

NOTES [E II.53.2004 P&D.06]

¹ In this specific connection, J. H. Stevenson, Heraldry in Scotland (Glasgow, 1914) p. 35, states:

"9. The 'virtue' which entitles to arms is not moral virtue but 'politik or civil'. The following are thus entitled:

"A lord of a barony; a 'laird', or person who holds his lands under the crown directly, in contra distinction to a 'goodman', who holds his lands from a subject-superior; a soldier who enjoys any 'considerable command'; clergymen; doctors of universities; advocates; physicians; 'orators' (possibly the same as advocates); 'laureate poets'."

.....
"12. Whatever renders a person infamous renders him incapable of getting arms, though every infamy forfeits them not.

Stevenson cites Sir George Mackenzie of Rosenhaugh, the Science of Heraldry (Edinburgh, 1680) at pp. 11-15. as the source of his authority.

Therefore, it would seem that if Lyon refused a petitioner Arms without citing 'facts' which would render that Petitioner 'infamous', that Lyon's refusal might be appealable to the Court of Session as an *abuse of authority*.....

² Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 155, as follows:

"Meantime **Lyon Court accords the chapeau tinctured Gules, where the Petitioner has, himself, been connected with the fief, either as infect or heir-apparent of the infeft baron; and such chapeau, once it is matriculated, descends to the 'heir and representative' of such 'baronial race' who in the Continental sense is of course a 'Baron'**. The baronial chapeau is also awarded to females [*Charlotte Douglas of Brighton* (Baroness of Brighton), 21st May 1941, Lyon Register, Vol. XXXIV, p. 33] so succeeding to the feudal fief, or honours, or to the Representation." (Emphasis supplied.)

"It has also been decided that where the escutcheon of a feudal Baron is shown without helmet and crest, **the shield may be ensigned with the appropriate chapeau, which is shown frontwise.** [*Carnegy of Lour*, Lyon Register, Vol. XXXV, p. 37] (Emphasis supplied.)

³ Lord Lyon Sir Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland", Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111-163, (Session 1944-45) at p. 152-153 citing *Nisbet's Heraldry* (1742 ed.), II, pt. iv, p. 1 in the plate of 'External Ornaments'

"Whilst the conventional *Chapeaux* (usually surmounted by a crest) are shown flat-topped and with no tassel, **the traditional Scottish version retained the early nobiliary character of a higher crumpled cap, and with a golden tassel.** Such is the chapeau illustrated in *Nisbet's Heraldry* (1742 ed.), II, Pt. IV, plate 1), in the plate of "External Ornaments", where it follows *after* the 'Lords' Coronet, and prior to the 'mural crown'. This very significantly corroborates its place, in correct precedent, amongst heraldic insignia, as well as showing it in the earlier form used before the fifteenth century and in the Old English baronial pedigrees. **It is in this tasselled form that it was officially allowed by Lyon Court to Chisholm of Chisholm.** [29th March 1938, Lyon Register, Vol. XXXIII, p. 12]." (Emphasis supplied.)

⁴ See "Robes of the Feudal Baronage of Scotland", Proc. of Soc.. of Antiquaries of Scotland, Vol. 79, p. 111. See also "Huntly Processional Roll," Proc. of Soc.. of Antiquaries of Scotland, Vol. 77, p. 154.

This Mantle or Robe of Estate is technically described as being a "**feuso- baronial Mantle, Gules doubled of silk Argent, fur edged of miniver and collar Ermine, and fastened on the right shoulder by five spherical buttons Or**".

⁵ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at pp. 133-134, as follows:

"In the first stage these robes were worn with the hood, which led to a brave display of the 'furry' lining, and in addition the *chapeau*, gules doubled with ermine, or other fur (to be hereafter referred to), or else a 'chaperon' was worn; whilst later, and throughout the sixteenth century, a black chapeau-type of cap, the precursor of the judicial 'Black cap', was worn. Later on the furred collar grew into the fur cape, which in the case of the robes of peers and the Lord Lyon had become a full cape by the close of the seventeenth century."

⁶ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 139, as follows:

"[U]nder the existent statutory provisions (1455, c. 10) **the Barones Majores and Barones Minores were robed alike, and that the latter had been again quite recently declared 'ane part of the Nobilitie'** [*A. P. S.*, Vol. III, p. 40], so the Privy Council, in framing the Proclamation which followed, promulgating His Majesty's pleasure [that velvet robes are not to be worn by the Earls except at Coronations, creations and such public solemnities], adopted the foregoing statutory interpretation of the Royal Command. The text of this, like most such proclamations, is not officially recorded, but fortunately we have a contemporary account of it from *Birrell's Diary* : " (Emphasis supplied.)

"22nd June 1606; Proclamation that Dukes, Marquesses, Earls, Lordis, **and Barronis**, should show their evidents [That is title deeds for determining their precedence.] to be placed and **robes to be made in red, lined white.**" (Emphasis supplied.)

"Birrell accordingly preserved the fact that the proclamation applied the Royal Command anent robes of **'red, lined white' to both 'Lords' and 'Barons'**. " (Emphasis supplied.)

⁷ An illustration in colour of the above Matriculation may be seen at the following web-site:

http://216.239.39.104/search?q=cache:Fg8hbl6M—sj:www.lyon-court.com/lordlyon/servlet/controller%3Fp_service%3DContent.show%26p_applic%3DCCC%26pContentID%3D228%2Bapplying%2Bfor%2Ba%2Bcoat%2Bof%2Barms%2Blord%2Blyon&hl=en&ie=UTF-8

⁸ Malcolm R. Innes of Edingight, Scots Heraldry (3rd Ed., 1978), page 36, Footnote 33.

⁹ Col. Robert Gayre, Heraldic Standards and other Ensigns (Edinburgh, 1959), Chapter VI, "The Streamer", pp. 86-88 observes, as follows:

"Large as was the standard, its size was exceeded by that of the streamer. This was a large flag, like a great pointed or swallow-tailed pennon, which was of enormous length and flown from the masts of ships."

.....
"Putting aside the length of the streamer, which after all, would in most cases have to conform to the requirements of seamanship, it seems clear that **the streamer was nothing more than a standard without the motto bends and the national flag in the hoist, ...**" (Emphasis supplied.)

.....
"We consider that **the right to the streamer automatically belongs to the bearer of a standard**, and its form is, equally automatically, fixed by the form of the standard." (Emphasis supplied.)

- "The reintroduction of the streamer or small craft would allow an alternative or an additional display to the armorial or badge-pennon to be used as a burgee, and by so doing add interest and gaiety to our harbours, and keep alive an old tradition."
- ¹⁰ Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 95, as follows:
 "The Compartment is that part of the Achievement, whereupon the supporters stand, and though non have offered to conjecture what gave the first occasion to Compartments in Heraldry, Yet I conceive that the **Compartment represents the Bearers Lands and Territories**; though sometimes they are bestowed in Recompense of some honourable action:" (Emphasis supplied.)
- ¹¹ Alexander Nesbit, *System of Heraldry*, Vol. II, Part Fourth, Chap. xii. p. 135, "I am much of the opinion with this great man, that **such compartments represented the bearer's lands and territories**" citing the compartment used by William, first Earl of Douglas and Earl of Marr ca 1377, as "sitting on a compartment like to a rising ground, with a tree growing out of it, and *semée* of hearts, mullets, and cross crosslets, the armorial figures of this earl's arms, to show, very probably, that **this compartment represented his lands and territories.**"
- ¹² Sir Thomas Innes of Learney, *Scots Heraldry* (2nd Ed., 1956), p. 39, declares:
 "Nesbitt [Nesbit, *Heraldry*, IV, II, 137] restricts compartments to the **Baronage**, but they are occasionally granted as a distinction or for special services." (Emphasis supplied.)
 "They represent the **bearer's territories**, and are thus **feudal honours** [Nesbit, *Heraldry*, IV, II, 138; Mackenzie, *works*, I, 631; *Maclean of Ardgour*, 10 October 1941, *Lyon Register*, 34/42], now only assigned to **historic territorial houses**, and in the case of clan-chiefs, now usually incorporate the plant-badge." (Emphasis supplied.)
- ¹³ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. xii. p. 134, as follows:
 "It is probable these compartments of the Douglas's do **represent and perpetuate** the one their **feus**, and the other a **noble action** of one of their family; ... though some do represent pieces of ground for their **noble feus**, .." (Emphasis supplied.)
- ¹⁴ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. xii. p. 135, as follows:
 "And yet I am still of the opinion that compartments, of whatsoever form they be, are none of the proper parts of the achievement accounted for by any herald that I have met with, foreign or domestic; yet I see nothing against the usage of them, but that they may for a decoration be used by all those families who have right to carry arms, and particularly families who have for a long time possessed **ancient baronies** may place them on compartments **to represent their feus**, and may also have the same *semée* of their armorial figures, if they be agreeable to such a disposition" (Emphasis supplied.)
- ¹⁵ George Seaton, *The Law and Practice of Heraldry in Scotland* (Edinburgh, 1863), p. 278, as follows:
 "Two other instances of regular compartments are mentioned by Nisbet [*System of Heraldry*, Vol. II, Part IV, p. 134], viz., those carried by the Macfarlanes of that ilk and the Ogilvies of Innerquharity. The former consists of a wavy representation of Loch Sloy, the gathering-place of the clan, which word is also inscribed on the compartment as their *cri de guerre* or slogan; while the latter is a [particular compartment composed of a] 'green hill or rising terrace,' on which are placed two serpents, 'nowed,' spouting fire, and the motto, 'Terrena pericula sperno'."
- ¹⁶ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 252, as follows:
 "A fenced compartment appears on the shield of James of Douglas, third Earl of Angus, 'Cominus de Ledalisdail et Gedwort Forrest' (1437-1466), and also on those of his successors in that earldom (1511-1695)"
- ¹⁷ Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 94, as follows:
 "And that of old, **Barons might use Supporters, de Jure**, seems most certain; for they were **Members of Parliament** with us, as such, **and never lost that privilege**, though for their convenience, they were allowed to be represented by two of their number, and therefore such as were **Barons before that time** [1587], may have **Supporters**, as well as Lord Barons; nor should we be governed in this by the custom of England, seeing there is *dispar ratio*; and this is now allowed by the Lyon to such" (Emphasis supplied.)
- ¹⁸ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 88.
 "These classes, according to Mackenzie, were such as 'Dukes, Marquises, Knights of St. Andrew, the Garter, or any other order,' Knights Banneret, and Baronets, **and particularly the old minor Barons**. And to these, all of whom have right by general law of rank, he adds chiefs and heads of families as having right by prescription. ... " (Emphasis supplied.)
 "The persons **now** entitled to apply to Lyon for supporters, being otherwise within his heraldic jurisdiction, are peers of the realm, **representatives of those minor barons who were liable to be summoned to sit in parliament before the Act of 1587**, Chiefs, Knights Banneret, Knights of the Thistle, and Knights Grand Cross or Grand Commander of most Orders." (Emphasis supplied.)
- ¹⁹ Sir Thomas Innes of Learney, *Scots Heraldry* (2nd Ed., 1956), pp. 130 – 131, as follows:
 "In Scotland the Law of Supporters is very different from that of England, the social system being Celto-feudal and different from that south of the Border. ... Lyon grants supporters to the arms of (a) all peers of Scotland, (b) United Kingdom peers whose arms are Scottish, or who receive Scottish titles, and no peer may use supporters in Scotland until these have been so constituted in Lyon Register."
 "In Scotland, not only peers, **but the heirs** [It appears that each erection of such a barony creates a separate supporter-claim, and whether a resettlement of the barony covers the supporters depends on whether the charter of resignation refers to the arms, and a reinvestiture has followed thereon. Since 1672 this can only be established from a rematriculation.] **of the many minor barons, or 'Lairds', who were liable to be called to parliament prior to 1592** and Chiefs of Clans and 'old families' and certain knights are entitled **as of right** to obtain grants of supporters from the Lord Lyon. [See Matriculation of Arms of *Fraser of Reelig*, 10 February 1932, *Lyon Register*, XXX, 22, containing a patent of supporters as 'Baron of Moniak' *ante* 1587].] (Emphasis supplied.)
 "Since the Statute 1587, cap. 120, was a **relieving** and not a disabling Act, **the right could only be lost by negative prescription**, so that all barons *ante* 1633 seem entitle to claim [supporters]. In other cases people may be able to prove the use of supporters anterior to 1672, when there is a presumption that a regular grant must have existed." (Emphasis supplied.)
- ²⁰ George Seton, *The Law and Practice of Heraldry in Scotland*, Edinburgh, 1863, p. 287, as follows:
 "[W]hen representation of the minor Barons was fully established, upon the ground that those persons were Barons, and sat in Parliament as such, and were of the same order as the titled {Lord} Barons. Their right is recognised by the writers on heraldry and antiquities"
- ²¹ *Stair Memorial Encyclopaedia: The Laws of Scotland*, Vol. 14, "Precedence", ¶2021, defines 'precedence' as follows:
2021: The baronage: The baronage who, until 1587, had the right to sit in the Parliament of Scotland, includes owners of lands *in libera baronia*, who have had a precedence established by Act of Parliament. Their precedence is derived from the ownership of the landed barony, which is a fief annoblissant, and not necessarily a right of blood or inheritance. **They rank before esquires, and before doctors of divinity, law and physics** [Lyon Court Precedency Book folio 76]. **Inter se they rank according to the date**

of the erection of their lands into a barony. Where baronies have been advanced to territorial peerage rank, the owners of these baronies take their precedence according to the rank of their landed creations. Clan chiefs who have no higher precedence would appear to rank, even if landless, as esquires, because they are considered to hold their clan as an incorporeal hereditament from the Crown." (Emphasis supplied.)

²² Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at p. 113, as follows:

"The precedence of the Baronage was defined in the Nova Scotia Baronetcy patents, wherein the Baronets were placed before 'omnes milites auratos ... et prae omnibus baronibus *lie* Lairdis, armigeris *lie* Esquyris, et generosi quibuscunque *lie* gentelmen' (see *Douglas' Baronage*, p. 11), and the 'Baronets, Knights, and Barons' were grouped together in the 3rd section of the first volume of Lyon Register. Their precedence was thus after Knights and before Esquires."

²³ Green's Encyclopaedia of the Laws of Scotland, Vol. XII, "Precedence", ¶28 'Landowners', as follows:

¶28; The term '*barones lie lairds*,' means person holding land either in superiority, or both superiority and property *in liberam baroniam* of the Crown. It does not apply to the 'Gudeman' or holder of a feu from a subject superior. The *iliberi barones* — whose privileges arise out of Crown grants — enjoy the right of armorial supporters, if anterior to 1587, and, indeed, formerly had precedence next to knights and before the eldest sons of knights. In terms of the present warrant, and in consequence of the creation of Companions of Orders, etc., they can rank before esquires, that being the highest rank they can enjoy without conflicting with newly erected degrees. In virtue of a decision of the Lyon Depute in 1811, they rank before Doctors of Divinity, Law, and Physic [Lyon Court Precedency Book, fol. 76 — the terms of the decision read 'gentlemen of landed property']. Scottish 'lairds' being in a rank superior to 'esquires', being 'a part of the nobility' [Acts, III. 40, s. 33], have not been in the habit of using the 'Esq.' addition customary in England. They use instead the 'titles' or 'designations of their lands' (see NAME AND CHANGE OF NAME). Chiefs of Clans are classed by Sir George Mackenzie along with lairds, and would even when landless, usually be given precedence of these. They would no longer be allowed precedence of Knights and baronets, as they claimed in the seventeenth century." (Emphasis supplied.)

²⁴ Sir George Mackenzie, Works, Vol. II, p. 545, as follows:

"**The old Barons (or Lairds) amongst us**, especially where they were Chiefs of Clans or the Representatives of old families that were Earldoms ... **have never ceded the precedence to Knights Baronets, much less to ordinary knights**, though the other pretend that a Baron is no Name of Dignity and that Knights Baronets have a special privilege ... and though *militia non est per dignitas*, yet generally it is believed that next to Knights baronets succeed knights Bachelors, and next to them our Lairds." (Emphasis supplied.)

²⁵ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 157, as follows:

"... Sir Walter Scott was quite correct when he characterised his laird of Tully-veolan as '**The Baron of Bradwardine**.'" (Emphasis supplied.)

"Examination shows that **the title of (feudal) Baron was actually very widely used in daily life**, and the language of the people in a broad belt around the 'Highland line', and as *An Baran* and the feminine *Ban-Baran* throughout the highlands. In these parts there persisted more of the old ceremoniousness, whilst we shall also find **the character and title of feudal Baron continued in the formal documents of Lyon Court**." (Emphasis supplied.)

²⁶ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 158, as follows:

"As regards the feudal barons who were not peers, it will now be shown from a variety of examples, of the highest authority, that when the rank of a free baron fell to be described in such baron's style, **the actual description used was indeed, as Scott has immortalised it, 'Baron of Bradwardine', or, as in actual fact, 'Hugh Rose, Baron of Kilravock'**. This family is indeed one in which from generation to generation, **the right to the style of baron has been consistently asserted and recognised with the highest authority**, for Mary Queen of Scots addressed letters to 'Our traist friend the barroun of Kylrawak' [*The Roses of Kilravock*, p. 220] He is similarly addressed by the Earl of Huntly, Argyll, and other great public men, and colloquially referred to as '**the Baron**' [*The Roses of Kilravock*, pp. 216, 217]. Whilst the description in formal writs was 'Hutcheon Rose, Baron of Kilravock'. [*The Roses of Kilravock*, p. 203]. ." (Emphasis supplied.)

²⁷ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 158, as follows:

"Of popular use in the speech of the countryside, and in Scottish ballad literature, it is only necessary to refer to 'The Baron o' Brackley', 'The Baron of Rivernie', 'The Baron o' Towie', 'The Baron o' Drum', 'The Baron of leys' (Burnett), 'The Baron Ban' of Monaltrie (Farquharson), all on Deeside; 'The Baron of Kinchardine' (Stewart); 'Baron of Mulben' and others on Speyside; and further south 'The Baron Ruadh' (Reid) of Straloch; whilst the tomb of Alexander Innes of Sinnahard, Baron of Towie in Strathdon, is still pointed out at Migvie, 200 years after his death, as that of 'the Baron', variously named of Towie and Culquoich, whilst in Inverness (Macewens and Frasers) came to be described as 'the Barons of Moniak', as occurs in Continental baronial families. IOn Argyhll 'Baron McCorquodale' is found as a non-peerage description in 1427. [Sir Bruce Seton's *Gordon Peerage Case*, p. 15, and down to the nineteenth century, *Fasti Eccl. Scot.*, VII, p. 604]." (Emphasis supplied.)

²⁸ Frank Adams, rev. by Sir Thomas Innes of Learney, The Clans, Septs, and Regiments of the Scottish Highlands (8th edition, 1970), p. 410, as follows"

"In personal letters, a Scottish laird or chief, e.g., 'Campbell of Glenfalloch,' is addressed 'Dear Glenfalloch,' not Dear Campbell,' which would be as rude to Glenfalloch as to Lord Breadalbane, for the laird or chieftain of Glenfalloch has just as much a 'title' as the Earl. The old prefix of a laird or chief was 'The much Honoured,' and letters should be and still sometimes are addressed, e.g. 'The Much Honoured, the Laird of Glenfalloch' or **if a baron, 'The Much Honoured, The Baron of Dunfallandyh'** - they arrive quite safely. A clansman in writing to chief may, of course, commence 'Dear Chief.'" (Emphasis supplied.)

²⁹ Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland," (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 159, as follows:

"According to the practice of Lyon Court during the rule of Sir Francis Grant, following that of George Burnett and preceding Lord Lyons, **a Petitioner who establishes his baronial status is**, whether in the Register of Arms, in which Lyon is specifically directed to take cognisance of and to record feudal tenures [*Nisbet's Heraldry*, Vols. II – IV, p. 172], or the Register of Genealogies, **duly recorded as 'Baron of X —'** and Baronial ancestors duly numbered in the usual manner. [*Carnegy of Lour*, 28th February 1945,

Lyon Register, Vol XXXV, p. 24, is a good and very artistic example, including many subsidiary shields, each ensigned with coronets in the case of peers, and the baronial *chapeau* in the case of feudal barons.]” (Emphasis supplied.)

³⁰ Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 160, as follows:

“Coming to current times, we find the same practice continuing in, e.g., the re-matriculation — with Baronial *Chapeau* — for the present *Wauchop of Niddrie*, wherein the Lord Lyon (Grant) officially declares [Lyon Register, Vol XXXV, p. 31, 19th April 1945 (Lord Lyon Sir Francis Grant)]:

“That the Petitioner, as feudal Baron of Niddrie-Merschell and Lochture is **of Baronial Race, and of rank equivalent to that denominated Hoch Adel, and equivalent to the Chiefs of Baronial Houses, upon the Continent of Europe**, and that by demonstration of the foresaid Ensigns Armorial, he, and his 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.**” (Emphasis supplied.)

³¹ Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 162-163, as follows:

“Gordon of Hallhead, Baron of Esslemont’s Memorial then set forth:

“It is therefore respectfully submitted that it has been satisfactorily shown that the Baronage of Scotland is a subsisting baronage by tenure, whose **privileges**, though now negligible, do not interfere with its **constitutional existence**, and amongst the few privileges left is that of **being known upon the most formal occasions by the style and title of baron**, so that they may on matrimonial and other occasions not be prejudiced in their relations with the much inferior ‘baronages’ of the Continent. **Their right to be known and described, where requisite, upon fully formal occasions, as, e.g., ‘Baron of Brandwardine’, has been recognised by the highest authorities, namely by the Crown and Parliament, and by the Lord Lyon King of Arms as recorded in the Registers of the Lyon Court**, and it is respectfully submitted that it would be most unfortunate if, merely because it happens that the title of *baron* is preferred for formal purposes by English and British *lords*, that **the right of the Scottish Baronage to be designated as ‘Baron of Bradwardine’** should be allowed to fall into desuetude or — as it now transpires — ‘peerage-conveyancing description’ *Baron of the Barony of B*— substituted, thereby conveying to the public and to foreigners that the feudal Baronage of Scotland are not truly constitutional barons, whereas they are, being indeed the only remaining example of the original feudal and territorial baronage by tenure, and the fact that their ancient title may be a source of annoyance to mushroom political ‘barons’ under the English peerage system is no reason why **the rights of the Order of Baronage in Scotland, guaranteed by Art. 22 of the Treaty of Union**, should be one atom abrogated, and it is therefore respectfully submitted that **in formal documents such as Letters Patent, matriculations and birth-briefs**, where a petitioner establishes as required by the Sheriff Depute in 1713 (if need be by production of charters) that he is in fact a ‘baron’, **then he ought, in accordance with all the solemn documents, certificates, and others before recited and in particular the certificates of the Lord Lyon King of Arms himself, to be duly qualified ‘baron of’, e.g. ‘Baron of Bradwardine’, according to the custom of the Kingdom of Scotland.**” (Emphasis supplied.)

“The Baron of Hallshead-Esslemont duly received both *chapeau* and designation [Lyon Register, Vol. XXXI, p. 20], consistently with the statute and the ancient precedents of Lyon Court. “ (Emphasis supplied.)

³² See the Scottish Office’s ¶ 2.40 “Report on Abolition of the Feudal System”, as follows:

2.40 The **right to the title and dignity of baron** is the right which gives baronies the value which they have over and above the actual value of the lands themselves. Indeed the barony as such is often attached to a residual plot of land, with little or no intrinsic value, which is recognised as the *caput baroniae*. Baronies have a considerable commercial value and to abolish the so-called noble element in them, as was strongly urged by some consultees and members of our advisory group, would give rise to substantial claims for compensation. We see no need to do this. Although baronies are a feudal relic, **the abolition of baronies is not a necessary feature of the abolition of the feudal system of land tenure**. We do however consider that **the social, ceremonial and armorial aspects of baronies** should be severed from landownership. **Baronies should become non-territorial dignities**. There should be **no change in the jurisdiction of the Lord Lyon in relation to questions of precedence and arms**. If the Lord Lyon were not satisfied, on the evidence produced, that an applicant for a coat of arms with baronial additaments was entitled to a barony, and refused the application in relation to the additaments, then it would be open to the applicant to seek a declarator of entitlement to the barony in the ordinary courts and, if successful, to return to the Lord Lyon with that declarator. The courts already have sufficient jurisdiction to decide questions relating to heritable right and title. There is no need to create any special new jurisdiction.” (Emphasis supplied.)

