Dynastic Law

by

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Governing the intestate public law hereditary succession to sovereignties, related dignities, and positions, **dynastic law** is a subspecies of **public law** or constitutional law relating to the public institutions and structures of sovereign states. Such govern the succession to the throne, membership in the sovereign house, marriages of members of that house, armorial bearings, titles, and precedence, as well as the ownership, management, and payment of stipends of members of that House.

Dynastic law may take the form of constitutional provisions, public or statutory law (such as the 1701 Act of Succession to the English throne), international treaty, or house laws regulating the internal affairs of a Sovereign House but having public law effect of governing the succession to the throne. The *legal forms* which dynastic law may take are as varied as the countries themselves. The Germanic states tended to rely upon private "House Laws" having a public law effect. Newer states such as Belgium and Norway rely exclusively upon constitutional provisions. Having no written constitution, the United Kingdom relies upon statutory law.

Law of Arms applicable to matters of dynastic law:

Because in the British Isles and on the Continent, each sovereignty or subject of international law was anciently known by its public armorial bearings (i.e., rampant Lyon for Scotland, fleur de lis for France, Double Eagle for Austria, Harp for Ireland, etc.) as ensigns of authority over that realm and all the lieges thereof.

Because the possession of such ensigns armorial concern the succession to such sovereignties, dynastic law was originally part of the **law of arms** (i.e., heraldic law), which applicable amongst all civilised European nations was anciently part of public international law.

Originally, heralds performed the function of emissaries between sovereigns and enjoyed the legal immunity accorded to diplomatic personnel. Accordingly, the rules of the law of arms as such provide the original rules of international law providing the context for the interpretation and application of dynastic law. Even today, situations respecting dynastic law may well arise in which the ancient doctrines of the law of arms provide the applicable law.

Princes of Sovereign Houses are public *international persons* within the purview of public international law:

Traditionally the princes of sovereign houses are 'international public persons' within the purview of public international law: Possessing right of succession to subjects of international law (i.e., a State), a prince is more than a private citizen whose relations are governed by the municipal law of his domicile. The relations of princes, including dynastic marriages, has always been a matter of public international law.

Where various sovereignties, dignities, and subjects of international law are united under a common monarch, the rules of public international law apply in determination of the relationship of the subjects of international law so united:

Where sovereignties or subjects of international law are disposed by testamentary disposition, because such dispositions concern subjects of public international, the proper law applicable to such dispositions is public international law.

Because in the course of history disputes over such hereditary successions has led to international wars - the Hundred Year between England and France; the War of the Spanish Succession, the War of the Austrian Succession, the 1690, 1715, and 1745 Jacobite Risings in Ireland, Scotland, and England, the Carlist Wars of the nineteenth century in Spain, the similar Miguelist Wars in Portugal, and the 1866 War over the succession to Schleswig-Holstein being the most familiar - issues concerning **dynastic succession** or disputes thereto to States are matters of **public international law:**

***Subjects* and *objects* of public international law:**

Territorial States, kingdoms and principalities, as well as regnant princes, the pope, the United Nations, the International Red Cross, and the Order of Malta are **subjects** of public international law. In this connection, there are certain objects which by their nature are not capable of ownership by private individuals and my be owned only by international persons: Public ships (war vessels), nuclear weaponry, the beds of navigable rivers, the public roads, fortresses, etc. by their very nature are not capable of private law ownership. Such may be owned only by an international person, a state or a sovereign. These may be termed **objects** of public international law.

Among such objects of international law are legitimate orders of chivalry: To be legitimate an order of chivalry must have a *fons honorum*: A sovereign house, a State, or other international person. Without such a sovereign fons honorum, the legitimacy of an order of chivalry lapses. Similar to a public vessel, nuclear weapon, or the bed of a navigable river, no private person can own an order of chivalry. Because the validity or legitimacy of an order of chivalry depends upon its possession of a sovereign fons honorum, a subject of international law; such orders of chivalry are also **objects** of public international law and fall within the scope of international law in the same manner as do that public vessels and nuclear weapons.

Unilateral acts concerning subjects and objects of international law are *international transactions* governed by public international law:

Acts such as wills, testaments, inter-vivos transferral of sovereignty over subjects of public international law, renunciation of the succession thereto, or protests against the usurpation of such subjects of international law are termed **international transactions.** See Oppenheim-Lauterpacht, International Law, 8th ed., Vol. I, No. 486 and 488.

