as regards children who are not the genetic offspring of their parents? (At this point we can leave aside the question of whether their legal parents are married or not.) What does Scots law say as regards adopted, donor-conceived or surrogate-born children?

In family law terms, the law has clear rules in place for identifying the legal parents of children, and those rules are not exclusively centred round genetics. Where a child is conceived naturally, through sexual intercourse, then the legal parents will be the two genetic parents. However, where there is assisted conception, or adoption, then the focus turns from *genetics* to *intention*. The law identifies the legal parents of the child based on the intention of the parents, for example their intention to conceive using IVF with donor sperm, or their intention to

adopt the child. The egg donor or sperm donor will not be recognised as the legal parent, and in the case of adoption, the effect of the adoption order made by the court is that the birth parents are no longer the legal parents. Thus, genetics is no longer the exclusive touchstone for identifying legal parents in Scots law. We can see this clearly in the relevant statutory provisions.

In relation to adoption, the Succession (Scotland) Act 1964 states that for all purposes relating to testate and intestate succession, an adopted person is to be "treated as the child of the adopter and not as the child of any other person".[7] Thus, adoption achieves the "full legal transplant" of the child from their birth parents to their adoptive parents, and creates a new lifelong legal relationship between the child and the adoptive parents. This legal relationship governs all the usual consequences of the legal parent/child relationship: with one exception. Section 37 of the 1964 Act states that nothing in that Act shall "apply to any title, coat of arms, honour or dignity transmissible on the death of the holder thereof or affect the succession thereto or the devolution thereof." Thus, an adopted child is in the curious position of not being able to inherit the undifferenced arms of their legal parents – but they can inherit the undifferenced arms of their birth parents, despite having no legal (and possibly no social) relationship with them whatsoever.

Full legal transplant adoption was only introduced in Scotland in 1930, so before then it had not required any specific treatment in matters heraldic. However, following this new law, it was only a matter of time

Fig. 2. Arms of Lt. Col. Stewart. The Lyon Office, The Public Register of All Arms and Bearings in Scotland, Vol. 36, fol. 150.

before an adopted heir sought to bear the arms of their adoptive parent. The matter was addressed in the 1950s by the then Lyon, Sir Thomas Innes of Learney. He introduced a voided canton as a mark of difference to be borne by adopted children on the arms of their adoptive – not birth – parents, to signify the break in the bloodline.[8] There are thus examples in Scots heraldry of arms bearing a voided canton, which indicates to the world that the bearer (or an ancestor) was not the genetic heir of the parent (*fig. 2*).

A similar outcome results in relation to donor-conceived and surrogate-born children, where there has been a break in the bloodline. In relation to a child born using sperm donation, egg donation, or double donation (i.e. where both the egg and the sperm have been donated, sometimes in the

form of an embryo), then the Human Fertilisation and Embryology Act 2008 provides that the legal parents shall be: (i) the woman who carried and gave birth; and (ii) the man or woman who is married to her, or who is in a relationship with her and who meets the relevant statutory criteria.[9] The 2008 Act also specifically excludes the egg donor from being recognised as the mother, stating in section 33 that the woman who carries and gives birth "and no other woman" is to be the mother of child.[10] Section 41 makes specific provision that the sperm donor is not the legal father.

Once again, however, these clear statutory provisions, which identify the legal parents of a donor-conceived child for all purposes, are subject to an exclusion. Section 48(1) starts by saying that:

> *Where by virtue of [this Act] a person is to be treated as the mother, father or parent of a child, that person is to be treated in law as the mother, father or parent (as the case may be) of the child for all purposes.*

However, section 48(8) states that, in relation to Scotland, "those provisions do not apply to any title, coat of arms, honour or dignity transmissible on the death of its holder or affect the succession to any such title, coat of arms or dignity or its devolution". Thus, once more the child is excluded from the succession to a parent's coat of arms by operation of the law, despite being recognised as the legal child of those parents for all other purposes. This perpetuates differential treatment in the case of succession to arms, maintaining the significance of the bloodline.

Again, as far as I know, this legal regime is not applied rigidly in heraldic practice in Scotland, and there is also anecdotal evidence that in many cases, parents will not disclose that their child and heir is donor conceived. But it remains the case that the law on the page – and on occasion in practice – is discriminatory: it treats children who are donor-conceived, or who are adopted, differently in matters of succession to arms.

This is of course at odds with family law across Europe, which now recognises families based on the lived family life: who intends to be a parent, and what is in the child's best interest. There is now a sharp divergence between family law and society on the one hand and heraldic law on the other. In Scotland, this divergence is embedded in the statutory provisions.

So the question for heraldry in the 21st century is: what should we do? Should we reform heraldry, so that it reflects current society and family law? Or should we uphold long-established heraldic practice, and maintain this differential treatment, based on legitimacy and genetics?

4. Heraldry and Scots law

4.1 Heraldry and identification

It is obvious that heraldry is about identification: in Scotland, a coat of arms is unique to the bearer. Therefore, any mark of difference added to the arms for a specific purpose tells us something about the bearer of those arms, and also of course, something about their parents: illegitimacy in the case of a

riband sinister, or infertility or lack of genetic connection, in the case of a voided canton. When we identify an individual, do we need to know whether their parents were married or unmarried? Do we need to know whether there was a break in the bloodline? For many people of course, this is deeply personal information.

As an aside, it is worth observing that we do not convey any other deeply personal information through arms: we do not routinely use heraldry to record someone's sexuality, or political beliefs, for example. Religious beliefs can sometimes be recorded in heraldry, although that tends to be more the case in ecclesiastical heraldry, where the armiger is an appointed churchman. Thus, a bishop would display a mitre instead of a helm above the shield. In such cases, the armiger's religious beliefs are an integral part of his vocation, and reflect his chosen lifestyle.

If we accept that children born to unmarried parents, or children who are adopted or donor conceived, cannot inherit the undifferenced arms of a parent, then we are disclosing something which is deeply personal about them, and about their parents, by virtue of the fact that the law refuses to recognise them as heirs, and requires them to add a mark of difference if they wish to bear their parents' arms. This potentially gives rise to concerns about an invasion of privacy and information rights.[11]

4.2 Maintaining or developing tradition?

One response would of course be to say that heraldry must remain true to its origins, and respect only *genetic* and *legitimate* descent. This would uphold heraldic tradition, whereby natural children were treated differently from legitimate children, and any form of conception other than marital intercourse would not result in an heir to the father's coat of arms. Tradition can be an attractive reason to push back against new developments in heraldry.

But relying on tradition is problematic. Heraldry, and the laws and principles which regulate it, date back for nearly 1000 years, and much has changed in that time. Heraldry today is not the same as heraldry in the 13th century, and it has been gradually changing over that 800 year period: so what tradition should we adopt? The heraldry that was practiced in the late medieval period when, as J.H. Stevenson paraphrased Bartolus of Saxoferrato, there was "a right in any man to assume a distinctive coat of arms at his own hand"?[12] Upholding this tradition would see us revert to the practice where any man could assume arms, without the oversight or need for regulation by a heraldic authority, thereby overturning the authority of the Lord Lyon established by Act of the Scottish Parliament in 1672. Or should we revert to the heraldry that was adopted three hundred years ago, which would see modern charges obliterated from coats of arms, such as those derived from the industrial revolution, or more recent charges such as the Oscar statuette found in the Scottish arms of Sir Sean Connery? (*fig. 3.*) In the case of women, should we revert to the original practice whereby they bore their arms in a shield, or the practice (enthusiastically embraced by the Victorians) where women bore

Fig. 3. Arms of Sir Sean Connery. The Lyon Office, The Public Register of All Arms and Bearings in Scotland, Vol. 94, fol. 27.

arms in a lozenge? Or indeed, the current practice, whereby they can choose?

As these examples show, practice has changed over time: there is in fact no clear heraldic "tradition" to uphold. Instead, claims to resist change which are based on tradition rarely hold up to scrutiny. Heraldry is a product of society and has been evolving throughout its existence, to reflect the society we live in.

Seeking to move heraldry forward once more, to reflect ever-evolving social practices, can be seen as an agenda or a political stance, yet it is equally the case that seeking to preserve the status quo or uphold tradition is also a political stance. As Lady Hale has observed:

> *It is strange that challenging the […] status quo in the law […] is seen as an 'agenda' whereas preserving it is not. We have seen how efficiently the protectors of the status quo can mobilise when they feel it under threat […] But mostly they have no need to be so vocal – so that agenda remains hidden and, no doubt for many, quite unconscious.*[13]

Choosing to "do nothing" about the existing practice, thereby supporting it, is just as much as a (political) choice as seeking to "do something".

Moreover, if upholding the principle of true genetic descent is our priority, then we need to make sure we uphold this principle equally and fairly. While some families will be open that their child has been donor conceived, their child is in the genetic same position as one where the mother conceived following a secret extra-marital affair. It is perfectly possible that *any* family may have a hidden "cuckoo in the nest".[14] If genetic legitimacy is perceived to be essential to succession to arms, then we should require genetic testing for *every* heir in *every* family – to ensure that the heir is *always* the true genetic descendent. There can be no justification for giving some families the benefit of the doubt when it comes to genetic succession, and not others.

And yet I am not sure all families would be keen to have their genetic succession scrutinised. I suspect there are a number of families who are rather concerned about the possible impact of DNA testing in the case of their own succession. If we hesitate before imposing automatic DNA testing for every heir to every coat of arms, then any justification for treating adopted, illegitimate or

donor conceived children differently becomes questionable, as being based on prejudice or discrimination, rather than on principle. It therefore falls to us to seek other ways forward.