³³ *Sir Arthur Herman Munro of Foulis-Obsdale*, 1955 S.L.T. (Lyon Ct.) 5 at p. 10:

“In Scotland, on the other hand, not only are the *spellings* of various titles such as *Atholl* and *Argyll* (which are found in many varied orthographies in different formal documents) adjusted by the Lord Lyon’s official recognition in *matriculation of arms*, but, as in the case of the earldom of Northesk (formerly earldom of Ethie), to mention only one instance, a complete change of *nomen dignitatis* was effected by a further Crown charter.” (Emphasis supplied.)

“Similarly, the name of feudal baronies are repeatedly changed in successive Crown charters, and it has to be recollected that, when the Sovereign’s Sheriff calls the head court of the Sovereign’s vassals in the county, **the vassals are called not by their names** {surnames} **but by the names of their fiefs.**” (Emphasis supplied.)

“(Since 1832 the head courts have not been in the way of being summoned, as their principal purpose was to adjust the pre-1832 Reform Bill electoral machinery, but constitutionally there is nothing to prevent them from being summoned, just as burghs and **baronies themselves** still hold ‘head courts’ and, as I say **Crown Vassals** are called by the name of their **barony** or freehold.)” (Emphasis supplied.)

³⁴ *Petition of Sir Hugh Vere Huntly Duff Munro-Lucas-Tooth*, 1965 S.L.T. (Lyon Ct.) 2 at p. 13:

“‘Munro of Teaninich’ is, therefore, not only in itself a surname or *surnom terrien*, but it is a **‘title’** (the **title** of that **‘House and Family’**), and the **title** by which it is recognised, and which three words are born as its *distinguishing index* by the Head of the House, his Lady, and the unmarried daughters.’ (Emphasis supplied.)

“This alone shows how essential, not only to the original **Preservation purpose**, but to the continued social and identificatory and influential purpose of **‘preserving the family’**, and **‘perpetuating the family’** with its influence and leadership status, that the **‘title’**, viz. the interlinked three words ‘Munro of Teaninich’, should be preserved.” (Emphasis supplied.)

³⁵ *Patrick Gascoigne Munro of Foulis*, 1953 S.L.T. (Lyon Ct.) 15 at p. 19 – 20:

“I have here to consider the **precise nobiliary** and **legal implication** of the phrase used, ‘name of Munro and the arms and designation of Munro of Foulis’, or **more precisely** the significance of the word **‘designation’** when it is employed in a name and arms clause of a Scottish settlement or **in relation to the enjoyment of a Scottish feudal estate of that name.**” (Emphasis supplied.)

"We have to bear in mind that Scotland is a **feudal realm** in which there are lands **legally named** by certain place-names, by which they are conveyed in the charters from their feudal superiors and by which the lands are called in their superior's Courts." (Emphasis supplied.)

"These place-names have a different status from the names merely applied to land by the occupant or vassal without intervention of his lawful superior. Names of that description are of the type to which the description 'subjects or lands *known as* "so-and-so"' is applicable. In England all land may, for aught I know, now be of that character.

"In Scotland it is otherwise, and the structure remains in which the vassal is primarily summoned, where necessary, by the **name of his fief** in the Court of his feudal superior, and our authorities, such as Mackenzie (*Science of Heraldrie*), allude to a man being '**named of his estate**', as does the Lord Advocate in his proceedings following the Jacobite Risings.' (Emphasis supplied.)

"In early days the **place-name** was the man's **only surname**, and the feature common to Scotland, France, Spain and Hungary has been that these, though nowadays called '**designations**', or in Hungary the **predicatum**, as distinct from any former family surname, **are in fact a nobiliary title and form of title by which the holder of the noble terre** or free land is both distinguished or intitled, and in each of these countries is part of a compound 'ordinary name' which serves the **official purpose** of name, viz making the identity of the persons certain, both in relation to their identity and their **nobiliary status as feudal landowners**, or quasi-land-owners from some incorporeal nobiliary entity such as the noble family cf. clan itself, and by the use of which the whole identity and social status of the bearer in the nobiliary law of the realm are made clear." (Emphasis supplied.)

"In peerage law the **nomen dignitatis** is in many documents entirely substituted for the surname, though in Scottish practice both can be included. The **Nomen dignitatis** becomes in fact part of the Peer's ordinary name." (Emphasis supplied.)

"In Scots territorial and baronial law, the **estate** or quasi-estate name is **analogously adjected**, both in law and practice, to the patronymic word and is likewise in early entails, in social practice and in the law which we shall see was ascertained at the instance of the Lord Advocate, a supplemental part of the 'name' whenever it was adjected to the patronymic word." (Emphasis supplied.)

"The Act of 1672, cap. 47, lays down a form of signature in which the word adjected is used optionally, of course, because a man may have many fiefs."

"Usually one (or not more than two) acquire a **different and special employment** and become that from which he is '**named**', that which not merely in his signature but also in his ordinary usage of speech and/or writing gets adjected to the patronymic word, and where that is normally done, or even done where distinction is requisite, it becomes, in the words of our jurists and conveyancers, his '**style**' or '**title**', meaning **feudal title**, cf. 'the title of Moir of Leckie' (1794, M. 15537). " (Emphasis supplied.)

"... This, of course, is useful as showing from the Court of Session's terminology in the litigation that 'Moir of Leckie' was regarded by their Lordships as a '**title**', which we also find from many other sources, as well as a 'name'." (Emphasis supplied.)

³⁶ Lord Lyon Sir Thomas Innes of Learney, "The Robes of the Feudal Baronage of Scotland", *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, page 131-132, as follows:

"Reverting to **the 'Estait of the Nobility'**, this — then, and for another 1 1/2 centuries — consisted of" (1) The Earl/*Comites* constitutionally derived from, and representing, the provincial Sub-Kings of early Scottish history, the provincial *Righ/Morair*, and even in mediaeval and heraldic documents an Earl id described as 'High and Mighty Prince', (2) **The Baronage, or Crown vassals holding in liberam baroniam**, or apparently *ut baro* in respect of some incorporeal baronial hereditament [i.e., Chiefs of Clans or Names of non-baronial tenure]. (Emphasis supplied.)

"Parliament came to be, however, conceived as a representation of 'lands' and as represented, in effect, either by the Baronage or by the Earls, and accordingly we shall not find the sub-baronial 'freeholders' until these were admitted by statutory Commissioners at a later stage."

"During the sixteenth century the English terminology of referring to the Peerage as 'The Nobility', and the creation of the personal peerage *Barones Majores*, later denominated ('Lords of Parliament') 'Baron-Banrent,' and **the determination to constitute 'the Baronage' a distinct 'Estait'** (to replace the clergy after the Reformation), led to a statute of 20th December 1567 providing for more effective baronial representation on the preamble that 'Of law and reason *the barons* of this realm ought to have vote in Parliament **as a part of the nobility**, and for safety of numbers at each parliament that a precept of Parliament be directed to the sheriff...' [A. P. S., Vol. III p. 40]. (Emphasis supplied.)

"This clarifies the (obvious) nobiliary fact, that **the Barons are a part of 'The Nobility' in its constitutional sense, and as an 'Order' or 'Estate'**, and in the 1455 statute of Apparel we accordingly find both degrees, the Earls and the Baronage — great and small — provided with similar mantles opening in front." (Emphasis supplied.)

³⁷ Sir Thomas Innes of Learney, "The Robes of the Baronage of Scotland", *ibid.*, p. 143 in fn. 3, as follows:

"Edinburgh, 26th February 1943. The Lord Lyon King of Arms having considered the foregoing (in a birthbrief, the preparation whereof was then duly 'authorised', being the Signature *for such writ*). 'Further, with regard to the words 'untitled nobility' employed in certain recent birthbriefs in relation to the Minor Baronage of Scotland, Finds and Declares that **the Minor Barons of Scotland** are, and have been both in this nobiliary Court and in the Court of Session recognised as a "**titled nobility**" and that **the estait of the Baronage** (i.e. *Barones Minores*) are of **the ancient Feudal Nobility of Scotland'** (*Reg. Of Gen.*, vol. IV. P. 26). (Emphasis supplied.)

³⁸ Sir Thomas Innes of Learney, "The Robes of the Baronage of Scotland", *ibid.*, p. 160, as follows:

"Coming to current times, we find the same practice continuing in, e.g., the re-matriculation — with Baronial *chapeau* — for the present *Wauchope of Niddrie* [*Lyon Register*, 35/31, 19th April 1945 by Lord Lyon Sir Francis Grant], wherein the Lord Lyon (Grant) officially declares:-

"That the Petitioner, as feudal Baron of Niddrie-Merschell and Lochture is of Baronial Race, and of rank equivalent to that denominated *Hoch Adel*, and equivalent to the Chiefs of Baronial Houses, upon the Continent of Europe, and that by demonstration of the foresaid Ensigns Armorial, he and his 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."

³⁹ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 79, as follows:

"Most of our ancient earldoms, and some of our old lordships have, as it were, **armorial ensigns annexed to them**; which were either those granted upon their erection into noble feus, or those of the **ancient possessors**, and, by the favour of the sovereign, **are transmitted with the dignity of the feu** to other different families, with their proper arms, merely as **feudal ones**, and not upon the account of descent or alliance with the ancient possessors of these dignified feus, nor upon the account of special concession, patronage, or otherwise, **but only as invested in these noble feus: ..**"

⁴⁰ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 75, as follows:

"Arms, as I have said before, were anciently taken, not only as marks of noble descent, alliances, offices of merit, and royal favour, but also of **right to feus, territories, jurisdiction**, and other valuable things in possession, or of pretension to them"