Such acts and agreements which a de jure sovereign makes in his public law character follow the rules of public international law applicable to treaties. See Emeriich Vattel, Le Droit des gens, Nos. 214 and 215.

Wills (political testaments) concerning the political and dynastic succession to subjects of public international law constitute public unilateral international transactions subject to international law. See Oppenheim-Lauterpacht, International Law, Vol. I, Nos 486 and 488. See also J. H. W. Verijl, International Law in Historical Perspective, Vol. II, p. 17, and Vol. III, pp. 304-307.

Under the doctrines of public international law, the procedural 'form' of these instruments as "wills" or "testaments" is not relevant to and has no legal effect upon their true juridical nature as international transactions or 'acts' subject to international law rather than the municipal (domestic) law of the incidental place where they happened to be signed. See Lord McNair, law of Treaties (1961), pp. 7, 8, 11, 12-13, 18, and 22. Henry Wheaton, Elements of International Law (1866), Part Three, Chapter II, No. 253. Oppenheim-Lauterpacht, International Law, Vol. I, No. 507.

Similarly, the procedural 'form' of such instruments as "wills" or "testaments" is not relevant to and has no effect upon their ***legal status*** as binding international transactions or 'acts' subject to public international law as the **proper law** rather than to the municipal (domestic) law of the place where they were signed. See Lord McNair, Law of Treaties (1961), p. 11-12. Oppenheim-Lauterpacht, International Law, Vol. I, No. 508. II Yearbook of the International Law Commission 1966, p. 188.

The ***intent*** of the author of such "wills" or "testaments" to bequeath legal rights concerning the succession to a subject or an object of public international law is the sole criteria for the formation of a valid and legally binding international transaction or 'act' ... irrespective of the law of the place where such 'acts' bequeathing a subject or object of international law happened to be signed. See Lord McNair, Law of Treaties (1961), p. 15. Oppenheim-Lauterpacht, International Law, Vol. I, No. 508.

Unilateral international transactions competent to transfer subjects and objects of public international law by inter-vivos transfer or by testament:

It is competent under the traditional doctrines of public international law to alienate Sovereignty by intervivos transfer. See Hugo Grotius, De jure belli ac pacis libri tres, Book II, Chapter VI, Nos. 3 and 14; and Book I, Chapter III, No. 12

Two modern examples of such would be the 28 November 1907 transfer of Sovereignty of the Free State of the Congo by Leopold II to the Belgian State or the 1946 transfer of the Sovereignty of Sarawak by its White Raja, Charles Vyner Brooke, to Great Britain: See Oppenheim-Lauterpacht, International Law, 8th ed., Vol. I, No. 209, fn. 2, p. 545. Sir Charles Vyner Brooke had inherited Sarawak from his father, Charles Brooks, who, in turn, had inherited it from his uncle, Sir James Brooke the first Raja and founder of the State of Sarawak in 1868. Sir James Brooke originally acquired Sarawak by an inter vivos transfer from t he Sultan of Brunei in 1841.