4.3 Seeking reform: Strangers in blood

Unless we advocate mandatory DNA testing for all heirs, then I think there is a strong case for developing a more inclusive and less discriminatory approach to succession to arms. Heraldry is a creation of society, and should reflect the society it operates in, through accommodating all children who are recognised by law as the legal children of their parents. And when looking for answers, heraldry may already offer a solution.

Donor conceived children, and adopted children, can be seen as simply modern examples of "strangers in blood". Historically, one device which was used to allow arms to pass to a stranger in blood, was a deed of entail with a name and arms clause. Although Innes of Learney noted that "family arms can only in the most exceptional circumstances, and by re-grant, be transferred to 'strangers in blood'"[15] this is not strictly borne out by the available evidence, whereby entails often included name and arms clauses.[16] For example, a matriculation of arms from 1857 recorded in the Public Register of All Arms and Bearings in Scotland (informally known as the Lyon Register), concerns the estate of Guthrie of Mount. An entry in 1856 in respect of Miss Christina Guthrie of Mount narrates the existence of an entail and the accompanying name and arms clause:

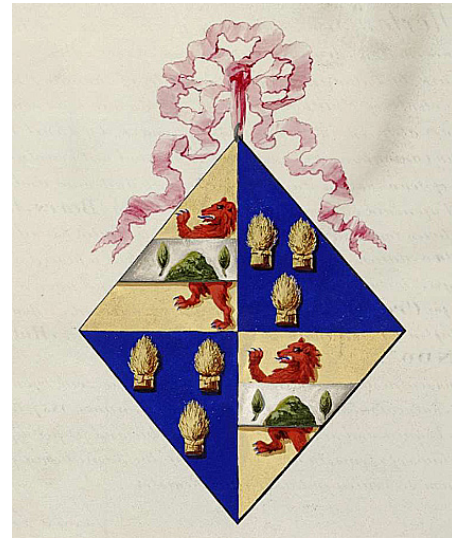

Fig. 4. Arms of Miss Christina Guthrie of Mount, 1857. The Lyon Office, The Public Register of All Arms and Bearings in Scotland, Vol. 5, fol. 99.

> *[…] the said Patentee, and the whole other heirs of Tailzie [i.e. entail] therein mentioned, succeeding to the Lands, Teinds and others thereby disponed, and the husbands of heirs female succeeding therefore, should be obliged upon their succession to assume and thereafter to use, bear and constantly retain the surname, Arms and designation of Guthrie of Mount as their proper and only Surname, Arms and designation.*[17]

Four years later, there is an entry in favour of her husband, The Honourable Geoffrey Guthrie (formerly Browne), wherein he matriculates the arms of Guthrie under this name and arms clause, in his newly adopted surname of Guthrie (*figs. 4 and 5*).[18]

Thus, arms could pass to a stranger in blood – such as the son-in-law of the pre-

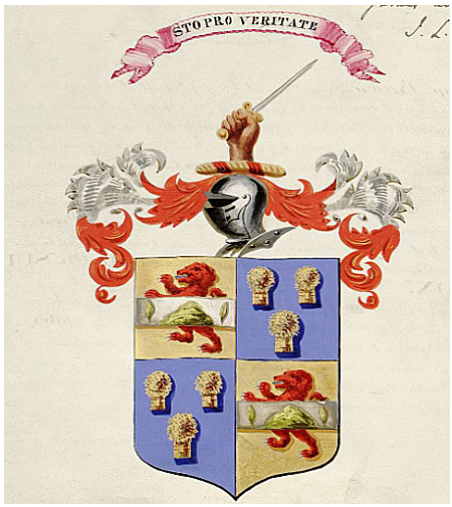

Fig. 5. Arms of Hon. Geoffrey Dominick Augustus Frederick Guthrie (formerly Browne), 1860. The Lyon Office, The Public Register of All Arms and Bearings in Scotland, Vol. 6, fol. 24.

vious holder – and that heir would take the surname and designation associated with the arms. This would require Lyon's consent, hence the matriculation in the Lyon Register, and Lyon's consent was typically forthcoming. On completion, the heir would bear the undifferenced arms, despite having no blood connection to their predecessor at all.

Could we apply this approach today, to donor-conceived and adopted heirs? Such heirs could seek to matriculate their parent's arms with Lyon, and take the arms without any mark of difference. The "name" element would not of course present any problem in the usual case, since most children in Scotland take their parents' surname anyway. One hurdle however would be that it would require the parents to take steps before their death, to grant the name and arms clause. Where they omitted to do so (or had planned to do so but then died unexpectedly early), their child – the legal heir – would potentially be excluded from the succession, in the absence of the relevant deed. Moreover, even if they were willing to do so, this option still imposes an obligation on the parents which is not required of parents where the child is born within marriage or is not donor conceived. A further hurdle is that such an approach depends on Lyon's discretion, albeit not often refused.

An alternative route, which would allow the heir to petition on the death of the parent(s), without any need for a prior name and arms clause, is where the Lord Lyon "maintains, ratifies and confirms" a person as the bearer of existing arms. This is a method which can be used when the arms exist but would not otherwise descend in a particular way: instead, a petitioner can seek to be recognised as the bearer of the arms through this ratification.[19] Since this is within the child's control to decide whether to petition or not (when the time comes, after the death of their parent), it is preferable to the name and arms method, which imposes a requirement on the parents to put in place a name and arms deed. It could therefore be a highly appropriate existing route to allow children who are the lawful children of the parents but are not at present recognised as the heirs in heraldic terms, to take up a parent's arms. However, this route also relies on Lyon's discretion.

One issue with both these options is that, while they would be entirely in keeping with the existing provisions in Scots law for strangers in blood, they both require adopted and

donor conceived heirs to take an extra step, in seeking Lyon's consent, which is not required of genetic heirs. This means there is still an element of discrimination, through differential treatment, by requiring these heirs to take steps not required of genetic heirs born to married parents – although they are recognised equally in law for all other purposes. Moreover, in each case it would remain at Lyon's discretion as to whether to recognise the heir to the undifferenced arms or not.

I would therefore suggest that we could build on these precedents and take matters a step further. Historically, we recognise that a stranger in blood, of a totally different surname and who is also a stranger in law – with no legal connection to the armiger at all – can bear the name and arms of the armiger under a private deed, where recognised by Lyon. Alternatively, there are examples of Lyon maintaining, ratifying, and confirming existing arms to a petitioner, when they would not otherwise have transferred to the petitioner. However, in the case of a legally-recognised child, the need for a petition and Lyon's consent could be dispensed with, and the child could inherit their parent's arms on the same terms as a genetic heir to married parents, without any mark of difference or any additional legal or procedural steps. This would build on long-established heraldic practice, and allow Scottish heraldry to adapt to the social practice of the 21st century on a principled and consistent basis.

5. Conclusion

My own view is that succession to arms in this case should follow the legal line, rather than the blood line – who does the law recognise as the legal child of the family, for all other purposes? That person should be entitled to succeed to the undifferenced arms, on the same basis as the child of married parents. I think a case can be made in support of this approach, to recognise that such family relationships as adoption, donor conception, and being born outside of marriage are all standard family forms these days. This ensures equality of treatment in law, and it also accords with fundamentals of human rights and human decency: why should these children be excluded from heraldry? Moreover, it has the advantage of promoting parity with all the many heirs out there who are, unbeknownst to (almost) everyone, not in fact the blood heirs of their parents anyway. The alternative would be to uphold the need for legitimate and genetic blood descent, and to ensure that this was applied equally to all heirs through compulsory DNA testing every time the succession opens.

Whatever option one favours, this is not an issue which is going to disappear. As family forms continue to evolve, different ways of creating families will continue to emerge: we need to discuss what implications these have for heraldry and what solutions might work for Scots law, for the heraldry community, and for the wider community.

Notes

1 M. Antokolskaia, *Harmonisation of Family Law in Europe: A Historical Perspective,* (Intersentia, 2006).

2 Innes of Learney, *Scottish Heraldry* (2nd edition, 1956), p. 103, at footnote 1.

3 Emphasis added.

4 The National Records of Scotland (https://www.nrscotland.gov.uk/) provide statistics for each year going back to 1974, when 90.9 % of births were to married parents. Since 2008, there have been more births out of marriage each year. The figure varies year-on-year, but typically sits between 50 and 54%. There is a trend towards an increasing number of births each year being out of marriage. See the tables at: https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2022/list-of-data-tables#section3 (accessed 28 October 2023).

5 Scottish Law Commission *Report on Family Law* (1992), Para 17.11. The Scottish Law Commission is a statutory body responsible for reviewing and recommending reform of Scots law.

6 For example, Article 2 of the United Nations Convention on the Rights of the Child specifically enjoins States to respect the rights of the child with no discrimination, including on the grounds of birth or status. (UNCRC, 1989).

7 1964 Act, s. 23.

8 Innes of Learney, *Scottish Heraldry* (2nd edition, 1956), p. 100, and examples cited at footnote 1.

9 Human Fertilisation and Embryology Act 2008, sections 36, 37 and 43, 44.

10 See also Human Fertilisation and Embryology Act 2008, section 47.

11 I have addressed this issue in G. Black, "Making a difference: Heraldry, human rights, and matters of differencing" (2020) 43 *Double Tressure 2*.