- ⁴¹ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 74, as follows:
"Amongst the many ways of **acquiring arms**, that of noble feus and territories is one; the **possessors** of which have **right** to carry those **figures** which seem to be **annexed to dignified feus; such as those of dukedoms, marquises, earldoms, and old baronies**, which the possessors carry to show their dignities by **possession of them**, by right of succession, or grant of the Sovereign; as Hoppingius *de Jure Insignium*, paragraph 2. 'cum feuda nobilia titulo successionis vel beneficio domini jus & voluntatem habentis, insignia conferri & perfecte acquiri palam est'"
- ⁴² Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 82, as follows:
"The ancient Earls of Douglas, when dignified with the **titles of noble feus**, as that of the Earldom of Galloway, carried the **arms** of that country, being **azure, a lion rampant argent**; and when dignified with the **title** Duke of Touraine in France, and with the lordship of Annandale in Scotland, quartered the **arms of those dignities** with their paternal ones .."
- ⁴³ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 304, as follows:
"For the man who succeeded to the position of a **feudal lord**, whether by inheritance from his father or his mother, or in right of his wife, or a direct grant from the King on the failure or forfeiture of the previous lord, had a strong reason for assuming the arms which his vassals were already accustomed to follow, arms which very probably they themselves already bore with differences, and looked upon as an index as well as a symbol of their allegiance
- ⁴⁴ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 360, fn. 1, as follows:
"Several curious examples of these grants during the fourteenth century, will be found in Edmondson's *Complete Body of Heraldry*, I, 156. About the middle of the same century, Sir John Woodford purchased, from Sir John Nevil, the lands of Brentingly **along with the arms belonging to the said manor** — **sable, three fleurs-de-lis argent**, returned into three leopards' heads **gules** — and in the same coat-armour he appeared at 'the getting of Caleys' (A.D. 1347). *Woodford Chartulary. (Gentleman's Magazine, 1795, Vol LXV, p. 184.)*"
- ⁴⁵ Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. ii., pp. 13-14, as follows:
4. The being an Heritor of Land doth not Nobilitate in all cases, even though the Heritage be very considerable; for else a Rich Man might ennoble himself: but the **feueda** only **render the possessors Noble**, which are **bestowed** by the **Prince**, or **confirmed** by him. "
"For a **few** in either of these cases **makes the receiver** ", seeing the Prince is the Fountain of Honour. And a few in those cases is a **sufficient warrant to bear Arms, Tiraqu, cap. 7**"
"And this remembers me of a custom in Scotland, which is but gone lately in desuetude, and that is, That such as did **hold their Lands of the Prince**, were called **Lairds**; but such as held their Lands of a subject, though they were large, and their Superior very noble, were only called Good-men, from the old French word, *Bonne homme*, which was the Title of the Master of the Family;"
"and therefore such **Fews** as had a **Jurisdiction annex** to them, a **Barony**, as we call it, **do ennoble**: For a Baronies are establish only by the Princes erection or confirmation. And thus it was found by the *Parl, of Grenoble*, That *qui possident castrum cum territorio, & omnimoda jurisdictione sunt exempti a contributione subfidiorum, ut Nobiles, licet non sunt a Nobili Progenie*, Guid. pap. decis. 385"
- ⁴⁶ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Third, Chap. 2. p. 74, as follows:
"Some lawyers are of opinion, that ignoble persons, in possession of noble feus, are **nobilized by them**, and may carry **arms** at their pleasure without authority, provided they assume them not (*in emulationem alterius*) to the prejudice of others; because, say they, every man may choose a name for himself, seeing this is not forbidden in any law; as Bartolus, *lib. 1 Cod. de Dignitate*: and Segoin in his *Treatis de Regno Italico, lib. 7* tells us, 'That about the year of God 937, the Emperor Otto brought in a custom to Italy, by which the ignoble became noble, **by possessing noble feus, and had right to carry arms**; but still this was thought to be done with the special consent of the Sovereign, and is so understood by the law and customs of all nations'"
- ⁴⁷ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 276 – 277, as follows:
"*Arms of Interior Dominions*. The earliest of these also began as the personal arms of the possessor of dominions, arms, in most or all cases of assumption, and some of them, in addition, being arms of allusion to the fiefs themselves. Instances of these have thus been noticed already. But one or two may be added.
"The arms which Comyn brought with him from England, in the twelfth century, and his descendant bore as Earl of Buchan, were azure, three garbs or.
On the forfeiture of the Comyns, the earldom returned to the Crown. Robert II granted it out, both lands and title, to his kinsman Alexander Stewart, 'the Wolf of Badenoch.' But no line of earls had any continuance till the earldom came into the house of Erskine, in whose possession the title now is. It returned to Robert III, James I and James II, and by each of them was granted out again"
"None of their grantees derive their rights from the Comyns, **yet all in their turns have borne the Comyn arms as the feudal arms or arms of dominion of the Earldom of Buchan. ...**
"Similarly, the **feudal arms** of the Earldom of Atholl, paly of six or and sable, born by the Duke, are the **arms of the former Celtic Earls; ..**"
"Of **feudal arms**, created originally as such, we have the coat, argent three roses gules, born by the Duke of Montrose; the arms of the Earldom of Winton, azure, a star of eight points within a Tressure or; the sun in his splendour, **arms of the Earldom of Lothian**, which the Marquis quarters with those of his Earldom of Jedburgh, etc. ..."
- ⁴⁸ George Seton, *The Law and Practice of Heraldry in Scotland*, Edinburgh, 1863, p. 348, fn. 3, as follows:
"Hereditary arms of families must not be confounded with **feudal ensigns**, which are **annexed** to certain lordships and estates, and **carried by their possessors**"
- ⁴⁹ George Seton, *The Law and Practice of Heraldry in Scotland*, Edinburgh, 1863, pp. 350 – 351, as follows:
"Indeed, we may fairly admit that **feudal arms** must, in many cases, follow the other feudal inheritance, and that a person (though not the male heir) enjoying the family barony, bearing the noble title, leading the vassals in war, and dispensing justice among them in peace, was at first naturally looked upon as chief, and entitled to the **chief insignia upon his coat-armour**; and in the course of a few generations, from father to son, the use of these established the right to use them. In most cases, the **legally preferable heirs-male** did not object to the expedient arrangement"
- ⁵⁰ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 360, as follows:
"Edmondson remarks [*complete Body of Heraldry*, Vol I, p. 155] that 'a doctrine prevailed that the rightful possessor or proprietor

being deemed to have, as it were, an **absolute freehold in his coat-armour**, as well as in his lands, had an **undoubted right to alienate or transfer** the property and inheritance of **both** one and the other; and, in consequence of this doctrine, the proprietors of coat-armour did frequently, **to the exclusion of their own heirs**, by grants, and that with a covenant of warranty, convey, assign, and transfer not only such coat-armour of other families as happened to descend to them by right of inheritance as next heir, but the **original and paternal coat-armour of their own family**. These arms were, in other, *feudalised*, the arms of the fief. Whoever sealed the charters of the lord of the fief with them or raised them as his banner, the Courts and the vassals recognised them, for they never changed.

⁵¹ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p. 352-353, as follows:

“There is no necessity to suppose any denial at any time of the principle that the hereditary arms of the family should go undifferentiated to the **chief representative** of the family. The apparent or real want of adherence to any fixed heraldic rule arose more probably from an *elasticity* allowed to the term **‘representative,’** which enabled it to comprehend the successor of the family in its *principal fief*, whether he was its heir-male or heir-female, **or even in blood a total stranger**”

⁵² *Via a “Resignation in favorem for Re-Grant”* (Form No. 257, *Encyclopaedia of Scottish Legal Styles*, Vol. V, “Heraldry”, page 286-287) of the “supporter- claim”

⁵³ Thomas Innes of Learney, *Scots Heraldry* (2nd edition, 1956), p. 111 -112, fn. 2:

“... the character of **Representative** or **heir of line** [Kinnoull correctly treats “Representative” as a *broader character* than ‘heir of line’, and which could include *nominees* ...] to the family whose arms they claim to bear, and the same rule must always hold in deciding the claims of individuals for arms or **supporters** as a *matter of right*, which fall only to be awarded to the party [genealogically & heraldically] establishing the **character** [lawful heir of line of last pre 1587 Owner of barony] in virtue of which the claim is advanced.”

⁵⁴ Please see Footnote 2, above, for the **legal authority** for this conclusion set forth by Sir Thomas, *himself* !

⁵⁵ The *general premise* of the entire ACT in general and Sec. 63 of the ACT in particular is established by ¶2.30 of the “Report on Abolition of the Feudal System”, as follows:

“This report is concerned with **land tenure**. Superiors will disappear and there will be special provisions on baronies but, subject to that, the report is **not concerned with any right, title, honour or dignity (even if of feudal origin historically) held by any person**. In particular, it is **not the purpose** of this report to affect any of the feudal elements in constitutional law or practice, any peerages, or any of the ancient offices or positions which may have been feudal in origin. **The draft Bill is framed in such a way that all such matters would be unaffected by it.**” (Emphasis supplied.)

⁵⁶ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 72-73, as follows:

“Or, as the 8th Duke of Argyll explained it [j. Fyffe, *Scottish Diaries and Memoirs*, p. 565]: ‘Great estates were then generally erected into **baronies**, that is to say, districts with a **regular system of rural government** in which the tenantry of various classes took part **under a president** who represented the proprietor and **was called the Bailie**.’” (Emphasis supplied.)

⁵⁷ See *Registrum Magni Sigilli Regum Scottorum*, Vol II, p. 369; See also *Antiq. Abdn. and Banff*, Vol. II, pp. 248-249.

⁵⁸ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxviii-lxxix and footnote 1 on p. lxxix, as follows:

“The court might be presided over by the baron himself, or by his bailie; or the baron might sit *with* his bailie; or two or more bailies might sit together. The bailie was appointed by the baron and, upon appointment, took the oath *de fideli administratione* [He had to have ‘sufficient power, be letter and seale of the baron’ to hold the court (*forme and Maner of Baron Courts*, c. 1). For fuller details of the appointment and powers of a baron-bailie, see, for example, *R. M. S.*, II, 369; *Antiq. Abdn. and Banff*, III, 248-249].”

⁵⁹ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxxv-lxxxvi, as follows:

“The **baron-officer or sergeant**, like the mair of the sheriffdom, was the **orderly officer of the court**. It was his duty to ‘summand warne attache & arrest all the fre tanandis ... and all uthir substanchus 3emen men’ to the meeting of the court in fulfilment of their court service; to summon or attach the parties whose cases were to come before the court — doing this in the presence of witnesses, and subsequently proving his summons ‘be his precep Indorsat be him thairapon’; and to summon the necessary witnesses. When the court met it was fenced by him; he called the suitors; he called the parties; he called the witnesses for the various cases. After the meeting of the court he was responsible for **seeing that its decisions were carried out** — he executed all poindings and arrestments; he ensured that all ‘borghs’ were observed. **His insignia of office included a horn and white wand ‘ane eln lang’**. If opposed in the execution of his duty he broke his wand as an indication that he had been ‘deforced’.” (Emphasis supplied.)

⁶⁰ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 108.

⁶¹ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. lxxxviii, as follows:

“To complete the court it was necessary to have a **dempster** and the requisite number of suitors. Of the dempster there was little to be said, save that he was one of the suitors of the court and that **it was his duty to pronounce its ‘doom’**” (Emphasis supplied.)

⁶² See Grant of Arms to Major-General Clifford Thomason Becket, *Lyon Register* 48/58, of a key proper in bend set behind his shield in respect of his office of Keeper of the Castle and Fortalice of Lochoreshyre or Inchgall. Grant referenced in *The Military and Hospitaller Order of St. Lazarus of Jerusalem: The Hereditary Commandery of Lochore* (Edinburgh, ca. 1970), page 11.

⁶³ See William Croft Dickerson, *The Courtbook of the Barony of Carnwath*, pp. lxvi, cxiv – cxvi.

⁶⁴ Thomas Innes of Learney, “The Robes of the Feudal Baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 137

⁶⁵ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 108.

⁶⁶ • Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 111, 112, 113, 116, 118; at fn 3 beginning on p. 118 and extending to p. 119, at 121-22,

• Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 16, . 30 fn. 1, 30 fn. 3, 143,

• Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland* (7th edition, 1964), p. 18 – 19.

⁶⁷ Thomas Innes of Learney, *The Tartans of the Clans and Families of Scotland* (7th edition, 1964), p. 18 – 19:

“... Both the group and the land were called after the chief, who in theory was actual owner of the whole group and of the land of the group, with absolute power over every member. ... The Celto- Pictish principle emphasised the **patriarchal chiefly element** in which the chief was the parent, ruler, landowner, and proprietor on behalf of his **clana** or children. This **parental aspect** is implicit in the very term **clanna**, which strikes at the root of the modern canard of ‘elected chiefs’. The clan was in fact a ‘mixture of trib-

al tradition clustering round the *ipso facto* landowner of the soil' – the chief 'fulfilling the functions of the tribal leader'."

⁶⁸ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 95-96.

⁶⁹ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at p. 111, as follows:

"Feudalism has aptly been described as 'the development, the extension of the family', or one may say **the organisation of the family upon, and in relation to, the Land**: and in Scotland, so fundamentally a tribal country, where the predominant influences have consistently been Tribality and Inheritance. *the feudal system was immensely popular*, took root as a **means of consolidating and preserving the earlier clannish institutions**, and the clan-system itself was, as modern historians now recognise, not only closely intermingled with feudalism, but that **clan-system was 'feudal in the strictly historical sense'**." (Emphasis supplied.)

⁷⁰ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111, as follows:

"The Baronage is an **Order** derived partly from the **allodial system of territorial tribalism** in which the patriarch held his *country* 'under God', and partly from the later **feudal system** — which we shall see was, in Western Europe at any rate, **itself a developed form of tribalism** — in which the territory came to be held 'of and under' the King (i.e., 'head of the kindred') in an **organised parental realm**. The robes and insignia of the Baronage will be found to trace back to both these forms of tenure, ..." (Emphasis supplied)

⁷¹ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 112, as follows:

"In these circumstances, amongst the institutions which have survived in the tribal structure of Scotland, is the ancient *Baronage of Scotland*, of whom its first historian, Sir Robert Douglas of Glenberrie, observes: 'There is no nation in Europe where the Gentry, or lesser Barons and Freeholders, enjoyed so much liberty, or had such extensive privileges as those of Scotland.' it is with these barons and not with the Peerage that the Baronages of the Continent always have been, and fall to be, equated. [Woodward, *Heraldry, British and Foreign*, p. 12]"

⁷² Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 116, as follows:

"Such considerations all bear out Craig views [Sir T. Craig of Riccarton, *Jus Feudale*, 1-8-2] that **the title of Baron in Scotland was first applied to those who were *Capitani Tribuum***, and that Feudalism (or anyway an organisation which we would now recognise as synonymous with it) *existed in Scotland prior to the Norman Conquest in England* [see J. Cameron, *Celtic Law*, p. 80]." (Emphasis supplied.)