Likewise, it is competent to designate by "testament" or "will" the succession to subjects or objects of public international law. The most famous example of this is the testamentary designation of Spain by King Carlos II to a Bourbon grandson of King Louis XIV. See Samuel von Puffendorf, De officio hominis et civix juxta legem naturalem libri duo, Book II, Chapter 10, No. 6, p. 133. Puffendorf, De jure naturae et gentium libri octo, Book VII, Chapter 7, No. 11. See also Johann Wolfgang Textor, Synopsis juris gentium, Chapter IX, Nos. 26 and 27.
In certain situations, "wills" or "testaments" designating the succession to subjects or objects of public international law may be regarded as "subsequent agreements" or "practices" respecting the correct interpretation of a previous international transaction or 'act' concerning the succession to such subjects or objects of international law. See Article 31.3(b) and (c) of the 1969 Vienna Convention on the Law of Treaties.
When one so dynastically disinherited fails to protest against such "testaments" or "will", a prescription in public international law arises against any later questioning of such international 'acts' by his descendants. See Emeriich Vattel, Le Droit des gens, Book II, Chapter II, Nos. 145-146. See Article 45 and Article 31.3(a) of the 1969 Vienna Convention on the law of Treaties
Public international law the *proper law* to govern disputes to the succession to subjects and objects of international law:
Because disputes arising from a proper interpretation of dynastic renunciations to the succession to sovereignties concern subjects of international law, the rules of public international law constitute the proper law for the resolutions of all such disputes.
The inheritance of rights and claims to sovereign subjects of public international law constitute natural objects for the jurisdiction of international law re any dispute which might arise. See J. H. W. Verzijl, International Law in Historical Perspective, Vol. II, p. 17, and Vol. III, pp. 303-324. Where a dispute arises concerning the succession to the public law sovereignty of a monarchical state and the regalia relating thereto as a subject or object of international law, the doctrines of public international law provide that such a dispute to the succession may be legally settled by a decision of the members of that sovereign house: See Samuel von Puffendorf, De Officio hominis et civis libri duo, Book II, Chapter 10, No. 12, p. 135, as follows: "In case a controversy should arise in regard to the succession in a patrimonial kingdom, it will be best to take the matter before arbitrators *among the royal family.*"
This is because all the competence or jurisdiction to adjudicate the dispute to the succession of a subject of public international law has been transferred to the royal family: See Hugo Grotius, De jure belli ac pacis libri tres, Book II, Chapter 7, No. 27(2).
Renunciations required by public international law to prevent dynastic union of crowns:
Following the War of the Spanish Succession ending in the 1707 Treaty of Utrecht a rule of public international law arose requiring a prince or princess enjoying rights of succession to renounce such rights upon marrying into a foreign royal family. The purpose of this rule of international law is to prevent the union of crowns through dynastic marriages and the origin of wars resulting from such union of crowns. Because of creeping effect of personal unions leading to the amalgamation of small principalities into huge empires which upset the political equilibrium, customary public international law requires the renunciation of membership in and rights of succession whenever a prince or princesses marries into another royal house.
Indeed, Professor Verzijl observes in International Law in Historical Perspective, Vol. III, p. 332, that since the time of the War of the Spanish succession, customary international law expressly prohibits dynastic arrangements which might lead to possibility of a union of crowns through dynastic marriages:
"For the rest, the inconvenience of such hereditary acquisitions of territorial sovereignty had already become obvious long ago, owing to the danger of the accumulation of power and the consequent disturbance of the existing political equilibrium.
This has led to the express prohibition of concentrating two specific crowns on one head. ..."
From this customary rule of public international law, a standard practice (Royal Comity) exists among the royal houses of Europe: When a prince or princess (having rights of succession in his or her own House) marries into a foreign royal house, he or she renounces the rights of succession to his or her own House in order that he or she may enter the royal house of his or her spouse, assume the titles of that house, and become a subject of its Sovereign, in order to prevent the possibility of a union of successions to different subjects of international law.

In accordance with the norms of public international law, a dynastic renunciation irrevocably cuts off all the rights to any eventual succession of all after-born descendants of the person making the renunciation: See Hugo Grotius, De jure belli ac pacis libri tres, Book II, Chapter VII, No 26, and Book II, Chapter IV, No. 10. See also Emerich Vattel, Le droit des gens, Book I, Chapter V, No. 62.
Referencing subjects of public international law, a dynastic renunciation consists of the deliberate abandonment of rights. See Oppenheim-Lauterpacht, International Law, Vol. I, No. 490. By its very nature as an international transaction as well as by the effective language used therein (i.e., words such as "by this present act') all renunciations are **'executed' international transactions** which take effect immediately upon signature, See Lord McNair, Law of Treaties (1961), pp. 191-205. See also Articles 18, 24, and 26 of the 1969 Vienna Convention on the Law of Treaties.
Under public international law the legal effect of dynastic renunciations involving subjects of international law and matters relating thereto and the acquired or 'vested' legal rights established thereunder cannot later be unilaterally terminated or withdrawn: See Lord McNair, Law of Treaties (1961), pp. 256-259, 512, 704-713. Whitman, Digest of International Law, Vol. 14, pp. 413-415. See also Articles 56 and 70.1(b) of the 1969 Vienna Convention on the Law of Treaties.
Due to the **'executed' legal nature** of a dynastic renunciation involving subjects of public international law, the clause *"rebus sic stantibus"* (i.e., 'changed conditions') is completely inapplicable to renunciations: See Lord McNair, Law of Treaties (1961), pp. 493-494, 531-533. Oppenheim-Lauterpacht, International Law, Vol. I, Nos 538, 539, and footnote 1 at p. 939. See also Article 62 of the 1969 Vienna Convention on the Law of Treaties.
This customary rule of public international law requiring a prince or princess to renounce his or her rights of succession before marrying into another royal family to prevent disturbance to the international political equilibrium resulting from the dynastic union of crowns is evidenced by the following renunciation of dynastic rights upon marriage or succession to a foreign throne:
•When King Carlo of the Two Sicilies (Charles III of Spain) succeeded to the Throne of Spain upon the death of an older brother, he promulgated the 6th October 1759 Pragmatic constituting the basic law of succession of the Royal House of the Two Sicilies and governs the present juridical relationship between the it and the Royal House of Spain to achieve the following objectives:

