

Questionnaire

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Heraldry and the Law: United States of America

Part 1. Overview of the historical development

1.1. – A timeline of important changes

For all practical purposes, there is no history of legal regulation of heraldry in the United States or the European colonies from which it was created. A theoretical argument could be made that the British colonies on the Atlantic seaboard were subject to the English law of arms but in practice its regulatory aspects were never enforced there. Thus, although settlers who used coats of arms generally did so consistent with English heraldic practice, the rules effectively had the status of customary norms rather than law in the strict sense. The situation was essentially the same in the areas of the present-day United States that were at various times under Dutch, Swedish, Spanish, French, Mexican, and Russian rule. Indeed, attempts by English and French heraldic officials in the 17th and 18th centuries to extend their regulatory jurisdiction to the two countries' North American colonies were rejected by the royal authorities in charge of administering the respective overseas empires.¹

Since Independence, neither the federal nor state governments have sought any involvement in the realm of non-governmental heraldry, nor has serious consideration been given to the occasional proposals to that end submitted by members of the public.²

1.2. – Heraldry as part of the law

Official heraldic and other federal, state, and local government symbols are matters of law as discussed below, but in almost all respects the use of personal heraldry is purely a matter of custom. Armorial bearings used in commerce can, of course, be registered as trademarks but they are then dealt with like any other trademark, not specifically as coats of arms.

There are occasional exceptions, such as (1) the enforcement by probate courts of the increasingly rare provisions requiring that a person adopt the name and/or arms of another as a condition of receiving property under a will or similar settlement; and (2) federal regulatory

¹ In the English case by Sir Edward Walker, Garter King of Arms, in the early 1660s and in the French by Antoine-Marie d'Hozier de Sérigny, Juge d'Armes de France, in 1738. See Walter H. Godfrey and Anthony Wagner, *An Account of the College of Arms in Queen Victoria Street* (London, 1963), 52; online at British History Online, <https://www.british-history.ac.uk/survey-london/bk16/pp38-74>, and Auguste Vachon, "Projet d'un juge d'armes pour la Nouvelle-France / Project of a Judge of Arms of France for New France," *Heraldic Science Héraldique*, <http://www.heraldicscienceheraldique.com/projet-drsquoun-juge-drsquoarmes-de-france-pour-la-nouvelle-france--project-of-a-judge-of-arms-of-france-for-new-france.html>.

² The most fully elaborated of these (both transcribed on the American Heraldry Society website) were by William Barton, submitted to the then-future President George Washington in August-September 1788 (<https://www.americanheraldry.org/heraldry-in-the-usa/key-documents/the-washington-barton-letters-1788>) and William H. Whitmore, submitted to Congress in 1868 (<https://www.americanheraldry.org/heraldry-in-the-usa/key-documents/whitmore-proposes-heraldic-regulation-1868/>).

restrictions on the misleading display of armorial bearings on certain alcoholic beverage labels and advertising material.

Part 2. International law on armorial bearings, flags, and other state emblems

2.1. – Paris Convention for the Protection of Industrial Property of 1883, art. 6^{ter}

The United States is one of the original parties to the Paris Convention. It has registered its national coat of arms and seal, the seals of the executive departments and states, and the seals, logos, and similar devices of many (although not all) federal agencies. Some of these are armorial in character. No flags have been registered.

2.2. – Legal protection of the coats of arms of other states and of international organizations

The Trademark Act of 1946 (15 USC § 1052 (b))³ provides for refusal of registration to any proposed trademark that “consists of or comprises the flag or coat of arms or other insignia of ... any foreign nation, or any simulation thereof.” The U.S. Patent and Trademark Office’s *Trademark Manual of Examining Procedure*, section 1205.02, provides guidance to its examining officers for applying the provisions of article 6^{ter}.

Each state of the United States operates its own trademark system in parallel with the federal system. The relevant state laws and regulations mirror the federal Trademark Act in prohibiting the registration of trademarks that infringe on foreign national flags, coats of arms, and other insignia.