⁷³ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 144, as follows:

"[S]o early as 1382 and therefore long anterior to the existence of 'personal peerage' barons [i.e., Lord-Barons], it was set forth that ***Baronia est nomen dignitatis et importat jurisdictionam*** [See Dickinson, *Carnwath*, p. XX, who duly says '**A barony is a dignity**', and **the crux of the dignity lay in the jurisdiction**, the 'High Justice' of Feudal Law (ibid, lviii-lix), hence the symbolic and social importance of the gallows, if not for use, as an ornament, of what I must explain, proceeding slightly beyond Dr. Dickinson, in the light of further research, was not the 'King's Justice', but **the *jus familiae***, as indeed Mackenzie observes: cf. *Works*, Vol. II, p. 446, with F. F. Brentano, *Old Regime in France*, pp. 5, 73.] We can accordingly readily perceive the wisdom of not seeking, even in the early seventeenth century, to distinguish over-pointedly between the Lord-Barons of the peerage and the Minor barons who so late as 1672 successfully maintained, in claiming their supporters, that 'they were as good Barons after that Act (1587) as before' [*Sundry Barons v. Lord Lyon*, June 1673, Fountainhall's *Decisions*, No. 393; (Brown's *Supplement*, Vol. III, p. 6).]" (Emphasis supplied.)

⁷⁴ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 116, as follows:

"Such considerations all bear out Craig's views [Sir T. Craig of Riccarton, *Jus Feudale*, 1-8-2] that the title of **Baron** in Scotland was first applied to those who were ***Capitani Tribuum***, and that Feudalism (or anyway an organisation which we would now recognise as synonymous with it) *existed in Scotland prior to the Norman Conquest in England*. [cf. Grant, *Social and Economic Development of Scotland*, p. 16; and J. Cameron, *Celtic Law*, p. 80)]." (Emphasis supplied.)

⁷⁵ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 119, fn 3 beginning at p. 118, as follows:

"Indeed the very contents of many early feudal charters warn us that they were recording, perpetuating, and formalising **ancient local institutions, related**, if not to 'tribalism' (now a somewhat ambiguous term), at all events to '**tribes**', to which the 'Feudal System' gave **machinery for juristic consolidation** — upon which indeed their survivance depended (I. F. Grant, *Social and Economic Development*, pp. 502, 516; Innes of Learney, *Tartans of the Clans, etc.*, 1945, pp. 15-16, 25, 39, 41)." (Emphasis supplied.)

"This is an aspect of importance not only to historians, but for the consideration of antiquaries and archaeologists in relation to many early objects and structures."

"It is only necessary to look at **charters** such as those including the Gaelic '*Kenkynol*', fortunately defined therein as '***caput toties progenii***' (*R. M. S.*, Vol I, p. 509), and the **captaincy of communities** which the ancient Great Seal Indices give, in the vernacular, as '**clan**', and in the Latin as ***parentela*** (*R. M. S.*, Vol I, App. II, pp. 912, 913, 982); to realise **such organising of loose 'tribalism' is precisely what 'feudalisation' was effecting** (see Evidence of John Cameron, Ph.D., p. 102, *Maclean of Ardgour v. Maclean*, 1938)." (Emphasis supplied.)

"[T]hat 'Feudalism' as developed in North and West Europe was something quite different from what it was in Italy, and that Brentano is sound in asserting that 'in defining as accurately as possible the real meaning of this word, we should call it **the development, the extension, of the family**' (*Old Regime in France*, p. 5); though ***familia*** in early documents had, as he pointed out, an ambit **which included all connected with the *mansionata***, just as the '**clan**' (which Dr. Mackay Mackenzie observed 'is not old and it is not Celtic, it is feudal'. *Ardgour Evidence*, p. 220 — though the **feudalisation, per Cameron, supra, preserved what was 'old' and also 'Celtic'**), i.e., the ***parentela*** of David II's charters, is in later statutes set forth as **including persons depending on Chieftains** 'be pretence of blude or **place of their duelling**' (*A. P. S.*, Vol. III, p. 464)." (Emphasis supplied.)

⁷⁶ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. vii. p. 43-44, as follows:

"And these are either declared such by **feudal erections**, their lands being erected by the King into a duchy, earldom, etc. The **dig-**

nity of which feu, of old, did, of **itself**, give the **honour and privileges** in whose favour the lands were so erected; otherwise, both with us and other nations, they were honoured with these titles by a formal creation; and, of late, by patents of honour from the sovereign declaring them dukes, Marquises, earls, viscounts, and lords, taking their titles of honour from a county, or part of the same, viz. a town, castle, places where they have estates or dwellings”

⁷⁷ Sir George Mackenzie of Rosenhaugh, *Precedency*, Edinburgh, 1680, Chap. viii., p. 33, as follows:

“The Nobility of Scotland were either Declared such by **Feudal Erections**, their Lands being Erected by the King in a Duchy, Earldom, etc which did of it self make him a Duke or Earl, in whose Favours the Lands were so Erected; Or else they got Patents of Honour, Declaring them Dukes, Earls, etc. and this is a much later way, none being Nobiliated by Patents amongst us before King James the first”

⁷⁸ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 16.

⁷⁹ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 120, fn. 2.

⁸⁰ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 143, as follows:

“The enlarged family, which embraced the younger sons and their children, their cousins, the servants and workmen attached to the house, took the name of *mense* from the Latin *mansionata* or house. The *mense* comprised the family; the relations assembled around the head of the principal branch, the servants, and all of those living around, maintained for the service of the house and supported by it. At the head of the *mesne* was the **Seigneur** [i.e., minor baron], invested with a paternal and paternal character.” (Emphasis supplied.)

“The members of this larger family were united like a corporation. They gave each other mutual assistance. They possessed their tribunal [the Baron Court of that Barony], the tribunal of the Seigneur, that is, of the head of the family. They had their own customs, manners, and traditions, and they had their standard and their battle-cry. They had their banner on its staff with gilded point. ... To bring honour or advantage to the family is the sole ruling sentiment. The **fief** made its appearance in the eleventh century, in the form of a greatly enlarged family over which the father was suzerain, and so in order to designate the entire agglomeration of all persons united under the governance of a feudal chief, contemporary writers made use of the word familia. **The baron at the head of the fief was in reality the chef de famille.**” (Emphasis supplied.)

⁸¹ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at p. 112, as follows:

“Scottish Feudalism — ‘Family-feudalism’ — was in fact the same popular system as that of ninth to twelfth century France, and preserved its popularity simply because it retained the clan/family aspect [It was recently elicited in expert evidence (cross) that ‘Clan and Family mean exactly the same thing’, vide, *Tartans of the Clans and Families*, 1945, p. 50; *Notes and Queries*, 15th August 1942, vol. 182, p. 94] under which ‘the minor baron was *chef de famille*’ in relation to the occupants of his fife [Scott puts into the mouth of the ‘Baron of Bradwardine’ the same doctrine — that the Baron is *in loco parentis* to all inhabitants of his barony] and never evolved a ‘caste-distinction’ which played havoc with the popularity of feudalism on the Continent .”

⁸² Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 113

⁸³ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 108, as follows:

“[T]he authority of the chief was nevertheless far from absolute, **owing to the principle of the family council or clan council**, under which the chief, although parent and representer of the community comprehending his clan, nevertheless **acted constitutionally in concert with the conseil de famille composed of the heads of houses, and by whose advice and assent he was guided on matters of family policy**, and who in some cases, where necessary, even took steps to place a foolish or improvident chief under supervision. In a small clan of family, such council might be quite an informal one, but in the greater clans, and in the case of the Lord of the Isles, it amounted to a full and formal parliament, like those even yet found in many of the great families of Europe. In the feudal organisation of the tribal territories, this council became formalised as the **Court of the Barony**, ...” (Emphasis supplied.)

⁸⁴ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 116, fn. 1, as follows:

“In Scotland, as on the Continent, however, **‘Baron’ has always meant a person of a certain social status**, to wit, invested with a jurisdiction, and having the **function of advisor** to a reigning Prince (the term ‘Prince’ in the old sense includes Earls or Counts) or **‘representing’ such a ‘Race’**.” (Emphasis supplied.)

⁸⁵ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 132, as follows:

“It has, however, rather an interesting, possible, bearing on the **early character of ‘The Baronage’ as Capitani Tribuum**, and holders of, originally *allodial* fiefs; for the Scottish Parliament was careful, in 1556, to remind the Crown and Nation that the title ‘King of Scots’ denoted that the Sovereign was essentially, and at Common Law, a personal *Ard-Righ*, and not territorially King of Scotland. [(A)s I pointed out in *Sources and Literature of the Law of Scotland* (Stair Soc.) s.v. Peerage Law, p. 427, **even the Earls** were not proprietors of the whole lands of the earldoms, **but of a caput** as the Crown held the Moot-Hill of Scone. There was a distinct theory of allodial possession, anterior to the organisation of the feudal system, which, however, accorded so excellently with the organisation of the clan-tribe system, **that feudalism was readily and inevitably adopted in a clannishly minded community** (*Tartans of the Clans and Families*, pp. 15, 25; *Heraldry in Scotland*, pp. 1-3; cf. F. Funk Brentano, *Old Regime in France*, pp. 5-11)].” (Emphasis supplied.)

⁸⁶ • Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 131, fn. 3,

• Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), pp. 15, 104-105, 163,

• William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi,

⁸⁷ Lord Lyon Sir Thomas Innes of Learney declares in “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at p. 121-122:

“**The Minor baron was Chief de Familee, and the familia over which he ruled comprehended not only all his children, and cousins, but also the vassals, tenants, and servants.** This explains why it has been observed of Feudalism in Scotland: ‘Such

a form of social organisation accords very well with the natural pugnacity and clannishness of the Scots ... (*and*) made the feudal system in a strange sense a truly popular one. "Emphasis supplied.)

⁸⁸ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 118, as follows:

"... Craig's deduction, that the early **Scottish barons were chiefs of clans**, one observes at once that the 'Wand' of the Officers of a Barony was the 'white wand' associated with Chiefship, and indeed with the sceptre of an Ard-Righ [*Carnwath*, p. lxxxvi; *Bute, Scottish Coronations*, p. 16; *Tartans of the Clans and Families*, p. 30, n. 2], and we thus realise at once the significance of the observations that **'the minor baron was a chef de famille' — and that 'He reigned' —** that is the word used in documents of the period'." (Emphasis supplied.)

⁸⁹ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 30, fn. 3, as follows:

"Much discussion has centred on who this *Communitas* [of Scotland] was. Historians are not satisfied it could not, and did not, mean the 'Estat of the Burghs', nor popular representation of what is called 'the people'. It is, I think, equally clear just what it really was, for the *magnatus* et tecius communitatis of certain early charters are the *comitum, baronum et proborum hominorum* of others. In these days — and the more so in tribe-clannish realms — constitutional theory took no cognisance of individuals, but only of communities and their **Representer**." (Emphasis supplied.)

"**The earls and barons were the magnates**, each in principal **chiefs and representatives of all within their jurisdictions, and each with their own court for those within their potestas**, just as in earlier times the chiefs of clans were the real *Proceres Regni* (*Loyall Dissuasive*, pp. 22, 37, 98). " (Emphasis supplied.)

"There were, however, many Thaners (*tigh-airn*), freeholders, and chieftains, 'holding' directly of the Crown by titles less than *in liberam baroniam*, yet who were equally the 'representatives of communities,' to whom they stood in the position of *chef de famille*; and it was evidently these smaller *tenants in capite* (including chiefs of 'honourable clans' recognised as incorporeal fiefs, no doubt) who protested for the independence of Scotland."