(1) Abdication of Charles III from the Two Sicilies in order to assume the throne of Spain, pursuant to the prohibition of international law (similar to that in the Treaty of Utrecht between France and Spain) requiring the separation of Spain from all interference or involvement in Italian affairs;

(2) Transference of the Two Sicilies and other Italian possessions and rights (including the antique religio-military Order of Constantine of St. George) of Charles III to his *third son*, Ferdinand I, and the *exclusion* of his two older sons (destined to become Kings of Spain) from these possessions;

(3) Enactment of a common law of succession uniting all of the above possessions in Italy into a "real union";

(4) Emancipation of Ferdinand I (whose descendants comprise the Royal House of the Two Sicilies) from the paternal power, authority, and jurisdiction of the King of Spain, thereby establishing Ferdinand I and his descendants as a new and completely independent Royal House *in order to guarantee the separation of Spain from any involvement in Italian affairs;*

(5) Creation of a reversion between the Royal Houses of Spain and the Two Sicilies in the contingency that the Royal House of Spain might become extinct *under the express provision that the two crowns could never be united.*

By excluding the senior reigning line of Charles IV of Spain (the immediate older brother of Ferdinand I of the Two Sicilies) from the succession to the Two Sicilies, the above Pragmatic specifically envisions that no one forming part of the Royal House of Spain with vested rights to the succession thereof can at the same time hold any right of succession to the dynastic rights of the Two Sicilies:

Whilst members of the Royal House of Spain *may never possess rights of succession to the Two Sicilies,* members of the royal House of the Two Sicilies can succeed to the Spanish Crown through the route envisioned by the revision in the Pragmatic (i.e., the complete extinction of the reigning senior line of Charles IV of Spain), *provided that the over-riding objectives of the Pragmatic* (viz., the separation of Spain from involvement in Italian affairs and the prohibition of a possibility of a union of crowns) *are maintained.*

As members of both Royal Houses frequently married each other, a new problem of dynastic law arose when Ferdinand VII introduced Female Succession into Spain in 1832: The prescriptions or overriding objects of the Pragmatic would be violated if a *female member* of the Royal House of Spain were to marry a *male* of the Royal House of the Two Sicilies, *as their descendants would simultaneously possess acquired or 'vested' rights of succession to both Spain and the Two Sicilies.*

Accordingly, the Pragmatic would have to be interpreted to cover this new contingency:

(1) The reversion of the Spanish Crown to the Two Sicilies line upon the extinction of the reigning line of Charles IV of Spain would thereby have to be broadened to include *also the extinction of such female descendants of Charles IV as were made eligible for the Spanish succession by Ferdinand VII;*

(2) Because the Pragmatic absolutely bars members of the Royal House of the Two Sicilies from being eligible for the Spanish Throne *except by the reversion in the Pragmatic* (i.e., the complete extinction of the reigning senior line of Charles IV), the Pragmatic thereby operates to bar the children of a female member of the Royal House of Spain and a male of the Royal House of the Two Sicilies *from succeeding to the Spanish Throne in the right of their mother.* (However, they would still be eligible for the remote reversion to the Spanish Throne coming through the Pragmatic to their father as a Prince of the Two Sicilies.)

Therefore, if a Spanish Princess were to marry a Two Sicilies Prince and if it was desirable for her future issue to preserve t he rights to the Spanish throne which they might inherit through her, it would be necessary to overcome the absolute barrier imposed in by the Pragmatic.

This could be done easily if the Two Sicilies Prince-in-question were to renounce absolutely his eventual succession to the Crown and dynastic rights of the Royal House of the Two Sicilies for himself and for his heirs and successors, *thereby leaving the Royal House of the Two Sicilies and thus freeing himself from the bonds of the prescription of the Pragmatic* which would otherwise prevent his future children from inheriting the Spanish Throne in the right of their mother.