12 J.H. Stevenson, Heraldry in Scotland (James Maclehose and Sons 1914, reprinted by Bruce Durie Books 2012), p. 25 referring to Tractatus Bartoli de Insigniis et Armis. The original quote from Bartolus is, in translation: "Some assume coats of arms and insignia on their own initiative, and we should consider whether they are permitted to do it. I think that they are permitted. Just as names are created to identify persons, so insignia and coats of arms are devised for this purpose. Anyone is permitted to use such names for himself, and thus anyone bear these insignia and depict them on his belongings, but not on another's". O. Cavallar, S. Degenring, J. Kirshner, A Grammar of Signs. Bartolo da Sassoferrato's Tract on Insignia and Coats of Arms (1994), pp. 145–146.

13 Lady Hale, *Spider Woman: A Life,* (The Bodley Head, London, 2021), at p. 177. Lady Hale was the most senior judge in the UK, holding the post of President of the UK Supreme Court, from 2017 until she retired in 2020.

14 To use the phrase employed by a member of the family in the *Baronetcy of Pringle of Stichill* [2016] UKPC 16, para 12.

15 Innes of Learney, *Scottish Heraldry* (2nd edition, 1956), p. 100.

16 J.H. Stevenson, *Heraldry in Scotland*, 1914 (reprinted 2012, ed. Dr. Bruce Durie), at Chapter XIII, especially pp. 356–357, where he cites Sir George Mackenzie of Rosehaugh, and also gives various examples of entails or testamentary deeds which include name and arms clauses.

17 The Public Register of All Arms and Bearings of Scotland, Vol. 5, folio 99, 1856.

18 The Public Register of All Arms and Bearings of Scotland, Vol. 6, folio 24, 1860.

19 One example can be found in The Public Register of All Arms and Bearings of Scotland, Vol. 82, folio 63, from 2000, where the Chief of the Clan Chisholm conveyed to the petitioner (his uncle) supporters of arms, and this conveyance was maintained, ratified and confirmed by Lyon.

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Canada's Law of Arms: An Insider's Glimpse into a Constantly-Evolving System

By Dr. Samy Khalid, a.i.h., Chief Herald of Canada

Abstract: The Chief Herald of Canada has a very practical responsibility to grant arms, flags, badges and other heraldic emblems to Canadian citizens and corporations. On another level, flowing from the Sovereign's heraldic prerogative, he also has a mandate "to create and maintain a heraldic system for Canada". His decisions relating to national heraldic practice, including the need to define and limit the use of certain heraldic charges that may be overused, contribute to the day-to-day development of Canada's law of arms.

This chapter covers a couple of areas of focus in the Chief Herald's purview. Firstly, the maple leaf, Canada's quintessential national symbol, gives us an excellent opportunity to reflect on an often-overused emblem, which, as a consequence, tends to be ever more reserved for certain specific uses. Secondly, Indigenous emblems, which are very popular in the collective imagination but are too commonly usurped for commercial purposes and without consultation of their creators or the First Peoples concerned, are now seeing their use restricted thanks to the commitment of the Chief Herald of Canada to combat the pervasive phenomenon of "cultural appropriation". The implementation of detailed guidelines and policies in these areas highlights a non-public aspect of the work of the Canadian Heraldic Authority and opens a window into the way Canada's law of arms is shaped.

Résumé : Outre la responsabilité concrète de concéder armoiries, drapeaux, insignes et autres emblèmes héraldiques aux organismes et aux citoyens canadiens, le Héraut d'armes du Canada a comme mandat, lui venant de Sa Majesté le souverain, de voir à « la création et au maintien d'un système héraldique canadien ». Ses décisions concernant les pratiques héraldiques au pays, y compris le besoin d'encadrer ou de limiter l'utilisation de certains meubles héraldiques surutilisés, contribuent à l'essor du droit d'armes canadien au jour le jour.

Ce chapitre couvre deux axes prioritaires du Héraut d'armes. En premier lieu, la feuille d'érable, symbole national par excellence, représente un terreau fertile pour la réflexion entourant un emblème trop fréquemment utilisé et qui tend donc à être réservé de plus en plus pour certaines utilisations particulières. En second lieu, les emblèmes autochtones, fort populaires dans l'imaginaire collectif mais trop souvent usurpés à des fins commerciales et sans consultation de leurs créateurs ou des groupes autochtones concernés, sont maintenant restreints grâce à la volonté du Héraut d'armes du Canada de combattre le phénomène omniprésent de « l'appropriation culturelle ». La mise en place de lignes directrices voire de politiques met en lumière un aspect non public du travail de l'Autorité héraldique du Canada et de sa façon de modeler le droit héraldique canadien.

1. Introduction

In the spirit of the theme of this colloquium – "Heraldry and the Law" –, this paper focuses on a couple of recent policy decisions made by the Chief Herald of Canada which directly impact the Law of Arms of Canada. Policy matters of this sort, while generally not shared publicly, are sure to be of interest to heraldic experts and historians wishing to understand the creation and development of heraldry, whether from the earliest times or in the present day, as they provide valuable insight into the challenges associated with the building of a heraldic system such as Canada's.

2. Heraldry, a mirror of society

It is important to start by stating that while responsible for defining Canada's Law of Arms, the Canadian Heraldic Authority (CHA) is not in the business of policing the use of heraldry in Canada. Whereas other heraldic authorities may be concerned with the right to bear arms or with the descent of arms (for example only to male heirs or to legitimate children) or with the status of armigers, the CHA's goal is to create emblems for all Canadians who so desire. Our focus is to ensure that a good, efficient system is in place, and is accessible to all.

My commission of office as Chief Herald of Canada states among other things that I am to "create and maintain a heraldic system for Canada". Ours is still a very young institution, at 35 years of age in 2023. Nonetheless, our system is composed of policies and procedures, just as with any other heraldic authority, and these sets of rules and guidelines keep evolving along with the society we live in, a society which is very much reflected in our Law of Arms.

In such a context where heraldry is open to everyone and where there are so many "worthy and deserving" candidates to be granted arms, flags and badges, the difficulty resides elsewhere. It lies with the need to educate our "clientele" (composed of government agencies, private corporations, associations and other institutions, as well as individuals from all walks of life) on the science and art of heraldry. The heralds on our team spend a great deal of time explaining the rules of colours, simplicity, symmetry and symbolism. They also expend great efforts repeating that each design must be unique and that, therefore, certain charges must be avoided as they have unfortunately become too common.

2.1 The maple leaf

One overused heraldic charge is the maple leaf.

The maple leaf has been Canada's quintessential national symbol since the 19th century. More than 100 years after becoming a common feature on coins and stamps, after having been used in many international conflicts by our soldiers or during Olympic Games by our athletes, a century after having appeared in provincial coats of arms, the maple leaf was officialized on Canada's national flag in 1965. No other symbol says "Canada", in our country and internationally, more than a maple leaf.

While maple trees can be found throughout the world between the 30th and 60th parallels north, including the United States and

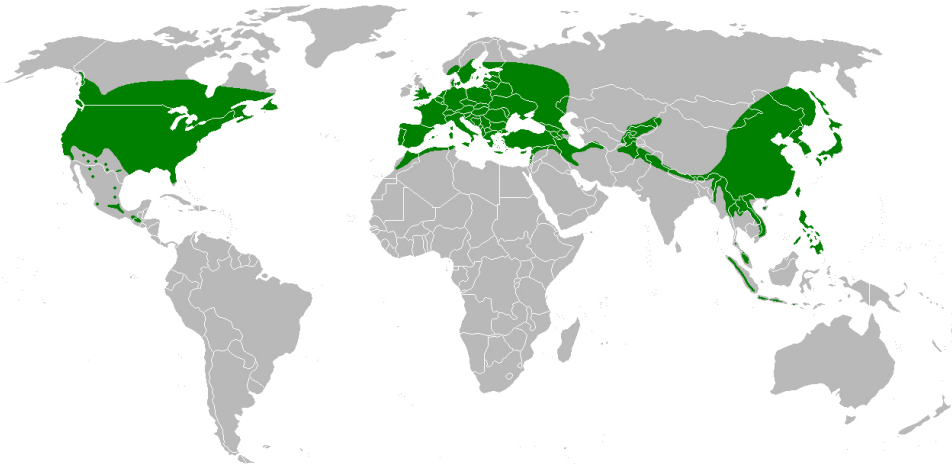


Fig. 1. World distribution map of the genus Acer (maples). Source: Wikipedia, https://en.wikipedia.org/wiki/Maple.

most of Europe (see *fig. 1*), and even though maple trees are not present in all regions of Canada, I would argue that every Canadian knows and identifies with the maple leaf on our national flag, coat of arms, currency, military insignia and many more everyday symbols in our visual landscape.

The Public Register of Arms, Flags and Badges of Canada is our country's national armorial. Its Web version features tools that help us document our heraldic heritage and all of the CHA's new creations. As of July 2023, the Public Register contains almost 11,500 separate elements, namely shields, crests, supporters, mottoes, flags, badges, military badges and national symbols.

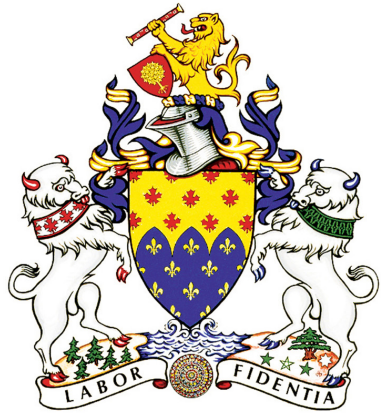
Of the now 8,700 graphic emblems that it contains (that is, all entries excluding mottoes), some 20% include a maple leaf of some sort, or sometimes many maple leaves.[1] In other words, one in five emblems bear Canada's recognized and well-known national symbol.