⁹⁰ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 131, fn. 3, as follows:

"... [C]onsideration of such persons as the 'Baron of the Bachull' (Hereditary Keeper of the *Bachull Mor*, Pastoral staff of St. Moluag (I. F. Grant, *Lordship of the Isles*, pp. 309, 315)), and the Chiefs of *Communitates*, found in early State Documents, and whom Sir Aeneas Macpherson correlates with the early *Proceres Regni* (*Loyall Dissuasive*, pp. 22, 99, 110). This, and the **patriarchal jurisdictions**, and grants of supporters to 'Chiefs of old families' and or 'Clans', **irrespective of baronial fief**, go far to bear out not only Craig's view that **the earliest Barons were Capitani Tribuum (Chiefs of Clans, Jus Feudale, 1-8-2** but also to explain the **'other indivisible tenures'** in the Report of the Scottish 'Tryours' in *Bruce v. Baliol*, 1292; and are related to the heraldic view that a **'clan' or 'noble family' is an incorporeal heritable fief** (see Sir Charles Erskine, cited *Juridical Review*, September 1940, p. 205, n. 7), as, moreover, evidenced by the fourteenth-century Great Seal Charters (*Tartans of the Clans and Families of Scotland*, pp. 25, 41) — 'noble fiefs', which, however, in the chivalric concept, though negotiable for 'grave and weighty considerations' (*Scottish Notes and Queries*, December 1933, p. 188) were not vendible to a *Familiae Emptor* in the venal Roman manner." (Emphasis supplied.)

⁹¹ Chiefs of Clans and Names possess the same patriarchal jurisdiction *ut baro* entitling them to supporters without the necessity of owning land erected *in liberam baroniam*. Erection of lands *in liberam baroniam* conveys separately (1) jurisdiction consisting of 'the dignity of baron' from which patriarchal or 'chiefly' jurisdiction is derived; and (2) Civil and Criminal territorial Jurisdiction re exercise of the King's Justice. This latter type of jurisdiction was based upon statutory authorisation in which part of the King's Justice was conferred upon Baron Courts — most of which was repealed in 1746 following the '45.

Accordingly, a Baron is *Chef de Familee* and Hereditary Representer of the territorial Clan formed around his Barony in precisely the same manner that the Chief of a Clan or Family is the patriarchal chief of the personal Clan formed of all those who bear his Name or the Names of related Septs.

⁹² Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at fn 3 beginning on p. 118 and extending to p. 119, as follows:

"Indeed the very contents of many early **feudal charters** warn us that they were **recording, perpetuating, and formalising ancient local institutions**, related, if not to 'tribalism' (now a somewhat ambiguous term), at all events to **'tribes'**, to which the 'Feudal System' gave **machinery for juristic consolidation** — upon which indeed their survivance depended (I. F. Grant, *Social and Economic Development*, pp. 502, 516; Innes of Learney, *Tartans of the Clans, etc.*, 1945, pp. 15-16, 25, 39, 41). This is an aspect of importance not only to historians, but for the consideration of antiquaries and archaeologists in relation to many early objects and structures."

"It is only necessary to look at charters such as those including the Gaelic *'Kenkynol'*, fortunately defined therein as **'caput toties progenii'** (*R. M. S.*, Vol. I, p. 509), and the **captaincy of communities** which the ancient Great Seal Indices give, in the vernacular, as **'clan'**, and in the Latin as **parentela** (*R. M. S.*, Vol I, App. II, pp. 912, 913, 982); to realise **such organising of loose tribalism' is precisely what 'feudalisation' was effecting** (see Evidence of John Cameron, Ph.D., p. 102, *MACLEAN OF ARDGOUR V. MACLEAN*, 1938), that 'Feudalism' as developed in North and West Europe was something quite different from what it was in Italy, and that Brentano is sound in asserting that 'in defining as accurately as possible the real meaning of this word, we should call it **the development, the extension, of the family'** (*Old Regime in France*, p. 5); though *familia* in early documents had, as he points out, an ambit **which included all connected with the mansionata**, just as the **'clan'** (which Dr. Mackay Mackenzie observed 'is not old and it is not Celtic, it is **feudal'**, *Ardgour Evidence*, p. 220 — though the feudalisation, *per* Cameron, *supra*, **preserved what was 'old' and also 'Celtic'**), i.e., the parentela of David II's charters, is in later statutes set forth as **including persons depending on Chieftains** 'be pretence of blude **or place of their duelling'** (*A. P. S.*, Vol. III p. 464) ...

"I have also pointed out (*Tartans of the Clans, etc.*, p. 37; *Law of Succession in Ensigns Armorial*, p. 35, n. 2; p. 47, n. 3; *Notes and Queries*, 24th February 1940, p. 132) that the British system of Courtesy Titles, and its armorial prototype the *differentiae consanguineum* are curiously equateable with the *finé (gill-finé)* and, so, a **feudally-perpetuated portion of early community organisation**, of which I think archaeologists will find other instances deserving through in such matters as 'fire-houses' and 'hearths' (cf. note 2, p. 116) which may cast light on early settlements, and the community-life therein." (Emphasis supplied.)

⁹³ Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), pp. 104-105, as follows:

"The 'family' or 'clan' is, however always based on a fief, because to be an 'honourable community' which has been 'received into

the *noblesse*; of the realm, it must, **in the person of its 'representer,'** have been granted or conferred, a 'family seal of arms,' and a coat of arms is feudalised property [*Maclean of Ardgour v. Maclean*, 1941, following *Macdonnell v. Macdonald*, 1826, Shaw & Dunlop, 371], and the family is an 'incorporation,' [Sir H. Maine, *Ancient Law*, pp. 205, 211; cf. *Old Regime in France*, p. 5] and all the scientific modern evidence concurs that 'clan and family mean exactly the same thing' (Appendix XXX, Dr. Lachlan Maclean Watt). **This may explain also why a clan chief, as chief of a 'baronial family' may be 'baron' without holding land in liberam baroniam** [cf. *Court book of the Barony of Carnwath*, p. lix], by e.g. succeeding to a baronial coat of arms, or amongst several such *in familia*, to that **which carries with it the 'representation' of the clan/family as a noble incorporation.**" (Emphasis supplied.)

⁹⁴ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi, as follows: "But with the penetration of feudalism into the Celtic administration we find **barons who enjoyed jurisdictional rights without holding a barony**; that is, **they had personal rights rather than territorial rights.**" (Emphasis supplied.)

⁹⁵ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi, as follows: "But with the penetration of feudalism into the Celtic administration we find **barons who enjoyed jurisdictional rights without holding a barony**; that is, **they had personal rights rather than territorial rights.**" (Emphasis supplied.)

⁹⁶ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 163, as follows:

"Whilst chief and chieftain, chiefship and chieftaincy, are used promiscuously in Scottish records, the term 'chief' normally does conotate a greater chief, and consequently branch-chiefs have in later times come to be designated 'chieftains' as being lesser chiefs. The word, originally French, was anciently applied to the **head of a territorial house** [such as a feudal barony], but at a time when, in the 'glorious epoch' of French tribo-feudalism, **the minor barons were chefs de famille in the true clan sense**, [of] 'the groups surrounding him not bearing his name' [i.e., within the jurisdiction of his Baron Court]. In Scotland the term is **not** confined to 'clan' groups, indeed is largely associated with **feudal houses**, which, however, are now recognised as essentially **clannish.**" (Emphasis supplied.)

⁹⁷ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 131, fn. 3, as follows:

"[T]he patriarchal jurisdictions, and grants of supporters to 'Chiefs of old families' and or 'Clans', irrespective of baronial fief, go far to bear out not only **Craig's view that the earliest Barons were Capitani Tribuum (Chiefs of Clans)**, *Jus Feudale*, 1-8-2, but also to explain the 'other indivisible tenures' in the Report of the Scottish 'Tryours' in *Bruce v. Baliol*, 1292; and are related to **the heraldic view that a 'clan' or 'noble family' is an incorporeal heritable fief** (see Sir Charles Erskine, cited *Juridical Review*, September 1940, p. 205, n. 7), as, moreover, evidenced by the fourteenth-century Great Seal Charters (*Tartans of the Clans and Families of Scotland*, pp. 25, 41) — **'noble fiefs', ...**" (Emphasis supplied.)

⁹⁸ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 150, as follows:

"In Scotland, as on the Continent, however, **the minor barons retained their title, status, courts, and character**, in a manner which constitutional developments obliterated in England. Even so, however, certain representatives of the older feudal houses continued to bear their baronial caps, even though they never became 'peers of parliament' under the English parliamentary bi-cameral system." (Emphasis supplied.)

⁹⁹ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 132, as follows:

"During the sixteenth century the English terminology of referring to the Peerage as 'The Nobility', and the creation of the personal peerage *Barones Majores*, later denominated ('Lords of Parliament') 'Baron-Banrent,' [As explained in *Proc. Soc. Ant. Scot.*, Vol. LXXVII, p. 163, N. 1, this term seems to mean 'bannered' namely the Great Barons authorised to display square-banners, as distinct from the ordinary rectangular banners (longest side next staff)] and **the determination to constitute 'the Baronage' a distinct 'Estate'** (to replace the clergy after the Reformation), led to a statute of 20th December 1567 providing for more effective baronial representation on the preamble that **'Of law and reason the barons of this realm ought to have vote in Parliament as a part of the nobility**, and for safety of number at each parliament that a precept of Parliament be directed to the sheriff ..." (Emphasis supplied.)

"This clarified the (obvious) nobiliary fact, that **the Barons are part of 'The Nobility' in its constitutional sense, and as an 'Order' or 'Estate'**, and in the 1455 statute of Apparel we accordingly find both degrees, the Earls and the Baronage — great and small — provided with similar mantles opening in front." (Emphasis supplied.)

¹⁰⁰ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 134.

¹⁰¹ Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 114, as follows:

"[T]he Barony was a **peaceful self-governing social unit**, and that the **economic functions** of the Baronial-Council, or court, were far more important than its judicial functions (which in their criminal aspect — as is usual of all court proceedings — attract disproportionate attention). The Barony was, like any other rural estate — only more so — both a co-operative and a communal unit. These aspects were coloured and galvanised into more than ordinary vivacity, by **the operating of these units each as a natural family organisation** whereby the State was able to 'do more than make alliance with the Family, and to *assimilate itself to the Family*'. In ceremonial, tradition, and legal custom, this is just *what the feudal state effectively did*, and is why, as a system, it has proved so enduring, and so attractive, alike to students and tourists. It is always the *feudal state* which these crowd to see and to study. In this lies what is called its 'romance' or 'glamour' and the colourful variety, at once stimulating and restful, which characterises the life, clothing, art, and customs of the feudal state." (Emphasis supplied.)

¹⁰² Thomas Innes of Learney, "The Robes of the Minor baronage of Scotland," (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 114, as follows:

"[T]he proper residence of a landed gentleman, **the centre of local Government'**, Mackay Mackenzie has exalted rather than lessened the status of the castle [*the Medieval Castle in Scotland*, p. 141]. 'The seigneurie, its spirit breathing within the stone-built donjon, became a fatherland which was loved with a blind instinct and devotion.' [Brentano, *Old Regime in France*, p. 75, only says more picturesquely what is true of every Scottish tower]."

"So indeed the Scottish Legislature regarded them, enacting that mansions be maintained by lairds 'for the gracious governall of their landis be gude polishing' (*and as another statute puts it*), 'Mak his ordinary duelling and residence at his awin hous with his

familie ... for **setting forward of policie** and decoratioun of their saidis duelling places, **supporting of the puir and intertening of freyndschip with nechbours** be all guid honest means' (A.P.S., III, 222).” (Emphasis supplied.)

¹⁰³ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) Proceedings of the Society of Antiquaries of Scotland, Vol. 79, pp. 111 at 120-21, as follows:

“[T]he ‘family’ and the ‘family fief’ were regarded as integrated and indissoluble. The fief was a ‘family-community’, a sort of beehive. The Baron was *Chef de Famille*. “

¹⁰⁴ A baronial Clan derived ‘horizontally’ from the territory of the Barony *differs* from a genealogical ‘vertical’ personal Clan in that the *Chief de Famille* or Hereditary Representer of the baronial Clan is **always** the Baron.