Part 3. National heraldry

3.1. – National coat of arms – definition

The coat of arms of the United States is defined in a resolution of Congress of 20 June 1782, adopting the design of a seal for the United States in Congress Assembled (the formal designation of the confederation legislature at that time). The arms are blazoned in heraldic terms. Following the transition to the present Constitution, an act of Congress of 15 September 1789 declared “the seal heretofore used by the United States in Congress assembled” to be “the seal of the United States.” These two legislative actions together form the legal basis for the national coat of arms.⁴

3.2. – National flag – definition

The current statutory basis for the design of the United States flag is an act of Congress of 30 July 1947 (4 USC §§ 1-2). This, however, was merely an administrative codification of previous law and did not make any substantive change to the Flag Act of 4 April 1818. The latter stabilized the process for updating the design of the flag as originally adopted by resolution of the Continental Congress of 14 June 1777 to reflect the admission of new states. All these statutory enactments provide only a verbal description of the flag.

³ U.S. federal statutes are identified by public law or joint resolution number, citation to the chronologically organized *Statutes at Large*, and (for laws of permanent effect) by title and chapter or section in the United States Code, which is organized by subject matter. Where possible, references in this report will be to the United States Code in the format, e.g. “4 USC § 5,” meaning Title 4, United States Code, section 5.

⁴ 1 *Statutes at Large* [hereafter “Stat.”] 68; Title 5 USC § 301.

Since 1916,⁵ details concerning such matters as the arrangement of the stars, sizes and proportions of flags, and the relative proportions of the component elements have been set forth following the admission of each new state by an executive order of the President. These orders include detailed technical drawings as well as verbal descriptions of the flag. Although legally binding only on departments and agencies under the President's control, the executive orders are also followed *de facto* (except with respect to flag sizes and proportions) by the other branches of the federal government and by flag manufacturers in general. The current directive is Executive Order 10834 of 21 August 1959.

3.3. – *Legal protection?*

It is a criminal offense punishable by a fine and/or imprisonment up to six months for anyone to “knowingly display” a representation or facsimile of the great seal of the United States “for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States” (18 USC § 713).⁶ This provision also applies to other specified seals as will be noted in subsequent sections of this survey.

The Trademark Act (mentioned above in relation to the Paris Convention) authorizes the Patent and Trademark Office to refuse registration to any mark that includes the U.S. arms, seal, or flag. In addition, there is a separate federal regulatory prohibition, enforced by the Bureau of Alcohol, Tobacco, and Firearms, against depicting any “flag, seal, coat of arms, crest or other insignia” on wine labels and advertising materials if doing so is “likely to mislead the consumer to believe that the product has been endorsed, made, used by, or produced for, or under the supervision of” the owner of the flag, seal, coat of arms, etc., in question. This applies equally to national, state, foreign, and personal seals, coats of arms, and other emblems.⁷

Otherwise, there are no restrictions on the production or display of emblazonments of the U.S. coat of arms except in the forms depicted on the great seal and certain other seals such as those of the President and Vice President.

There are no restrictions on who may display the national flag. The Flag Code enacted by Congress (4 USC §§ 5-9) lays out guidelines for how the flag should be displayed but provides no penalties for disregarding them.

The Flag Protection Act of 1968 as amended (18 USC §§ 700-713) made it a criminal offense to mutilate, deface, or otherwise desecrate the U.S. flag. In 1990, however, the Supreme Court invalidated this law as an unconstitutional infringement of freedom of speech.⁸

Within the District of Columbia, it is a federal criminal offense punishable by a fine of up to \$100 and/or up to 30 days in jail to use the U.S. flag as advertising material, whether by defacing a flag with words, marks, drawings, etc., using representations of the flag on merchandise packaging, or placing a representation of the flag to call attention to items offered for sale (4 USC § 3). In practice, this law seems not to be enforced.

⁵ Woodrow Wilson, Executive Order 2390, 29 May 1916.

⁶ The same section also applies to the Presidential seal and others mentioned below.

⁷ 27 CFR §§ 4.39 (g) and 4.64.

⁸ United States v. Eichmann, 496 US 310 (1990).