This number is underestimated, beyond any doubt, because until recently we did not code and therefore did not count maple leaves featured in military badges, the majority of which are set in badge frames full of such leaves. In fact, most military badges, which account for 18% of the contents of our Register, have maple leaves.

In effect, this means that rather than 20%, the proportion of maple leaves in Canadian heraldry, in the current state of our knowledge, could in fact reach 35 to 38%. In simpler terms, at least one in three official heraldic emblems in Canada features maple leaves.

It is worth explaining that this is not only the doing of the Canadian heralds over the past 35 years. Approximately a quarter[2] of the content of the Public Register is composed of registrations, referring to heraldic emblems created by another state authority before the establishment of the CHA in 1988. Many were granted to Canadians by the

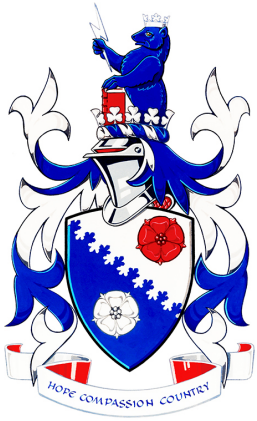
Timothy Robert Groulx (2000)
Public Register, Vol. III, p. 346



Léopold Henri Amyot (1989)
Public Register, Vol. I, p. 9

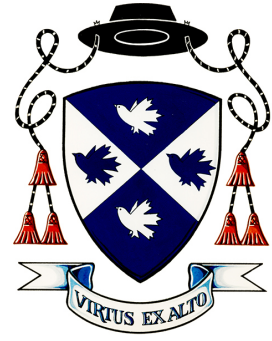
Tania M.S. Grünewald (2019)
Public Register, Vol. VII, p. 194

Fig. 2. Multiplying maples leaves, including (1) as a sprig, (2) as a semé, (3), "tessellated of maple leaves Vert and Or", an arrangement of leaves embedded into each other. Source: Public Register of Arms, Flags and Badges of Canada.



Terence Albert Hargreaves (2003)
Public Register, Vol. IV, p. 190

Gary Lee Nelson (2010)
Public Register, Vol. V, p. 486



John Cameron Cairns (1995)
Public Register, Vol. III, p. 23

Fig. 3. Partitions, decorations and charges morphing into maple leaves: (1) "per bend érablé", (2) maple-style mantling, (3) "Canadian martlets". Source: Public Register of Arms, Flags and Badges of Canada.

Kings of Arms of England, Scotland or Ireland, and we also have a small handful from Slovakia, Spain and South Africa. In many cases, these showcase maple leaves, sometimes several.

Looking at coats of arms created by the

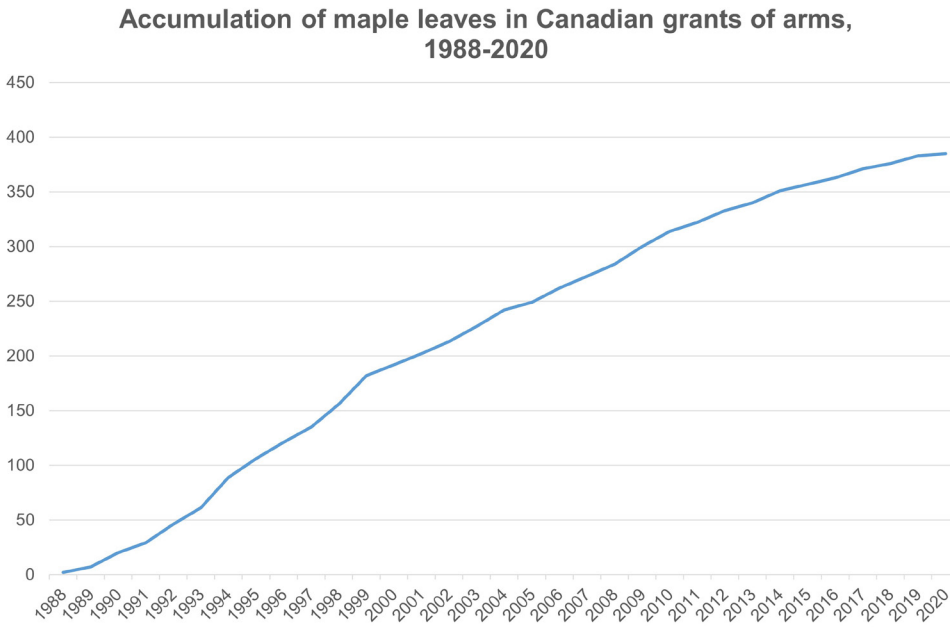


Fig. 4. Accumulation of maple leaves in Canadian heraldry, 1988–2020. Source: Samy Khalid, 2020.

Canadian heralds over the years, we can clearly see what I would describe as an incontrollable multiplication of maple leaves. In addition to being shown individually or in pairs and trios, etc., there are many other occurrences to be seen: maple branches, semys of maple leaves and other configurations, such as an innovative tessellated design (see *fig. 2*).

All of these designs reveal just how popular the maple leaf has been to represent Canada and Canadians. The explosion of maple leaves in Canadian heraldry during the first 20 to 30 years of the CHA has not been gradual or modest. In response, for already over 20 years now, there has been an effort to reduce the number of maple leaves in our creations. Instead of placing the charge centrally on the shield or in the crest, we started by moving it to bordures or secondary attributes, such as in coronets, partition lines, or we developed charges terminating in maple leaves and even designed leafy-looking mantling or compartments. In other cases, the heralds tried playing with charges and made them morph into maple leaves, such as "Canadian martlets" (see *fig. 3*).

In summary, because of its simple shape, because of how "heraldically friendly" it is in terms of the range of colours in which it can be displayed, because of its versatility, the maple leaf has never ceased to be most appealing as a national symbol. One wonders if from a certain point of view, it was perhaps deemed the only way to proclaim Canadian identity.

It was only when the technology of our

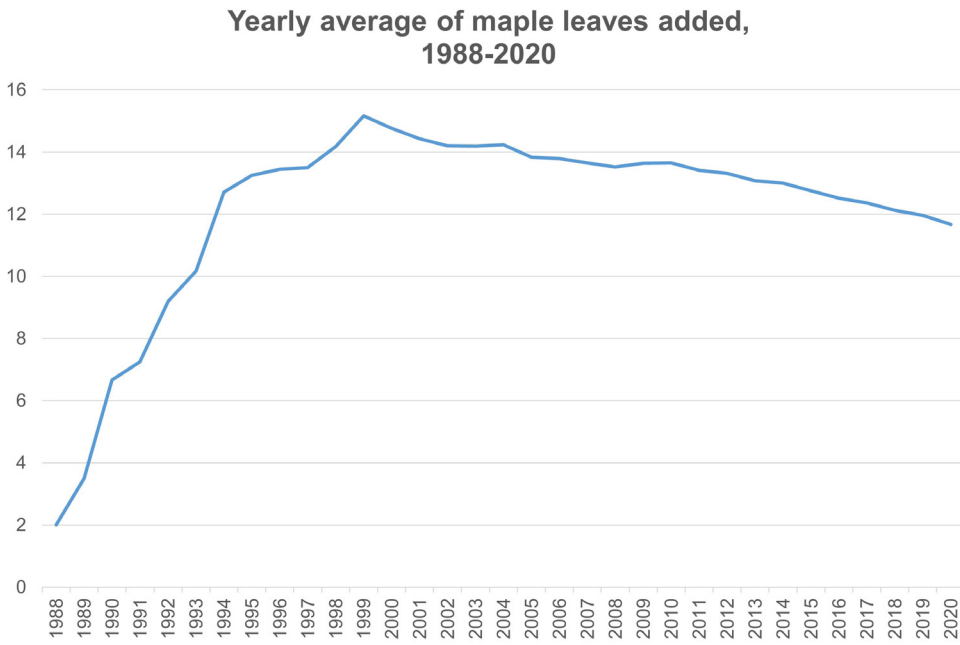


Fig. 5. Yearly average of maple leaves added, 1988–2020. Source: Samy Khalid, 2020.

Public Register evolved in the very recent past – five years or so – that the heralds really took stock of the situation (see *fig. 4*). When I was appointed the third Chief Herald in 2020, I stepped in to challenge my team with stricter rules. Limiting the use of Canada's national symbol has not been a popular measure. But all the heralds agree that it was, and is, a necessary one.

The Public Register, a platform which gives us much pride, is actually what is making our work harder, because our petitioners are encouraged to, and do, consult it for inspiration. And of course, the plethora of maple leaves makes it difficult to explain why some Canadians were able to "get a maple leaf" in the past, whereas it is almost impossible to "get" one now.

Nowadays, I restrict very heavily the granting of maple leaves. The result has been that in the past three years, between 2020 and 2023, the number of emblems bearing maple leaves has declined significantly (see *fig. 5*). The heralds get together on a weekly basis, encourage each other to consider alternatives, and determine in which situations such leaves can be included, for example for institutions serving large segments of the population or for national emblems.

The maple leaf is not the only charge that has become commonplace to the point of losing its uniqueness. So has the fleur-de-lis, favoured by many as *the* defining symbol of the province of Quebec (which has a population of 8.8 million), a symbol for Francophones (of which Canada counts 7.8

million people) or a charge to indicate a family's French origins (which would be appropriate for 7 million people in Canada).[3] Other common symbols are the sword, so liked by our military personnel; the lion (the king of land animals), and the eagle (the king of birds); shamrocks (for Ireland), thistles (for Scotland) and roses (for England); and so on.