Because “the need for proved descent from a common ancestor related ultimately to the chiefly house is clearly far too restrictive” a criteria for determining membership in a clan as noted by George Way of Pleun, Secretary of the Standing Council of Scottish Chiefs, in Collins Scottish Clan and Family Encyclopaedia (Updated Edition, 1998) p. 28-29; membership in a clan is accomplished by enrolment of a person into that Clan by the Chief there of, which in olden days was accomplished by ‘bonds of manrent’:

“Clans, as they developed their distinctive territorial base, would have comprised ‘native’ men who came to accept the authority of the dominant group in the vicinity. **Chiefs would also accept allegiance from smaller communities and individual families by adoption**, as well as from branches of the family not linked territorially to the main clan lands.” (Emphasis supplied.)

“Such alliances were sometimes the subject of **elaborate ceremonial** and developed into the system of written undertakings known as ‘**bonds of manrent**’. The gradual process of absorption of **other families** into the main clan is to some degree responsible for the **system of septs or sub-names**. **A clansman can be said to be one who professes allegiance to a chief and the other members of his noble community**, whether by descent with a common name, territorial origin or **adoption**, and who respects the Law of Arms in Scotland.” (Emphasis supplied.)

“The clansman who becomes an armiger, i.e., receives a grant of arms from the Lord Lyon in his own right, will form part of the *duisne-usail* [gentry of the clan]. This will be acknowledged by his receiving a coat of arms suitably differenced from the chiefly arms themselves. The status of a clansman is accordingly not a lowly one and as part of a noble community recognised by the Crown, he may wear his tartan and the bonnet badge of his chief with pride.”

.....
“However, it should be remembered that membership of a clan is not an automatic right. **Any chief may refuse membership or outlaw an existing member from the clan**, thus depriving him of the privileges of that status.” (Emphasis supplied.)

Respecting the specific issue of adoption of persons unrelated by blood into a clan, the late Lord Lyon Sir Thomas Innes of Learney notes that this is frequently done in both olden and modern times:

Sir Thomas Innes of Learney, The Clans, Septs and Regiments of the Scottish Highlands (8th Ed., 1970), p. 201, as follows:

“The powers of even French families to exclude pretended members [Seton, *Law and Practice of Heraldry*, p. 421] and **the bonds of adoption** [Cameron, *Celtic Law*, p. 220], and **specific instances of adoption of clansmen by a chief**, e.g., ‘to be Gordons depending upon the noble House of Huntly,’ [Spalding Club, Misc. III, 234], indicate that, **apart from descent** within the name or sept-names, **the consent of the chief**, although it has been only occasionally applied for solemnly [Most chiefs were delighted to accept any adherent who would till land and could wield a claymore; cf. references cited in process in *Macgregor of Inneregny*, Lyon Register, 32/22], **was the requisite step to acquire membership in the clan**. Indeed, most chiefs endeavoured to persuade their tenantry to join their clan [*Social and Economic Development of Scotland*, pp. 500-505.] Similarly in armorial administration — e.g., in doubtful pedigrees — the chief may be invoked to give a certificate that he accepts the party as a member, even if indeterminate, of his community. [E.g., Carstairs, Lyon Register 2/147; *Colquhoun* (Cahun), 1781, Lyon Register 1/528; *McLeod*, 1948, Lyon Register 37/36].” (Emphasis supplied.)

The capacity of a chief to extend his clan through adoption would, of course, include a Baron as the *Chief de Famille* and Hereditary Representer of the “Noble Community” or “Honourable Clan” formed around his Barony. Thus, a Baron could adopt sufficient matriculated Scots Armigers so as to give him his legal *Derbhfine* of nine Scots Armigers to form the core ‘true community’ of the clan formed about his barony.

Membership in the Baronial Clan and adoption into it would be recorded upon the Official Roll of Membership with numbered certificates signed by the Baron as *Chief de Famille*. This Roll of Membership would be maintained by the Baron Court as the *organisational mechanism* of the ‘horizontal’ clan formed about the Barony. Certified membership of the nine Scots Armigers forming the true ‘community’ as the *Derbhfine* of the baronial clan could, thus, be submitted to Lyon:

Sir Thomas Innes of Learney, The Clans, Septs and Regiments of the Scottish Highlands (8th Ed., 1970), p. 201, as follows:

“It will only be a further, and natural step, **to make such a roll definite**, and a certificate of membership the evidence of right to wear the strap-and-buckle crest, and for a permanent clan association acting under the chief to institute prosecution of individuals infringing the armorial privilege without having become sanctioned members of the clan as an organised and honourable community. To these sentimental and armorial privileges, which thus form the cognisable and legal basis of clan membership under the chief of the clan as a statutorily recognised community [What is constituted and confirmed as a *Family, Name, or Clan* by Lyon or in Lyon Court is not a ‘private family’; it is a *public tribo-familial* nobiliary *incorporation*, ‘known’ in the public life of the Realm through its *chief*], material advantages of country club membership, etc., may render clanship a valuable social privilege.” (Emphasis supplied.)

¹⁰⁵ The statutory transformation accomplished by §63(4) of the ACT re “any quality or precedence associated with” the dignity of baron (as an *acquired legal right* of “incorporeal heritable property”) ... makes the *issue* of Official Recognition of a Baron as *Chief de Famille* and Hereditary Representer of the “Noble Community” or “Honourable Clan” formed around his Barony and organised by his Baron Court ... into “**one recognised by law**” re Lord Wark ... and “(3) and, most important of all, it depends, ... upon any principle of law of succession which can be applied by a Court of Law” — per Lord Wark — which is the pre-1964 Law of succession applicable to the dignity of baron re §37(1)(a) of the Succession (Scotland) Act 1964 This is because the Chiefship in the Baronial Clan is clearly vested in the Baron.

Being ‘vested’ in the Holder of the dignity of baron, the chiefship of a baronial clan *differs* from the Chiefship of a genealogical personal Clan which is vested in the holder of the undifferenced Arms of the Clan or Family: The Baron is always the Chief of the Baronial Clan; and the dignity of baron always passes under the pre-1964 law of succession governing “any title, coat of arms, honour or dignity transmissible on the death of the holder” in accordance with §37(1)(a) of the Succession (Scotland) Act 1964

Therefore, Sec 63 of the ACT answers all of the *objections, problems, and difficulties* raised by Lord Wark and his Brethren in *Maclean of Ardgour v. Maclean*, concerning the justiciability of the chiefship of a clan as “question of social dignity or social precedence” or an issue of “social status or precedence” ... as “a matter which involves any interest which the law can recognise”:

Accordingly, Scots Courts — the Court of Session and the Court of the Lord Lyon — are ‘vested’ by §63(4) or the ACT with statutory juris-

dition to consider matters of “precedence” and “social dignity”.

§63(4) of the ACT **statutorily transforms** “any quality or precedence associated with” the dignity of baron to be an *acquired legal right* of “incorporeal heritable property” re §63(2) of the ACT ‘vesting’ in the Holder of the dignity of baron. § 63(4) of the ACT *statutorily brings* “any quality or precedence associated with” the dignity of baron **within the purview** of the Court of Session as ‘**an interest which the law can recognise**’: Chiefship as a ‘social dignity’ is clearly encompassed within the scope of §63(4) of the ACT as “any quality or precedence associated with” the dignity of baron.

As a ‘social dignity’ recognition of the chiefship of a baronial clan is clearly encompassed within the purview of the *savings clause* of §63(1) of the ACT ... mandating that “nothing in this Act affects the dignity of baron or **any other dignity** or office (whether or not of **feudal origin**)”.

This is in accordance with the clearly Parliamentary intent in Sec. 63 of the ACT to preserve all social, ceremonial, armorial, and honorific aspects of Barony ... not specifically concerning land tenure:

Manifestly, the *issue of official recognition* of a Baron as the *Chef de Famille* and Hereditary Representer of the “Noble Community” or “Honourable Clan” formed around his Barony has no concern *whatsoever* with land tenure ! Rather, such official recognition is an *issue* of “any quality or precedence associated with” the dignity of baron re §63(4) of the ACT ‘vesting’ as an *acquired legal right* of “incorporeal heritable property” in the Holder of the dignity of baron under §63(2) of the ACT.

Clearly §63(4) of the ACT constitutes a **statutory change** in the law which the Court of Session was asked to apply in 1941 in the Case of Maclean of Ardgour v. Maclean: In 1941 questions of ‘social dignity or precedence’ did not involve “any interest which the law can recognise”, as per Lord Wark, in *Maclean of Ardgour v. Maclean* 1941 S.C. at p. 657. In the Year of Grace 2003 §63(4) of the ACT has constituted “any quality or precedence associated with” the dignity of baron to be an *acquired legal right* of “incorporeal heritable property”:

§63(4) of the ACT has *statutorily transformed* official recognition of a Baron as the *Chef de Famille* and Hereditary Representer of the “Noble Community” or “Honourable Clan” formed around his Barony into a **specific legal interest** providing both Lyon in his judicial capacity as an inferior judge and the Court of Session with “jurisdiction except as is conferred by statute”, as per Lord Wark.

^{cv1} • Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 99, 105 fn. 6, 114, 123, 129, 161 fn. 4, . 171-172,

• Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 118, 148, 151,

¹⁰⁶ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 155. See also the Matriculation of *Chisholm of Chisholm*, 29th March 1938, *Lyon Register* 33/12.

¹⁰⁷ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 123, as follows:

“This **close relationship of the minor barony** (i.e., the organised ‘family’) **to the clan system** and the tartan is well illustrated from the *Court Book of the Regality of Grant*.” (Emphasis supplied.)

¹⁰⁸ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 148, as follows:

“It now remains to consider the baronial headgear, which it will be found is also related to the **doctrine that ‘every minor baron was chef de famille’** and that the baronial robes are essentially a formalised survival of the dress of the **tribal patriarch**.”

¹⁰⁹ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 114, as follows:

“The chief, attired in white was now led to the stone, and presented to the assembled clan — in a ceremony somewhat analogous to the ‘Recognition’ — as their undoubted chief,” and it is to be noted that the ‘undoubted’ successor is brought in already wearing the **chapeau**, turned up with ermine; **that is the parental cap underlying**, as we have said, **the whole principle of barony and chiefship**.” (Emphasis supplied.)

¹¹⁰ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 151, as follows:

“The ancient and formal ‘**cap of dignity**’ had, in fact, about this time, passed into a ‘state’ headgear, employed rather **to denote a specific noble rank**, and was becoming related rather to record and heraldry than to everyday wear, save that **the baronage still wore it with their state robes in Parliament — and no doubt in their own courts** — and in Scotland, as on the Continent, ‘Baron’ meant not merely peers but **the minor baronage as a whole, the ‘Fathers’ of the great families under the Ard-Righ as ‘Father of all the Fathers’**.” (Emphasis supplied.)

¹¹¹ Thomas Innes of Learney, “The Robes of the Minor baronage of Scotland,” (27th Oct 1945) *Proceedings of the Society of Antiquaries of Scotland*, Vol. 79, pp. 111 at 118, as follows:

“[E]mphasising Craig’s deduction, that **the early Scottish barons were chiefs of clans**, one observes at once that the ‘Wand’ of the Officers of a Barony was **the ‘white wand’ associated with Chiefship**, and indeed with the sceptre of an Ard-Righ [*Cqarnwath*, p. ;xxxvi; Bute, *Scottish Coronations*, p. 16; *Tartans of Clans and Families*, p. 30, n. 2], and we thus realise that at once the significance of the observations that **‘the minor baron was a chef de famille’ — and that ‘He reigned** — that is the word used in the documents of the period’ [F. F. Brentano, *Old Regime in France*, p. 4].” (Emphasis supplied.)

¹¹² Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 161, fn. 4, as follows:

“The official wand of a **baron** is also white (W. C. Dickinson, *Baron Court Book of Carnwath*, p. lxxxvi.), which corroborates **the connection of chiefship with the earliest baronial jurisdictions** (Craig, *Jus Feudale*, I, 8, 2).” (Emphasis supplied.)

¹¹³ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 171-172, as follows:

“The earldoms (*mormaerships*) were really high-chiefships, and the early barons were right surmised to have been *capitani tribuum*, i.e., clan chiefs.”

¹¹⁴ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970) p. 129, as follows:

“It was a fundamental principle of the ‘organised family’ — **whether in the clan or its formalised equivalent, the minor barony** — that the **chief or baron** who was actually and officially *chef de famille* (being representer of the common ancestor) was *in loco parentis*, and his wishes were in the ordinary course obeyed without question, as sacred commands emanating from the person who was himself the ‘sacred embodiment of the race’ to which is people belonged.” (Emphasis supplied.)