•When Princess Augusta of Hessel Cassel married the Duke of Cambridge, a son of George III, she renounced her eventual rights (i.e., 'eventual' as not being in direct succession) of succession to the throne of Hesse Cassel by the marriage treaty of 7 May 1818.

•When Princess Adelaide of Saxe-Coburg-Meiningen married the Duke of Clarence, later William IV, she renounced her eventual rights of succession to the Royal House of Saxe-Coubrg-Meiningen in the marriage treaty of 9 July 1818.

•When Princess Mary Louisa Victoria of Saxe-Coburg-Saarfeld married the Duke of Kent, son of George III, she renounced her rights of eventual succession within the House of Saxony by a marriage treaty of 29 July 1818.

•Princess Elizabeth of Bavaria had to renounce her eventual rights to the Bavarian throne upon her 1853 marriage to Franz Joseph, Emperor of Austria.

•Princess Louise of Prussia had to renounce her right to the eventual succession of Prussia in the marriage treaty of 26 February 1879 when she married Prince Arthur, Duke of Connaught, son of Queen Victoria.

•When Grand Duchess Maria Alexandrovna married the second son of Queen Victoria, Prince Alfred, Duke of Edinburgh, she had to renounce her eventual rights to the Russian throne in the marriage treaty of 22 January 1874.

• When Princess Helen of Waldeck and Pyrmont married Prince Leopold, Duke of Albany, son of Queen Victoria, Princess Helen renounced her rights of eventual succession to the Principality of Pyrmont by marriage treaty of 20 April 1882,

•When Prince Christian of Denmark assumed the throne of Greece in 1863, he renounced his Danish rights.

•In 1864 when Prince Gaston d'Orleans married the heiress to the throne of Brazil, he renounced his eventual rights to the throne of France ... even though the Royal House of France had been dethroned by 1864 and an Empire of the French had been recreated by the Bonaparte: The marriage of a potential claimant to a deposed throne to a dynastic heiress disturbs the international political equilibrium: The incoming husband may acquire the means from his wife's army and countrymen to enforce his own claim.

•Before Prince Ferdinand of Bavaria married Infanta Maria Theresa of Spain, the younger sister of King Alfonso XIII, Prince Ferdinand renounced his eventual rights to the Bavarian Throne in 1905 and left the Royal House of Bavaria. He was received into the Royal House of Spain with the new title of "Infant Ferdinand of Spain" on 20th October 1905 and married Infanta Maria Theresa on 12 January 1906. His descendants are to day members of the Royal House of Spain not of Bavaria.

•The legitimacy of King Juan Carlos's dynastic title to the Spanish throne through his father, Don Juan, Count of Barcelona, is derived from (1) the dynastic renunciation of Don Juan's older brother, Don Jaime, Duke of Segovia (a deaf-mute), on 21 June 1933; (2) the exclusion of Don Jaime from the succession and the designation of Don Juan, Count of Barcelona, as the successor in King Alfonso XIII's will of 8 July 1937; and (3) the abdication of King Alfonso XIII in Don Juan's favour on 5 February 1941.

•This rule was obtempered in 1947 when Prince Philip of Greece married Princess Elizabeth, eldest daughter of King George VI; Prince Philip renounced his rights of eventual succession in the Royal House of Greece and joined the Royal House of Great Britain with the title of Duke of Edinburgh: Neither Prince Philip nor his descendants form members of the Royal House of Greece

•In 1962 when Princess Sophia of Greece, eldest daughter of King Paul of Greece, married Prince Juan Carlos of Spain; she renounced her rights of eventual succession as a member of the Royal House of Greece.

•In 1964 when Princess Anne Marie of Denmark, youngest daughter of King Frederick IX of Denmark, married King Constantine II of the Hellenes, King Frederick IX did not give his consent to this marriage in cabinet; thus in accordance with Art. 5 of the Danish Law of Succession Princess Anne-Marie and her children forfeited any rights of succession to the Danish throne.

• In 1964 when Princess Irene of the Netherlands, the second daughter of Queen Juliana of the Netherlands, married Prince Hugo-Carlos of Bourbon-Parma, eldest son of the Carlist claimant Prince Xavier of Bourbon-Parma; the Dutch Estates General refused to grant the parliamentary assent to this marriage required by the then Article 17 of the Dutch Constitution.