Part 4. Heraldry of the head of state and other central office holders

4.1. – The head of state

The U.S. Presidential coat of arms consists of a distinctive emblazonment of the national arms following a fixed pattern, with the addition of a ring of stars equal to the number of states encircling the achievement. It is the central device of the Presidential seal and flag. The basic pattern (with 48 stars) was established by Executive Order 9646 of 25 October 1945, which also defined the design of the flag. The present version with 50 stars in the ring was introduced by Executive Order 10860 of 5 February 1960.

As in the case of the great seal, it is a criminal offense punishable by a fine and/or imprisonment up to six months for anyone to “knowingly display” a representation or facsimile of the Presidential seal “for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States” (18 USC § 713 (a)).

Executive Order 11649 (16 February 1972) as amended by Executive Order 11916 (28 May 1976)⁹ provides more detailed guidance on permitted and prohibited use, manufacture, reproduction, etc., of the Presidential seal and arms other than by the President himself. The order gives blanket permission for the publication of illustrations of the seal and arms in books and periodicals of various types and displays in libraries, museums, and other educational facilities, in both cases “incident to a description or history of seals, coats of arms, heraldry, or the Presidency.” It also permits their depiction in *bona fide* news reports, both in print and other visual media, as well as their display on monuments to former Presidents and as architectural embellishments at the museums and libraries housing their papers. The White House Counsel (chief legal adviser) may authorize other unofficial uses that can be shown to serve “exceptional historical, educational, or newsworthy purposes.”

4.2. – The prime minister and other central office holders

The designs of the seal, coat of arms, and flag of the Vice President have been prescribed by executive order since 1948. The present pattern was established by Executive Order 11884 of 7 October 1975. The laws, executive orders, and procedures restricting unofficial use of the Presidential seal and arms also apply to the Vice Presidential seal and arms.

Congress and its two constituent houses (the Senate and House of Representatives) each possess an official seal, the design of which is determined by the bodies themselves. The laws restricting unofficial use of the Presidential seal and arms also apply to these seals. Designated officers of Congress and of each house are empowered to authorize production of facsimiles of the seals of their respective bodies for unofficial use.

The designs of seals and arms (if any) of the various executive departments and independent agencies are determined by their respective heads in accordance with the acts of Congress establishing them. Presidential approval of the design is necessary only if required by the relevant statute. Departmental and agency flags and the personal flags of their senior officials are adopted and approved according to each department or agency’s own regulations.

⁹ These orders were published in the *Federal Register* (41 FR 22031) and are codified in the *Code of Federal Regulations* (3 CFR, 1976 Comp., p. 119).

It is a criminal offense punishable by a fine or up to five years in prison to “falsely make, forge, counterfeit, mutilate or alter” any departmental or agency seal.¹⁰ In addition, some agencies, including the Marine Corps,¹¹ Coast Guard,¹² Central Intelligence Agency,¹³ and Social Security Administration¹⁴ have specific additional statutory protection for their marks of identity. All these laws are aimed at preventing fraudulent use of the seals and various emblems. In practice, the purely decorative display of facsimiles of the seals and related emblems of most departments and agencies is generally not prosecuted unless a false impression of government sponsorship or involvement is implied.

Part 5. Heraldry and seals of courts and state authorities

(The following addresses only courts of law. Symbols of other federal and state-level civil authorities are covered in parts 4 and 7 respectively.)

5.1. – Adoption, grant or registration?

In the federal judicial system, each court adopts the design of its own seal by its own judicial order. Most federal courts use the arms of the United States as the principal device on their seals.

At the state level, procedures for adopting court seals vary. Some states have laws prescribing the design of the seals of certain courts but in most cases the design is up to each court itself.

5.2. – Heraldic competence involved?

Heraldic expertise is not required—and is rarely involved—in the adoption of court seals at either the federal or state level. As noted above, most federal courts use the arms of the United States as the principal device on the shield; in recent decades this is usually a replica of the emblazonment on the great seal. In some states it is normal practice for court seals to replicate the design of the state seal, which may or may not be armorial in character.

5.3. – Legal protection?