2.2 Indigenous emblems

Indigenous emblems are another issue entirely.

Canadians have the distinct privilege of having inherited two great emblematic traditions: one from European heraldry and the other one from the First Peoples.[4]

It must be remembered that every pattern, every figure, every symbol drawn, woven, engraved, embroidered or carved by Indigenous peoples corresponds to a unique way of translating a story, a tradition or a culture into an image. When we consider the thousands of years of Indigenous history, the heralds realize, just as the rest of the Canadian population, that they still have much to learn. This is a continuing endeavour. Indeed, although distinct from European heraldry, these Indigenous traditions continue to inform and influence modern-day Canadian heraldry.

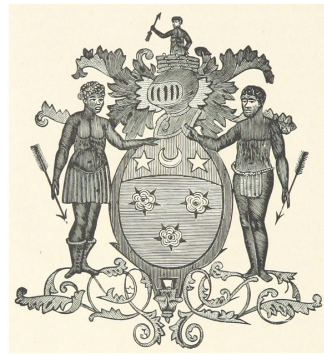
Traditional Indigenous emblems – in fact, probably all Indigenous emblems – are interesting in that they are not like other "regular" symbols. They are linked to complex systems of knowledge, culture, communication and traditions which encompass the "collective stories, experiences, practices, genealogies, legends, mythologies, customs, laws […], spiritual teachings, wisdom, values and knowledge that have been passed down from one generation of Indigenous peoples to the next".[5] In essence, over the years, my colleagues and I have learned that Indigenous emblems can contain in them and be tied to the physical and spiritual dimensions of the objects or concepts that they symbolize.

Let me take a step back and explain why I highlight the distinct nature of Indigenous emblems. Throughout its history, the Canadian Heraldic Authority took to heart its mission to create "proper" and high-quality heraldry, adhering to most international standards while aligning first and foremost to Canadian values. Some of these values are listed in the Canadian Charter of Rights and Freedoms, which is enshrined in the Canadian Constitution:

1) Equality for all before and under the law;
2) Gender equality;
3) English and French as official languages of Canada;
4) Recognition and promotion of multiculturalism;
5) Protection of Indigenous peoples' rights.

This last point, the recognition and protection of Indigenous rights, has not been Canada's greatest area of accomplishment, as Canadians have discovered in the past 15 years. From 2008 to 2015, the Truth and Reconciliation Commission of Canada set out to "guide Canadians through the difficult discovery of the facts behind the residential school system, [and also] to lay the foundation for lasting reconciliation across Canada",[6] that is, to rebuild the relationship with Canada's First Peoples.

Nova Scotia (1625)
Public Register, Vol. V, p. 160



Charles Le Moyne (1638)
Bibliothèque et Archives nationales du Québec

HMCS Iroquois (1948)
Public Register, Vol. V, p. 414

Fig. 6. Examples of Indigenous depictions in Canadian heraldry, prior to 1988. Source: Public Register of Arms, Flags and Badges of Canada (Nova Scotia, HMCS Iroquois), and Bibliothèque et Archives nationales du Québec ("Armes de M. [LeMoyne] de Longueuil", https://numerique.banq.qc.ca/patrimoine/details/52327/1955948).

In 2015, the Commission produced a substantial report. It didn't discuss Canada's distant past but focussed on the last century and a half since Confederation in 1867. Since that time, it was revealed that the Government of Canada forcedly placed Indigenous children in residential schools, in an attempt to "civilize and Christianize" them by removing them from their families and distancing them from their cultural settings. The Commission's report unveiled a portion of what the Government of Canada later recognized as a cultural genocide which had until then been unsuspected by Canadians, and which lasted until the late 1990s.

The Commission issued almost 100 recommendations. These "calls to action" span all spheres of society and many themes, including justice, health and education. Canadians were called on to learn more about the relationship between their country and its Indigenous population. The media were called on to "be properly reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples". Governments were asked to "provide education to public servants on the history of Aboriginal peoples" as well as their teachings and practices.

My predecessor the second Chief Herald, Dr. Claire Boudreau, often described her mandate as that of "helping individuals and groups or organizations of various kinds to have their emblems recognized at the national level, under the powers of the Canadian Crown, when it is their desire to obtain such recognition for their emblems".[7] And she emphasized that her role was not to impose or to "police" emblems.

However, the Truth and Reconciliation Commission taught the CHA one very important notion, and it is that the inclusion of Indigenous emblems in Canadian heraldry must be carefully controlled. Borrowing sym-

Town of Gananoque (2000)
Public Register, Vol. IV, p. 56

Canadian Forces Military Police Group (2014)
Public Register, Vol. VI, p. 370

Timmins Police Service (2015)
Public Register, Vol. VI, p. 560

Fig. 7. Examples of Indigenous allusions created by the heralds of the Canadian Heraldic Authority since 1988. Source: Public Register of Arms, Flags and Badges of Canada.

bols, as is common in heraldic practice, cannot be considered without prior research and consultation.

Unfortunately, many of Canada's heraldry includes poor misrepresentations of Indigenous peoples. Many emblems can also be qualified as cultural appropriation. Consider the following (see *fig. 6*):

- The North American Indigenous supporter in the arms of the Province of Nova Scotia, 1625, a Scottish grant.
- The supporters in the arms of Charles Le Moyne, as granted by the King of France in 1668.
- The Iroquois man's head in the military badge of HMCS Iroquois, 1948, a design created by the Royal Canadian Navy based on an unofficial badge adopted during the Second World War.

At a certain time, it may have been thought uncontroversial to portray "Savages in they natural state" or "the head of an Iroquois brave, couped at the base of the neck," but this today obviously has to be considered demeaning and improper. It is easy to understand how this type of depiction puts a culture in an unfavourable light, and how this type of misrepresentation leading to stigmatization is harmful and wrong.

More recently, from 1988 until the mid-2010s, the heralds of the CHA also included Indigenous allusions that can now be called into question: a First Nations woman in 1780s clothes for the Town of Gananoque, Ontario, a thunderbird for the badge of the Canadian Forces Military Police Group, or an eagle feather for the arms of the Timmins Police Service (see *fig. 7*). I cannot confirm if the local Indigenous groups were consulted when the first two emblems were created. As for the feather in the third emblem, it was until recently considered perfectly appropriate to use such a symbol "in the spirit of

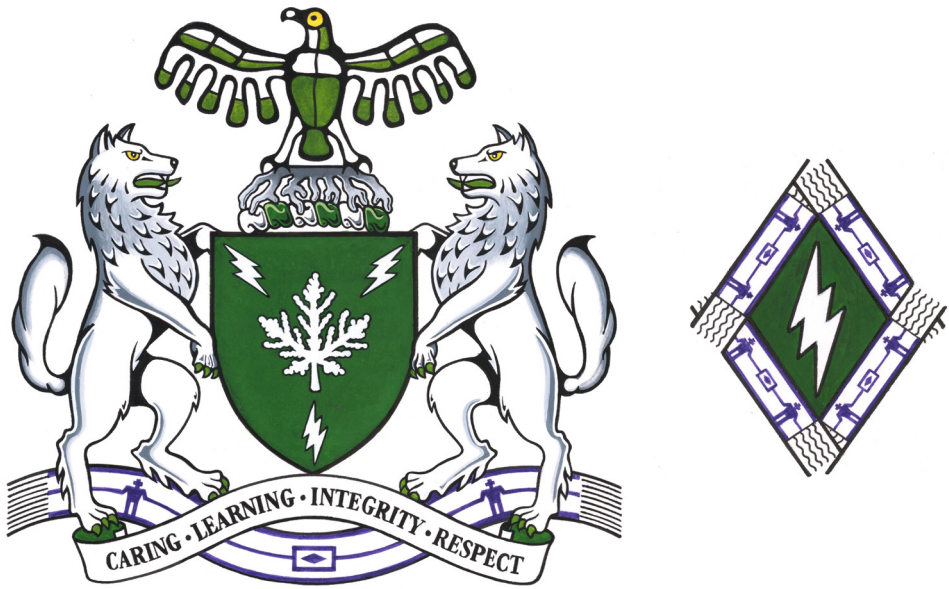


Fig. 8. Arms and Badge of Algonquin College, Ottawa (2017). Source: Public Register of Arms, Flags and Badges of Canada, Vol. VI, p. 727.

reconciliation". Since 2015, the CHA has embarked on a long process of reflection on Indigenous emblems, out of which came the realization that consultation is necessary.

I shall briefly describe one positive example, which has set the tone for the type of work we do now. On the eve of its 50th anniversary, a postsecondary institution in Ottawa, Algonquin College, embarked on a heraldic project. As a show of pride in its name, which honours the Algonquin people whose lands the entire region is on, the college asked to include Indigenous elements in their coat of arms. A committee composed of different Indigenous representatives was assembled by the College, and the two Algonquin nations of the larger Ottawa region were directly consulted. The wampum – a belt of purple and white beads made from shells – on which the supporters are standing represent the wampum belt offered to the College by its Indigenous students in 2017 (see *fig. 8*).

Does all this mean that we can no longer allude to Canada's First Peoples in the field of heraldry? Of course not! We must include them, talk about their cultures, give them a voice. Fundamentally, reconciliation rests on the notion of respect. Indigenous Canadians are still suffering. They have been subjected to 500 years of colonization, they saw their lands, works of art and ceremonial objects taken away from them, they were deprived of their languages and cultures. Through thick and thin, they are trying to save what

they have left. They see, quite understandably, the appropriation of their symbols as an insult and a violation of their rights.