• To obtemper the customary rule of public international law arising out of the 1707 Treaty of Utrecht re against any union of crowns, Prince Charles of Denmark, second son of King Frederick VIII of Denmark, renounced his rights of succession as a member of the Royal House of Denmark upon being elected King of Norway in 1905.

•in 1861 when Archduke Maxmillian of Austria assumed the throne of Mexico, he renounced his rights of eventual succession to the thrones of Austrian, Hungary, etc., as a member of the House of Habsburg-Lorraine.

•On 14th December 1900 when Prince Carlo, second son of the Count of Caserta, the Claimant to the Throne of the Two Sicilies, married Infanta Mercedes, the eldest sister and heir of King Alfonso XIII of Spain, he renounced his dynastic rights to the succession of the Royal House of Bourbon Two Sicilies:

This renunciation was made to insure that the children of his marriage with Infanta Mercedes would definitely be members of the Royal House of Spain and eligible for the Spanish succession as the prescriptions of the 1759 pragmatic would otherwise automatically operate to prevent the children of a Spanish Princess who married a Two Sicilies prince from inheriting the Spanish Throne through her.

On 7th February 1900 Prince Carlo was nationalised as a Spaniard, and was received into the Royal House of Spain with the title of Infante. He married Infanta Mercedes on 14 February 1900. Spanish Royal Decrees of 29 January 1903, 15 October 1904, and 3 August 1908 explicitly declared all descendants of Prince Carlo to be members of the Royal House of Spain. His grandson has the title of Infante of Spain and was appointed by his cousin, King Juan Carlos, to superintend the medieval Spanish Military Orders of Chivalry.
Although today Crown Princes commonly marry outside of their caste, should a dynastic heir marry a princess possessing rights of succession within her own family, the existing force of this customary rule of public international law against the union of crowns would require her to renounce the dynastic inheritance of her own house and succession to its throne before marrying
Public international law as *proper law* re unilateral international transactions or 'acts' concerning subjects and objects of international law:
As international acts concerning the public law succession to sovereignties, the **proper law** applicable to such dynastic renunciations and their proper interpretation is public international law concerning subjects of international law rather than the law of the place where the renunciation happens to be signed:
A renunciation is an unilateral International transaction subject to public international law as the **proper law**: See Oppenheim-Lauterpacht, International Law, Vol. I, Nos. 486 & 488.
Similar to treaties, the municipal or domestic law of the place where a renunciation concerning the succession to subjects of public international law is made does **not** constitute the proper law of that renunciation: See Lord McNair, Law of Treaties (1961), 100-101; Oppenheim-Lauterpacht, International Law, Vol. I, Nos. 21 &22; Article 13 of The Declaration of Rights and Duties of States, 9 June 1949 by the International Law Commission of the United Nations; 1887 U. S. Foreign Relations 751 at 753. See also Articles 27, 46, and 47 of the 1969 Vienna Convention on the Law of Treaties.
The same is true of any treaty: The proper law of that treaty is public international law rather than the municipal (domestic) law of the place where the treaty was signed. Thus, a treaty may properly affect international rights in a manner which might not be recognised for private law rights under the municipal law of the place where that treaty was signed -- the treaty as an *international act* concerning subjects and objects of international law being governed by public international law not the local municipal law.
The validity of dynastic renunciations referencing subjects of public international law is subject only to the peremptory norms of international law. See Lord McNair, Law of Treaties (1961), pp. 213-236. Brownlie, Principles of Public International Law, p. 417. See also Article 53 of the 1969 Vienna Convention on the Law of Treaties
Similar to treaties, the renunciation of rights to subjects of international law are governed by the canons of construction applicable to treaties and international agreements.
Survival of *de jure* Sovereignty and Governments-in-Exile:
Under the doctrines of public international law a ruler who is deprived of the government of his country by either an invader or revolutionaries remains the legitimate de jure Sovereign of that Country while the de facto regime set up by the revolutionaries or the invader is considered an "usurper", both constitutionally and internationally. See Hugo Grotius De jure belli ac pacis, libri Tres, Book I, Chapter 4, Nos. 15-19.