¹¹⁵ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 99: “... Later we find that the **dignity and title** was ‘annexed to’ and descended to the **inheritor** of the Moot Hill (for the Moot Hill of Scone *per*

se was regarded as the '**territory**' [i.e., the *caput*] identified with the High Chiefship/ *Ard- Righ*), or 'principal dwelling- place/ chief chymmes'; and within this hall and **chief hearth** [*caput*] (over which the arms hung or were carven). Later still we find that the '**subject**' could be the **arms** (and where it existed the **seal**), '**heritable property**' though **incorporeal**, and the **machinery** whereby **Representer / Chiefship** was operated."

¹¹⁶ William Croft Dickinson, *The Court Book of the Barony of Carnwath* (Edinburgh, 1937), pp. xxvi-xxvii, at fn 3 beginning at xxvi, as follows:

"But with the penetration of feudalism into the Celtic administration we find **barons who enjoyed jurisdictional rights without holding a barony** ; that is, **they had personal rights rather than territorial rights.**" (Emphasis supplied.)

¹¹⁷ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 129, as follows:

"... organisation of the feudo- family system in its **ascending pyramidal [fine] groups**. It was a fundamentally principle of the [heraldically] "organised family" – whether in the clan or its **formalised equivalent**, the **minor barony** – that the chief or **baron** who was actually and officially **chef de famille** (being **representer** of the **common ancestor**) was **in loco parentis** , ... emanating from the person who was himself the "**sacred embodiment of the race**" to which his people belonged. ..." (Emphasis supplied.)

¹¹⁸ Frank Adams, rev. by Sir Thomas Innes of Learney, *The Clans, Septs, and Regiments of the Scottish Highlands* (8th edition, 1970), p. 105, fn. 6, as follows:

"... As regards the custom of the chief alone wearing his had, the hat was the sign of **patriarchal jurisdiction**, hence the cap of velvet within the crown and coronets, and also the **baronial chapeau** of Heraldry. See Chapter XV. *infra*, and *proc. of the Soc. of Ant. Scot.*, Vol 79, pp. 111, 148 (Robes of the Minor baronage). **The hat is a marked symbol of Chiefship.**" (Emphasis supplied.)

¹¹⁹ The Clan Gregor Act, 15 Geo. III. cap. 29, constitutes legal recognition by Westminster of the Clan as a **legal entity** consisting of a community: Sir Thomas Innes of Learney, *The Clans, Septs and Regiments of the Scottish Highlands* (8th Ed., 1970), p. 188.

The legal definition of 'Clans' given in Scottish statutory law establishes that Clansmen are persons who accept the authority of the Chief of that Clan which may include persons based upon the 'place of their dwelling' within a Barony as well as upon genealogical descent of 'be pretence of blude':

Sir Thomas Innes of Learney, *The Clans, Septs and Regiments of the Scottish Highlands* (8th Ed., 1970), p. 144, as follows:

"Another statute [A. P. S., IV. 40] of five years later, for the enforcement of the foregoing one, further describes the clan organisation as comprehending 'Chiftainis and chieffis of all clannis and the principallis of the brancheis [elements of a social unit denoted by the heraldic differencing] of the saidis clannis duelland in the hielands or bordouris upon the landis of divers landis lordis and **depending upon the directionis of the saidis capitains, chieffis and chieftanis** be pretence of blude [this includes not merely actual affiliation, but descent claimed, viz. 'indeterminate cadets'.] **or place of thare duelling.**" (Emphasis supplied.)

¹²⁰ Sir Thomas Innes of Learney, *The Clans, Septs and Regiments of the Scottish Highlands* (8th Ed., 1970), p. 152, as follows:

"A clan, whether 'Highland' or **other**, can be defined in the law of Scotland, and in particular in the Law of Arms [heraldry] in Scotland, in these terms:

"A clan is a social group consisting of an aggregate of distinct erected families [It also includes the **sencliathe native men, and the tenants and servants forming the following** (*Loyall Dissuasive*, p. 56 n. 1; *Privy Council*, 3rd series, III, p. 75)] actually descended, or accepting themselves as descendants of a common ancestor, and **which group has been received by the Sovereign through his supreme Officer of Honour, the Lord Lyon as an honourable community**, with its 'family seal of arms' held by his chief or Representative [Erskine, *Principles of the Law of Scotland*, V, 8, 18], whereof all the members, on establishing right to, or receiving fresh grants of personal hereditary nobility, will be awarded arms as determined or indetermined cadets, both as may be of the chief family of the clan. If such community comprehends only families of one surname, i.e., that of the chief family, then the community is or may be termed a 'name'." (Emphasis supplied.)

¹²² Sir George Mackenzie, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 98, as follows:

"Though we confuse Devices and Motto's, yet they differ much; for a Device properly is a painted Metaphor, *metaphora in fatto*, as the Italians call them, wherein one thing is represented by another to which it resembles is called the body of the Device, and the Word whereby these are explained, the souls of the Device:

¹²³ Concerning the **authority** of a *Chef de Familee* and Laird of a Barony to make such selection see Lord Lyon Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970), p. 124, as follows:

"On the other hand, **in a matter of 'honour' it may be the recording of an Act of the chief, who in a matter of insignia** such as tartan is, of course, **the ultimate clan authority, as parental patriarch**, since the tartan is still quasi-allodial possession and not one held 'of and under' the *Ard-righ*, like the arms and seal ['chiefs have been getting "the proper tartan" of their clan embodied where possible in some **Lyon Register matriculation** and so given **statutory definition**']. We are here reminded of Gallic 'family laws, made by the *chefs de familles* for the preservation of their ... names and **distinguishing marks**'." (Emphasis supplied.)

"In 'matters of honour,' the settlement of family property, **its insignia**, etc., we find **the chief made the laws**, and that the baillie, in terms of an order from the chief 'ordains and enacts'. The function of the court or council is here to record, or become witnesses of, **what the patriarch has, in virtue of his patriarchal authority, been pleased to do**. The proceedings are somewhat analogous to the *lit de justice* of the old French monarchy." (Emphasis supplied.)

¹²⁴ Sir Thomas Innes of Learney, *The Clans, Septs & Regiments of the Scottish Highlands* (8th Ed, 1970), p. 525, as follows:

"To be a 'clan tartan' the sett must have **the sanction of the chief, who is the 'representative' of the clan and its founder.**" (Emphasis supplied.)

¹²⁵ Sir George Mackenzie of Rosenhaugh, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 97-98, as follows:

"Not unlike these Motto's are our Slughorns, which are called *Crie de guerre* in France. The use of them is either to serve as a **Watch-Word** to all of one Family, or are the **name of the place** at which a Family should meet in time of War: And thus the McKenzies have for their Slughorn, '*Tulloch Ard*', which is the place at which this Clan does meet; and the Name of Hume have for their Slughorn (or Slogan, as our Southern Shires term it) '*a Hume, a Hume*': For it is most ordinary to have either the Name of the Family who do meet, or the Name of the Place at which they do meet: And this Word or Cry was proclaimed everywhere, by a person who carried a Cross of wood burning, or a Fire Cross, as we call it, by which and by the cry of War or Slogan, all the Cadets of the Family were advertised to meet at the ordinary place; For of old, all of a Family did dwell in a Neighbour-hood." (Emphasis supplied.)

¹²⁶ Sir George Mackenzie, *Science of Heraldry*, Edinburgh, 1680, Chap. xxxi., p. 98, as follows:

"*Menestier* allows them [slogans, slughorns, *crie de guerre*] only to such as had power of carrying a Displayed Banner [such as a

feudal Baron], and says, that they were taken from the Name of the Princes, or Great Men who did command. 2. From the chief place where they were to rendezvous. 3. Some used the Name of the Family out of which they were descended. 4. The Name of the Saint they adored. 5. The Design they were about. 6. Some remarkable and happy Accident relating to the Family, and these Slughorns were not only used in publick Rendezvouses, but in private combats, upon which occasions the Heralds used to read aloud the Slughorn of the combatant, when he entered the lists, and the beholders used to cry out cheerfully when he prevailed.”

¹²⁷ Alexander Nesbitt, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. VI, “Of Mottos, Cries of War, and Devices”, p. 23, as follows:

“First, *these of resolution*, assumed by those who undertook the holy war, cried ‘*Dieu le veut*’, i.e., God willet it. *Cries of invocation*, such as that of the Lords of Montmorency, ‘*Dieu aide au premier Crestien*,’ i.e. God assist the first Christian, upon account the family was the first Christian one in France. Ashmole, on the *Institutions of the Garter*, says, ‘that the kings of England cried, ‘*Montjoy e notre dame St. George*’, having the images of the Virgin Mary and St. George on their standards’. This author likewise observes in the fore-mentioned book, page 189, ‘That Edward III of England, at a skirmish near Calais 1349, had for his cry, ‘*ha St. Edward*’, (meaning the Confessor) ‘*ha St. George*’ .” (Emphasis supplied.)

“Menestrier gives us *cries of exhortation* ; as that of the emperor’s, ‘*a dextre et a sinistre*’, to exhort the soldiers to fight valiantly on the right and left hand. For *cries of rallying*, he gives that of the Count of Flanders, ‘*au lion*’, for the soldiers to follow or rally to the standard, upon which was the lion of Flanders. And our author says, that ‘*montjoye St. Denis*’ was just another. and Barry, a French herald, observes, all the great men in France had for their cries, ‘*montjoye*’, who carried Flower-de-luces. And hence the word ‘*montjoye*’ is become the name of the principal Herald of France.” (Emphasis supplied.)

¹²⁸ Alexander Nisbet, *System of Heraldry*, Edinburgh, 1722, Vol. II, Part Fourth, Chap. VI, “Of Mottos, Cries of War, and Devices”, p. 23, as follows:

“Cries from the place of Rendezvousing were frequent with us; as that of the HOMES, ‘*A Home, A Home*’, intimating the meeting at Home Castle; the Mackenzies have for cry, ‘*Tullochdar*’; the Clan-Chattons, ‘*Craig-gow*’, or ‘*Craig-owie*’; and the Grants, ‘*Craig-ellachie*’ etc which were cries taken from the placers where those clans do rendezvous, and proclaimed through their countries by such as were appointed carrying a cross of wood burnt at the end, called a *fiery cross* ; upon which all the vassals and dependents met at the respective places of their clans; and the cry continued in their expeditions, and in action to distinguish their different troops.”

¹²⁹ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p 218, as follows:

“Two-thirds of the slogans of the clans are the names of their gathering places. Thus Mackenzie, ‘*Tulach-Ard*’; Grant, ‘*Craig-Elachie*’; MacGregor, ‘*Ard Choille*’, One of the Campbell slogans is ‘*Cruachan*’, Buchanan’s is ‘*Clare Innis*’, Macfarlane’s is ‘*Loch Sloy*’. In the lowlands ‘*Bellendean*’ was the war-cry of the Scotts of Buccleuch. [Tulloch-ard is a hill in Kintail; Craig-ellachie, a wooded rock near Aviemore, in Strathspey; Clair Innis, an island in Loch Lomond; and Bellendean, a place near the head of Borthwick Water, in Rosburghshire.] “

¹³⁰ J. H. Stevenson, *Heraldry in Scotland* (Glasgow, 1914), p 218, as follows:

“The last group we mentioned of these cries is composed of those which recall the clan to its pride. ‘*Remember the death of Alpine !*’ is the slogan of Mac Alpine and MacKinnon. The Munros’ ‘*Castle Foulis Ablaze !*’ may be a reminder of an injury to be avenged, a northern parallel to the burning of the ‘*Bonny Hoose o’ Airlie*’. ‘*Victory or Death !*’ is the cry of MacDoughal and MacNeill. The Mackay’s cry of ‘*The White Banner of Mackay !*’. The Gordons’ ‘*A Gordon !*’ and the Campbell cry ‘*The Clan of Diarmaid of the Boar !*’ referred to in the Duke of Argyll’s crest of a boar’s head, are all used as references to the chief or the clan itself. The slogan of the Camerons stands alone in referring to the enemy — ‘*Sons of the hounds come here and get flesh !*’”