Given all of the above, as Chief Herald, I no longer entertain requests or even suggestions to include a feather or any other sort of Indigenous emblem in a coat of arms unless the petitioner – in many cases an organization – has consulted with the local Indigenous community. To that effect, I require a letter from a First Nation chief or from the band council (in both cases representing elected official from the community) to confirm that a consultation has taken place.

Canada's First Peoples account for approximately 5% of the national population.[8] I wouldn't say that they represent a large proportion of the petitions we receive or the files we work on. But as the above examples show, they occupy an important part of our thinking, due to the Truth and Reconciliation efforts of the past five years and more.

3. Conclusion

In this chapter, I have talked about Canada's heraldic system and how a tighter control on the inclusion of some charges, whether to limit their overabundance or to avoid cultural conflicts, is contributing to an evolving Law of Arms in Canada. In my mind, this shows a willful determination by the Canadian heralds to serve their fellow citizens and their institutions in the spirit of nation-building and the promotion of national identity. Above all, it illustrates how our system – and Canada's Law of Arms – remains tightly linked to and reflects our evolving society.

Notes

1 As of July 20, 2023, the Register boasts 8,709 different emblems (excluding mottoes) related to 3,297 different "projects" (whether grants, approvals of military badges, or registrations).

2 796 projects on a total of 3,297, or 24.14%, as of July 20, 2023.

3 Institut de la statistique du Québec, https://tinyurl.com/5n8dxw4a; Statistics Canada, "Ethnic and cultural origins of Canadians" (https://tinyurl.com/k6uwvsva) and report on languages spoken (https://tinyurl.com/5m5zb9m6).

4 For reference, Canada's Indigenous peoples, or First Peoples, consist of three distinctly different groups: First Nations, Métis, and Inuit. Each has many further subgroups with their own language and cultural practices.

5 Paraphrased from K. Banner and M. Solomon, "Indigenous Knowledges", in *The Prepared Palgrave Dictionary of Transnational History*, quoted in *The Ethics of Cultural Appropriation*, edited by James O. Young and Conrad G. Brunk, p. 142 (Malden U.S.A., Wiley-Blackwell, 2012).

6 Ry Moran, "Truth and Reconciliation Commission", *The Canadian Encyclopedia,* 2015, www.thecanadianencyclopedia.ca/en/article/truth-and-reconciliation-commission.

7 Claire Boudreau, Panel on "Emblems for Storytelling", International Colloquium on Honours and Heraldry, Ottawa, May 31, 2018.

8 Statistics Canada, "Statistics on Indigenous Peoples", www.statcan.gc.ca/en/subjects-start/indigenous_peoples. Based on the 2021 Canadian Census, there were 1.8 million people who self-identified as Indigenous.

Participants during the visit in the Main University Building. Photo: Selma Rosenfeld.

Colloquium Lund 2023
Pp. 467–476

Heraldic Norms as (Non-)Legal Norms From a Swedish Perspective

By Professor Dr. Eric Bylander

Abstract: In heraldry, there are many norms that are so well-established that they are frequently referred to in legal terms. However, what is sometimes referred to as the laws of heraldry (and similar expressions), rarely constitute legal norms. This can lead to uncertainty about the nature of the binding effect of heraldic norms. It might also lead to misunderstandings about the scope and meaning of the legal protection in the strict sense of heraldic arms and related phenomena.

In this paper I examine – from a Swedish standpoint – heraldic norms from within and outside both legal and heraldic fields. An overarching question is what characterises a heraldic norm that is or is not also to be considered a legal norm. The study may be of interest to both jurisprudence and heraldry.

In the investigation that preceded the 1953 transformation of the Swedish National Heraldry Office (*Riksheraldikerämbetet*) into part of the National Archives (*Riksarkivet*), the investigator wrote the following (see Government bill, Proposition, 1953:75 p. 7, unofficial translation by the author):

> *As regards the criticism made against the Office for not following the "laws" of heraldic science, it should be pointed out that, if one can speak at all of heraldic "science", this science comprises only a survey of the historical development of arms, and that the "laws" stated are constructed by persons interested in heraldry. A more appropriate expression would be certain "rules" which have crystallised in the course of time as the appearance of the arms has evolved … A strict adherence to certain "laws" or "rules" valid for all time would not be advisable.*

This highly controversial statement is a starting point for the examination of the more or less legal nature of various heraldic norms. Some such norms are certainly also legally recognised. This applies, for example, to parts of the norm that no one may bear the arms of another person or entity. However, when viewed from a more specific legal perspective, there are many well-established heraldic norms that are not acknowledged in law. For example, can the tincture rule in any circumstances be regarded as a legal norm? What would this require? The study examines these and several other heraldic norms in order to determine their more or less legal character from a Swedish point of view.

Résumé : En héraldique, de nombreuses normes sont si bien établies qu'elles sont souvent évoquées en termes juridiques. Toutefois, ce que l'on appelle parfois les lois héraldiques (et autres expressions similaires) constituent rarement des normes juridiques. Cela peut entraîner des incertitudes quant à la nature de l'effet contraig-

nant des normes héraldiques. Cela peut également conduire à des malentendus sur la portée et la signification de la protection juridique au sens strict des armoiries héraldiques et des phénomènes connexes.

Dans cet article, j'examine – d'un point de vue suédois – les normes héraldiques à l'intérieur et à l'extérieur des domaines juridique et héraldique. Une question primordiale est de savoir ce qui caractérise une norme héraldique qui doit ou non être considérée comme une norme juridique. L'étude peut intéresser à la fois la jurisprudence et l'héraldique.

Dans l'enquête qui a précédé la transformation, en 1953, de l'Office national suédois de l'héraldique (*Riksheraldikerämbetet*) en une partie des Archives nationales (*Riksarkivet*), l'enquêteur a écrit ce qui suit (voir le projet de loi du gouvernement, Proposition, 1953:75 p. 7, traduction non officielle par l'auteur) :

> *En ce qui concerne le reproche fait à l'Office de ne pas suivre les « lois » de la science héraldique, il convient de souligner que, si l'on peut parler de « science » héraldique, cette science ne consiste qu'en une étude de l'évolution historique des armoiries et que les « lois » énoncées sont construites par des personnes intéressées par l'héraldique. Une expression plus appropriée serait celle de certaines « règles » qui se sont cristallisées au fil du temps, au fur et à mesure de l'évolution de l'apparence des armoiries... Il n'est pas souhaitable d'adhérer strictement à certaines « lois » ou « règles » valables pour toujours.*

Cette déclaration très controversée est un point de départ pour l'examen de la nature plus ou moins juridique de diverses normes héraldiques. Certaines de ces normes sont reconnues sur le plan juridique. C'est le cas, par exemple, de certaines parties de la norme selon laquelle nul ne peut porter les armes d'une autre personne ou entité. Toutefois, d'un point de vue juridique plus spécifique, il existe de nombreuses normes héraldiques bien établies qui ne sont pas reconnues par la loi. Par exemple, la règle de la teinture peut-elle en toutes circonstances être considérée comme une norme juridique ? Qu'est-ce que cela impliquerait ? L'étude examine ces normes héraldiques et plusieurs autres afin de déterminer leur caractère plus ou moins juridique d'un point de vue suédois.

1. Introduction

In this paper I examine – from a Swedish standpoint – heraldic norms from within and outside both legal and heraldic fields. In heraldry there are many norms that are so well established that they are often referred to in legal terms. To give an example, I could say "This is my coat of arms – it belongs to me" referring to *fig. 1*.

What is meant by such a statement? It could mean that I can ultimately protect my rights as an owner in court. However, (spoiler alert!) that is not the case – at least, not in Sweden, except possibly for a few special circumstances. What is sometimes referred to as the laws of heraldry (and similar expressions), rarely constitute legal norms – depending on how heraldic and legal norms are defined.

This can lead to uncertainty about the nature of the binding effect of specific heraldic norms. How legal are they? How heraldic are they? It can be assumed that it would be easier for a heraldist to identify a heraldic norm, than to determine to what extent it is also a legal norm. It might also lead to misunderstandings about the scope and meaning

Fig. 1. Coat of arms of the author.

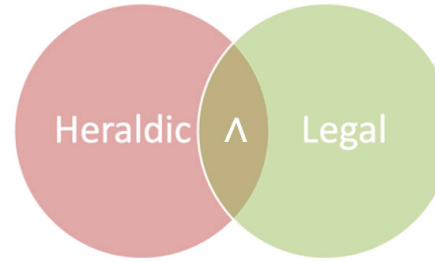


Fig. 2. The relationship between heraldic and legal norms.

of the legal protection of heraldic arms and related phenomena.

2. Background

Let me provide some context. My interest in the topic was sparked many years ago by a specific Swedish legal text.[1] In the investigation that preceded the 1953 transformation of the Swedish National Heraldry Office (*Riksheraldikerämbetet*) into part of the National Archives (*Riksarkivet*, which it still is today), the investigator wrote the following:[2]

> *As regards the criticism made against the Office for not following the "laws" of heraldic science, it should be pointed out that, if one can speak at all of heraldic "science", this science comprises only a survey of the historical development of arms, and that the "laws" stated are constructed by persons interested in heraldry. A more appropriate expression would be certain "rules" which have crystallised in the course of time as the appearance of the arms has evolved … A strict adherence to certain "laws" or "rules" valid for all time would not be advisable.*

Much could be said about a text like that when it comes to the view on heraldry. Is it a true description or not? Personally, to some extent, I even find the text offensive. It was quite extreme, when also considering the outcome of the investigation. Regarding the phrase, "persons interested in heraldry"; it makes me think of the inspiring presentation by Dr. Nicolas Vernot, A.I.H., where he identified heraldists as "a community" in the context of the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).[3]

3. Different Types of Norms

Against this backdrop, the overarching question in my paper is: *What characterises a heraldic norm that is or is not considered a legal norm?* The relation can be illustrated with *fig. 2* where we find the conjunction sign in the middle field.