Such de jure possession of sovereignty continues so long as the de jure ruler or government does not surrender his sovereignty to the usurper. See Johann Wolfgang Textor, Synopsis Juris Gentium, Chapter 10, Nos. 9-11

Upon the fall, dispossession, or usurpation of a monarchy, the *de jure* legal rights to the succession of that monarchy may be kept alive indefinitely through the legal vehicle of making **diplomatic protests** against the usurpation. See Emerich Vattel, Le Droit des gens, Book II, Chapter II, Nos. 145-146.

Such Claimants are *de jure* Sovereigns and, as such, Head of the Government-in-Exile of their usurped country.

The Jacobite Claimants, King James II & VII, the 'Old Pretender' James (III & VIII), the 'Young Pretender Bonnie Prince Charlie (III), and Cardinal York or Henry (IX) maintained their *de jure* claims to the three thrones of England, Scotland, and Ireland via competent diplomatic protests against the usurpation by William of Orange and the Hanoverians.

Governments-in-Exile are subjects of public international law, and matters relating to them are within the scope of the jurisdiction of public international law as the applicable **proper law** ... rather than the law of the place where that Government-in-Exile may be located. See Whitman, Digest of International Law, Vol. I, pp. 921-930. F. E. Oppenheim, "Governments and Authorities in Exile," 36 American Journal of International Law (1942), pp. 568-595. Oppenheim-Lauterpacht, International Law, Vol. I, No. 144.

The public international law regarding the legal effect of protests against the usurpation of sovereignty applies to **republics** as well as to monarchies: The United States of America refused to recognised the 1939 Soviet usurpation of the three Baltic Republics of Estonia, Latvia , and Lithuania. This facilitated the maintenance of Governments-in-Exile of the Baltic Republics and the maintenance of embassies in Washington, D. C., which persisted through the Cold War Era until these countries managed to recover their independence.

Accordingly, matters pertaining to *de jure* Governments-in-Exile are matters of public international law. The *de jure* sovereignty of a state which has been usurped by a foreign conqueror is not extinguished by such usurpation but survives as long as such sovereignty is kept alive by competent diplomatic protests. See Philip Marshall Brown, "Sovereignty in Exile," 35 American Journal of International Law (1941), p. 666-668.

Exiled Sovereigns and Governments *choice of law* that of usurped state to govern political and public acts:

Under public international law a Government-in-Exile, monarchical or republican, is deemed to have the implied constitutional power to perform all normal acts of state ... including those acts which by its own constitution would require the consent of an organ of government, such as a parliament, which are at present suspended due to the conditions arising from a usurpation of sovereignty. See F. E. Oppenheim, "Governments and Authorities in Exile," 36 American Journal of International Law (1942), pp. 568 at 581-582.

This is true even if the family of one of the parties making a renunciation is off the throne: The marriage of a prince of a former house to a dynastic heir or heiress possessing an army could easily provoke a war to recover that lost throne. In such cases the **choice of law** by the parties making the renunciation of dynastic rights concerning sovereignties is the public law of that former State rather than the law of the place where the renunciation was signed.

Choice of law is very common in private law commercial law contracts: A grain supplier located in Argentina shipping wheat to a purchaser in Russia upon a Liberian ship will commonly contract that the law relating to the shipment of the wheat will be British law (because British shipping law has been so well- interpreted) even though neither the buyer, seller or the shipper has any 'contact' with the United Kingdom. In all such cases courts will apply the law of choice as the substantive law governing that contract as the **proper law** applicable to that contract rather than the law of the place where the contract was signed, the goods were delivered, or the nationality of the vessel making delivery.

Thus, if a Government-in-Exile located abroad (say the Governments-in-Exile of one of the three Baltic Republics during the Cold War Era) makes a public law act concerning its former State which has been usurped (as were the three Baltic Republics by the Soviet Union), the legal validity of the acts of that Government-in-Exile are governed by the **public or constitutional law of that usurped State** rather than by the law of the place where the Government-in-Exile happens to be located.