The distinction between legal and heraldic norms is difficult to make consistently. This is partly due to the nature and impressive history of the heraldic rules which invite the use of language similar to that of the law. "This is what heraldry states…"; "According

Fig. 3. A scale of norms from the mainly inspirational to the mainly imperative.

to heraldry…", and so on. There are thus many examples of presentations where heraldic custom is described *as if* it could be legally enforced, even though a court would most likely dismiss the rules as not legally binding. I will come back to the courts in a moment (I am, after all, a professor of procedural law).

A definition of something as extensive as *norms*, risks hiding more than it reveals. But as a point of reference, I will provide just one of many definitions, like most others from sociology: "*Norms*… are rules of conduct; they specify what should and should not be done by various kinds of social actors in various kinds of situations."[4]

It doesn't give us much, does it? But it can sometimes still be good to have a starting point for establishing some sort of common understanding. However, I find it more fruitful to speak of different types of norms, according to their degree of binding effect or how persuasive they are. Here, one might imagine a scale with the mainly *inspirational* at one end and the mainly *imperative* on the other (*fig. 3*).

Let me illustrate this with some examples. Beginning with something as simple as the arrangement of people in a lecture hall or room; someone might tell us: "Well, usually we do it like this when we are in this lecture room. The professor is sitting here and the students over there." That might be seen as *a habit*. If it happens more often, then it might become *a custom*.[5] It is customary to sit in this way, though we are not obliged to do so. But then, it might be such *a practice* that everyone else would feel uncomfortable if a student was sitting where the professor usually sits. Here we are dealing with a more well-established norm in the process of being formed. If it is considered to be an important habit, custom or practice, then this might find its way to becoming a *guideline*. In this context, it could be a guideline for the conduct of the public defence of a doctoral thesis, indicating which actor should sit in each seat: *The panel sits on the right-hand side of the chairman in the first row opposite the defendant sitting next to the opponent*; and so on. It would probably be noticed if a guideline like this were not followed, but the public defence could be conducted anyway. It might become more imperative as the order of things becomes *a principle* and even more so as it becomes *a rule*.

The distinctions are not easy to make. Unlike a rule, a principle is not applicable in an all-or-nothing fashion, but both point to particular choices in particular circumstances.[6] Both principles and rules might be found in laws, ordinances and other public documents that are usually the most imperative. Yet there are also examples of laws not being applied, even if they are meant to be imperative. We have examples in Sweden of protection of certain heraldic devices reserved for noblemen. That is, it is still *law* in the technical sense, it

simply has not been abolished.[7] However, it would likely not be imposed by a court. So that is one way of looking at norms. There are, of course, different kinds of norms and they could also be described through the potential effects of not abiding to them.

4. Legal Norms

What has been said above, can be applied both to legal norms and to other norms, such as heraldic norms.

Legal norms, then (and here I hear the distant thunder of colleagues who are more into legal theory than I am): What is a legal rule? Usually it originates from specific, acknowledged sources. Moreover, it usually has a certain effect that is officially sanctioned.[8] It is not just that people get embarrassed when others find out what is going on. The legal norms are, ultimately, norms for the exercise of coercion by the courts.[9] At least, as a proceduralist, I find it quite reasonable to say so.

When we talk about effects, we might think of sanctions. Other norms, such as many heraldic norms, also have effects, but they are not always officially sanctioned. Even when norms have officially sanctioned effects, they might have other, sometimes more important effects. I recall what the President of the A.I.H., Elizabeth Roads, A.I.H., said in the first presentation of this Colloquium: "The penalty is rather the shame than the fine".[10] I also recall what Cedric Pauwels, a.i.h., said in his presentation:[11] "The only formal sanction or penalty is the non-registration" or non-recognition, as I think this legal effect could also be labelled.

For example: if someone says "Well, that's not good heraldry. You should be ashamed of yourself for having such a coat of arms." Or, even worse: "Isn't that the coat of arms of the King of Sweden?" That might have more effect than official non-recognition or even a big fine – especially if you made the coat of arms public and had used it for a long time before the remarks.

As might be reasonably expected, there are different attitudes to norms in different countries. In an admittedly light-hearted, but not necessarily inaccurate way, this has been expressed in the following aphorisms when contrasting the heraldically important countries of England, Germany and France, albeit not in a heraldic context:

- In *England*: Everything which is not forbidden is allowed.
- In *Germany*, the opposite applies: Everything which is not allowed is forbidden.
- This may be extended to *France*: Everything is allowed even if it is forbidden.

As is easily appreciated, this is a rather playful way of expressing the attitudes, but perhaps there is more than a grain of truth in it?[12] In my opinion, the attitude attributed to England is – at least in heraldry – more valid for Sweden than England. With this in mind, let us move on to Sweden; and I also invite the reader to relate what follows to the conditions in your own home country.

5. Heraldic Norms in Swedish Law

The Swedish Ordinance (2009:1593) with instructions for the National Archives Sec. 13, para. 1, sentence 1 reads:[13]

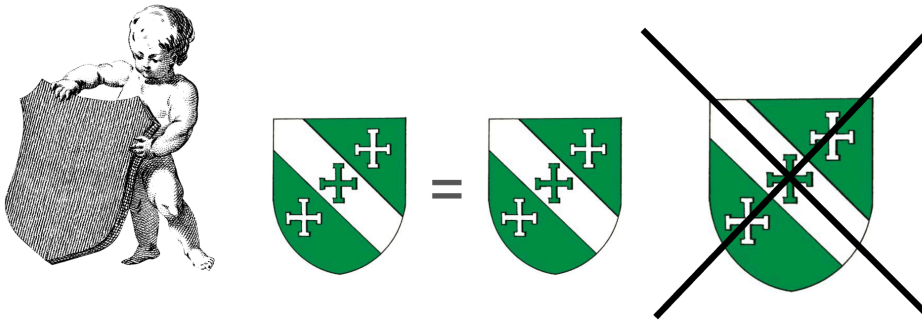


Fig. 4. The norms A, B, and C illustrated.

> *The National Archives is responsible for the state's heraldic activities and shall in particular ensure that coats of arms or heraldic emblems referring to the state or state authorities are designed in accordance with heraldic norms.*

The last words of the sentence – "designed in accordance with heraldic norms" (in Swedish: *utförs i enlighet med heraldiska normer*) – obviously deserve special attention in this context. They also present some challenges of interpretation and a problem of translation. What constitutes *heraldic norms* is the main question of interpretation. In my opinion, this refers to generally recognised heraldic norms in Sweden, which indirectly identifies Swedish heraldists as a legally relevant source of norms. If – as seems to be the case – these norms include the heraldic *tincture rule* (sometimes referred to as *the law of tincture*), this is to some extent also legally recognised. However, there are exceptions to it, even in good heraldry.

The translation problem concerns the Swedish word, "*utförs*", translated here as, "*are designed*". This runs the risk of focusing too much on artistic design when there is arguably more to it than that. It does not seem appropriate to say that the norm that one should not use another's coat of arms is sufficiently covered by *designed* in accordance with heraldic norms. One possible alternative might be: *are created*. In any event, the quoted provision of the Ordinance gives some recognition to the heraldic norms under Swedish law.

6. Legal Norms, Heraldic Norms, Both, or Neither?

I will now provide some examples and discuss whether they are based on legal norms, heraldic norms, both or neither. I begin by illustrating (*fig. 4*) the following three different norms:

A Anyone may assume a coat of arms.
B Each coat of arms should be unique. No one may bear the arms of another person or entity.
C The use of the tincture vert (green) should be avoided on a coat of arms.

There is nothing in Swedish law that prevents

anyone from assuming a coat of arms in general. You do not have to be a nobleman to assume a coat of arms, as some people believe.[14] You also do not have to register your coat of arms to be allowed to use it. In reality, there are only a few obstacles to assuming certain coats of arms.

That every coat of arms should be unique, is arguably one of the most well-established heraldic norms.[15] By virtue of that rule, I would be upset if someone else used my coat of arms – and I am certainly not alone. Even if I could not take *legal* action, I would try to persuade the person using my coat of arms to stop, since I was the first to use it. This is a practical aspect of registration. It gives the registrant some power, not necessarily of a legal nature, but of a more general persuasive nature.[16]

It could be argued, however, that the provision of the Ordinance quoted above includes a responsibility for the National Archives to ensure that coats of arms or heraldic emblems referring to the State, or State authorities, do not violate this well-established heraldic norm. This could include, for example, a responsibility to ensure that the design of a new coat of arms for a state authority, does not too closely resemble a personal coat of arms that may be known through various types of registration and the like.

Let us now turn to another heraldic norm, which is oddly specific and, for me personally, very bothersome (with regard to my own coat of arms, *fig. 1*), that is: *The tincture vert should be avoided in a coat of arms.* The theoretical basis for the heraldic so-called *flatestil*, Nowegian for *surface style*, was laid down by the Norwegian heraldist Hallvard Trætteberg, A.I.H. (1898–1987). This style with related ideas[17] was an exaggerated reaction to the heraldic decline of the 19th century, advocating a more medieval style – commendable in itself – which never had a real historical equivalent. One of its most devastating maxims is that the tincture vert should seldom be used.[18] This is certainly not a total ban, but nevertheless questionable. To my relief, this norm does not seem to have been enforced by the Swedish National Archives. I daresay that, overall, it is not considered a heraldic norm in modern Sweden.