Survival of private law rights acquired under former sovereign:
The fall, revolution, or usurpation of a former government or state brings into play the international law of **state succession** to govern resulting legal affairs: Briefly, within the usurped State the public law of the former sovereign governing constitutional and public institutional matters must, of necessity, fall. However, the statutory law of the former Sovereign survives to govern **private legal rights acquired or 'vested'** under such statutory law of the former Sovereign. As 'vested' or acquired private law legal rights, such survive the change or succession of sovereign. Such 'vested' private law legal rights must be recognised by the new or usurping sovereign.
The general proposition of public international law is that the municipal law of a country is not changed by a change of sovereignty. Private law rights acquired or 'vesting' under the law of the former sovereign remain valid after state succession and continue to be governed by the law of the former Sovereign applicable at the time when such private law rights originally 'vested' or were acquired ... notwithstanding the fact that the former Sovereign has been *de facto* replaced. In support of this proposition see the decisions of The Hague "World Court, the Permanent Court of International Justice in the case of the German Settlers in Poland, P.C.I.J., Series B, No. 6, Advisory Opinion No. 8, Annual Digest, 1923-1924, Case No. 37.; Sopron-Koszeg Local Railway Company Case, Lega of Nations, Official Journal, 1929, p. 1359; American Journal of International law, Vol. XXIV (1930) pp. 164-174; Annual Digest, 1929-1930, Case No. 34; E. Thalheimer v. Yugoslav State before the Hungarian-Yugoslav Mixed Arbitral Tribunal on 6 Sept 1928, Recueil, VIII, p. 579, Annual Digest, 1927-1928, Case no. 60; State Succession (Notarial Act) Case, before the Austrian Supreme Court in Civil Matters decided 13 May 1919, Annual Digest, 1919-1922, Case No. 40; Occupation of Crete Case, the Greek Court of Cassation, Annual Digest, 1925-1926, Case No. 69; Heirs of the Prince Mohammed Selim v. The Government of Palestine,, Annual Digest 1935-1937, Case No. 39; Mihan Singh v. the Sub-Divisional Canal Officer, Annual Digest, 1954, pp. 64-66; Supreme Court of India in Virendra Singh v., State of Uttar Pardesh, Annual Digest, 1955, p. 131
Given the many separate state successions involved in the formation of the United States between Great Britain, France, Spain, the Republic of Texas, and Hawaii, this doctrine is also affirmed in the following decisions of the United States Supreme Court in United States v. Perchman, 7 Pet. 51, 86-87 (1830); United States v. Chavez, 159 U. S. 453 (1895); Brownsville v. Cavazos, 100 U. S. 138, 25 L. Ed 574 (1879); United States v. Perot, 98 U. S. 428 (1879); Fremont v. United States 17 How. 542, 58 U. S. 241 (1854); United States v. Fullard-Leo, 331 U. S. 256 (1946) Society for the Propagation of the Gospel v. Town of New Haven, 8 Wheat. 464, at 493 (1823); Delassus v. United States, 9 Pet. 117 at 133; United States v. the Heirs of Clarke and Atkinson, 16 Pet. 228, at 232; Dent v. Emmeger, 14 Wall. 308 at 312 (1871); Soulard v. United States, 4 Pert. 511 at 512 (1830); Terrett v. Taylor 9 Cranch 43 at 50 (1815);Ely v. the United Stated, 171 U. S. 220 at 223; Shapleig v. Mier, 299 U. S. 468 at 470 (1937);
The same doctrine of public international law re complete survival of 'vested' private law rights upon state succession has also been affirmed in the following decision of American State courts in Miller v. Letzerich, 49 Sw2d 404, 85 A.L.R. 451 (Texas, 1932); Harris et al. v. O'Conner, 185 Sw2d 993 (Texas, 2944); Manry v. Robison et al, 56 Sw2d 438 at 444; 122 Tex. 213 (1932); Pendery v. Panhandle Refining Co, 169 SW2d 766; Maricopa County Municipal Water Conservation District No, 1 v. Southwest Cotton Co, 4 P2d 369 (1931); Vanderslice v. Hanks, 3 California 27 at 37-38 (1852); State v. Valmont Plantations, 346 S.W.2d 853 (Texas, 1961); State v. Balli, 190 S.W.2d 71 at 99 (Texas, 1945); Luttes v. State, 289 S.W. 2d 357 (Texas 1956) and 324 S.W,. 2d 167 at 176.
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The following works may be conveniently located through /www.abebooks.com/ ... go to "advanced search" and click on "sort" by 'lowest price' to locate the least expensive books ... for those wishing to research into Dynastic Law and the associated public international law and the law of arms:
J. H. W. Verzijl, International Law in Historical Perspective Vols. I through IX -- an utterly fascinating study. Vols. III and II are the most valuable for dynastic law
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