How extensive is the protection of coats of arms recognised in Swedish law? It can be a somewhat surprising extent. For example, a coronet does not always have to be a coronet according to legal and heraldic norms. The Swedish State Herald, Davor Zovko, a.i.h., has, as an experiment, designed a coat of arms that could legitimately be blazoned: *Three tubs Or, two above one.* This may not be used as a coat of arms, because of the likelihood of confusion with the lesser coat of arms of the Kingdom of Sweden, which is blazoned: *Azure, three coronets Or, two above one.* It should be noted that Swedish authorities often adopt the convention of displaying three coronets without a shield. This is illustrated by the above series of images (*fig. 5*).[19]

In this case, the legal protection against at least use as a trade mark may extend beyond the borders of Sweden. According to Article 6*ter* (1) (a) of the Paris Convention for the Protection of Industrial Property, armorial bearings and other State emblems are protected against use as trademarks or as elements of trademarks. Included in the pro-

Fig. 5. Three tubs or, and three coronets or, and the lesser coat of arms of Sweden. Images by Davor Zovko, a.i.h., and the National Archives.

tection is also, "any imitation from a heraldic point of view" of the protected emblem.[20]

Finally, I want to mention a norm that would hardly be considered, either a heraldic or a legal norm in Sweden: *The maple leaf may not be used as a charge in a coat of arms (fig. 6).* By contrast, in Canada, this might at least be a recommendation for a new assessment of coats of arms, due to the widespread heraldic use of maple leaves, which has made the symbol too common.[21] Lack of imagination often leads to poor heraldry, even though it may not be illegal.

7. Final Remarks

Indirectly, heraldic norms also influence the extent of the need for legal protection of coats of arms, since the use of them in violation of good heraldic practice should be less attractive – at least in more serious contexts. This creates a *de facto* protection reducing the need for legally regulated protection, in line with the idea that sanctioned prohibitive legislation should only be resorted to when a phenomenon has developed into a social problem of some significance.[22]

The recurring complaints about the lack of binding legal norms in the heraldic field – at least in Sweden – can partly be explained by a lack of confidence in informal rules and unofficial sanctions, (like someone stating "That's bad heraldry"). This brings me to refer to the semi-formal Swedish *Domarreglerna* (The Rules for Judges), where Rule 11 states: "The law does not countenance all that may go unpunished because the law book cannot contain all the kinds of crimes."[23]

When compared with *Everything which is not forbidden is allowed* mentioned above; if that is your attitude to norms, it is understandable that you would be upset by the fact that not more of the most basic heraldic rules are also acknowledged as legal norms.[24]

We can conclude that different heraldic norms can be perceived as more or less binding according both to heraldic and/or legal norms. It can be useful to distinguish between the different types of norms. Not least in order to make international comparisons, it would be valuable to develop a grid to identify species and degree differences of norms applicable in heraldry. I might be the last to present at the Colloquium. Yet these are not the final words on the subject. Rather, they should be seen as very tentative starting

Fig. 6. The legal norm that the maple leaf may not be used as a charge in a coat of arms.

points for further discussion on the interaction between heraldic and legal norms.

Notes

1 See my thesis for the degree of Master of Laws, *Kommunvapenrätt: En studie av det svenska rättsskyddet för officiella symboler med särskild inriktning på kommunala vapen* [The law on municipal coat of arms: A study of the Swedish legal protection of official symbols with a special focus on municipal coats of arms], Faculty of Law, Uppsala University, 1998, pp. 12–14.

2 Government bill, *Proposition*, 1953:75 p. 7 (unofficial translation from Swedish by the author) citing a stencilled report submitted 15 May 1952 by the Deputy Director of the Ministry of Ecclesiastical Affairs, Count Augustin Ehrensvärd.

3 *Heraldry as "Intangible, Cultural Heritage" (UNESCO): a relevant institutional recognition?* Session 9A, Heraldry and cultural heritage, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 18[th] August 2023. See pp. 33–69 in this volume.

4 Robin M. Williams, Jr., *American Society: A Sociological Interpretation*, 2[nd] ed.; New York: Alfred A. Knopf, 1960, pp. 24–25, cited in Jack P. Gibbs, "Norms: The Problem of Definition and Classification", 70 (5) *American Journal of Sociology*, 1965, p. 587.

5 To mention only one of many similar definitions, *a custom* has been defined as "a norm whose content emerges from spontaneous behavior in the community", Karol Bolko Zdybel, *Spontaneous Norms in Law and Economics: A Sketch Typology,* January 10, 2023 ILE Working Paper Series, No. 66, p. 15. Available at: https://ssrn.com/abstract=4321605.

6 Cf. R. M. Dworkin, "The Model of Rules", 35 (1) *The University of Chicago Law Review*, 1967, pp. 14–46, p. 25: "The difference between legal principles and legal rules is a logical distinction. Both sets of standards point to particular decisions about legal obligation in particular circumstances, but they differ in the character of the direction they give. Rules are applicable in an all-or-nothing fashion. If the facts a rule stipulates are given, then either the rule is valid, in which case the answer it supplies must be accepted, or it is not, in which case it contributes nothing to the decision."

7 *Kongl. maj:ts nådige förordning, emot adelig sköld eller öpen hjelms brukande af ofrälse män. Gifwen Stockholm i råd-cammaren then 10 aug. 1762* [Royal Majesty's gracious decree against the use of a noble shield or open helmet by commoners. Given at Stockholm in the Council Chamber on 10 August 1762.]

8 Cf. Zdybel, op. cit., p. 11: "legal norms are characterised by the presence of third-party classification authority".

9 It has been stated that some norms, like "conventions are similar to legal rules, but they cannot be enforced by the courts", see Noel Cox, *The Royal Prerogative and Constitutional Law: A Search for the Quintessence of Executive Power*, Routledge, 2021, p. 181.

10 *The law and Scots Heraldry*, Session 1, Contemporary Heraldic Law I, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 16[th] August 2023. See pp. 89–102 in this volume.

11 *Heraldic law in French-speaking Belgium*, Ses-

sion 2, Contemporary Heraldic Law II, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 16[th] August 2023. See pp. 253–266 in this volume.

12 It is worth noting that the former Lord Justice of Appeal (in England and Wales), in a more serious context, has stated: "For the individual citizen, everything which is not forbidden is allowed; but for public bodies, and notably government, everything which is not allowed is forbidden", John Laws, "The Rule of Law: The Presumption of Liberty and Justice", 22 (4) *Judicial Review*, 2017, pp. 365–373, p. 368.

13 In Swedish: *Förordning (2009:1593) med instruktion för Riksarkivet 13 § 1 st. 1 meningen: "Riksarkivet har hand om statens heraldiska verksamhet och ska särskilt se till att vapen eller heraldiska emblem som syftar på staten eller statsmyndigheterna utförs i enlighet med heraldiska normer."*

14 This belief might, at least partly, be based on a misinterpretation of the royal decree from 1762 mentioned in n. 7 supra.

15 Of course, like any general rule, it has exceptions. To give just one example: "No person may lawfully have the same coat of arms as another person *in the same heraldic jurisdiction*" (my emphasis), Noel Cox, "The Law of Arms in New Zealand", 18 (2) *New Zealand Universities Law Review*, 1998, pp. 225–256, p. 228.

16 Cf. Henric Åsklund, a.i.h.: *In the Absence of Heraldic Law: Scandinavian Examples of how Registration of Burgher Arms has been Organized by Private Initiatives or Associations*, Session 5, Law and other types of norms, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 17[th] August 2023. See pp. 267–295 in this volume.

17 As a *pars pro toto*, the style has come to serve as a denomination for a heraldic movement of ideas of a broader nature.

18 See Hallvard Trætteberg: "Heraldiske farvelover" [The laws of heraldic colours], *Meddelanden från Riksheraldikerämbetet VII*, 1938, pp. 27–49, in particular p. 32.

19 I am grateful to The Swedish State Herald, Davor Zovko, for kindly allowing me to use his image of the three tubs, which was presented by him in his lecture *Heraldry and the Law: often – but not always – in harmony*, Session 7A, How to do it – litigation and legislation, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 18[th] August 2023. See pp. 197–214 in this volume.

20 For a recent study on this (in Swedish with an English abstract), see Martin Sunnqvist, A.I.H., "Heraldisk efterbildning och förväxlingsrisk i det rättsliga skyddet för statsvapen och statsemblem" [Heraldic imitation and likelihood of confusion in the legal protection of a coat of arms of a state and other state emblems], 13 (127) *Heraldisk tidsskrift*, 2023, pp. 447–460.

21 This example is taken from Samy Khalid, a.i.h., *Creation and maintenance of a Canadian heraldic system*, Session 2, Contemporary Heraldic Law II, The XXII[nd] Colloquium of the International Academy of Heraldry, Lund, Sweden, 16[th] August 2023. See pp. 455–466 in this volume.

22 Cf. e.g. A. P. Simester & Andreas von Hirsch, *Crimes, Harms, and Wrongs: On the Principles of Criminalisation*, Oxford: Hart Publishing, 2011.

23 On these intrinsically interesting rules, see Jarkko Tontti, "Olaus Petri And The Rules For Judges", 4(1) *Associations – Journal for Social and Legal Theory*, 2000, pp. 113–128.

24 It would be an interesting study in itself to measure how strongly different heraldic norms are considered to be binding in a certain group of heraldists ("persons interested in heraldry").

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