Forging or counterfeiting the seal of any U.S. federal court for the purpose of falsely authenticating a document or for other fraudulent purposes is a criminal offense punishable by a fine and/or up to five years imprisonment.¹⁵ All the states have equivalent laws concerning counterfeiting the seals of their own courts.

Part 6. Heraldry and seals of military authorities

(The following addresses only subordinate military formations and units below the departmental level. Symbols of the cabinet departments [Department of Defense and Department of Homeland Security] and military departments [Departments of the Army, Navy, and Air Force] to which the forces are subordinate are included in Part 4.)

¹⁰ 18 USC § 506.

¹¹ 10 USC § 7881.

¹² 14 USC § 639.

¹³ 50 USC § 3513.

¹⁴ 42 USC § 1320b-10.

¹⁵ 18 USC § 505.

6.1. – Adoption, grant or registration?

Army. Heraldry in the U.S. Army is centrally managed by the Institute of Heraldry (TIOH), an agency directly subordinate to the Army Staff. TIOH is responsible for the design and approval of organizational arms and insignia in consultation with the unit concerned.¹⁶

Navy. Organizational heraldry in the Navy is decentralized, with different rules and procedures applying to aircraft carriers, surface ships, submarines, aviation, and other units. Ships' emblems (officially referred to as "seals" although they are not actually used for sealing documents) are developed and adopted during the final phases of construction by the prospective commanding officer and crew under the oversight of the relevant Naval Sea Systems Command program executive office (PEO). The organizational insignia of aviation commands and units are regulated by Office of the Chief of Naval Operations Instruction 5030.4G, administered by the Naval History and Heritage Command, and must be approved by the Chief of Naval Operations.

Marine Corps. The Marine Corps has not had official formation or unit emblems for its ground components since shortly after World War II. Units are permitted to display historical or newly developed emblems on items such as signboards, mementos, and the like, but these have no official standing; they do not appear on unit standards and may not be worn on the uniform. Organizational insignia of Marine Corps aviation commands and units are covered by the Navy directives.

Air Force and Space Force. The use of heraldry in the Air Force is governed by Air Force Instruction 84-105, "Organization Lineage, Honors, and Emblems." Organizational emblems must be approved by the Air Force Historical Research Agency (AFHRA). The newly established U.S. Space Force thus far appears to be following existing Air Force policies on heraldry.

Coast Guard. Commanding officers and officers in charge of Coast Guard units are responsible for approving unit emblems in accordance with rules laid down in Commandant Instruction M5200.14A.

6.2. – Heraldic competence involved?

The U.S. Army instituted a formal system of unit heraldry in 1919 under the direction of an officer with considerable heraldic knowledge. This capability was institutionalized and now resides in TIOH's Heraldic Design Division, which designs all Army unit emblems, including coats of arms (for permanently established regiments, separate battalions, and equivalent units¹⁷) as well as non-armorial badges and similar emblems for other units.

¹⁶ Army Regulation 840-10, "Flags, Guidons, Streamers, Tabards, and Automobile and Aircraft Plates" (17 July 2020), para. 5-60.

¹⁷ I.e., those with a "table of organization and equipment," or "TOE."

TIOH is also authorized by law¹⁸ and its charter from the Secretary of the Army¹⁹ to design heraldic emblems for the other military services on request on a reimbursable basis.²⁰ The extent to which this capability is relied upon varies from one service to another.

In the Navy, as indicated above, the situation varies further depending on the type of unit concerned. PEO Ships (which manages acquisition of surface ships other than aircraft carriers) requires that prospective commanding officers consult with TIOH on new ships' "seals," which almost without exception take the form of a coat of arms with shield and crest. However, while TIOH provides advice and recommendations and any necessary drawings, it does not have final authority over the design, which rests with the prospective commanding officer. The PEOs for aircraft carriers and submarines impose no such requirement, although prospective commanding officers are free to consult TIOH if they wish. There is a great deal of latitude in the design of carrier and submarine "seals," which do not usually take an armorial form. Naval aviation organizational insignia are generally designed locally in accordance with the instruction mentioned above.

TIOH supports the Marine Corps with the design of organizational seals, coats of arms, and insignia designs when requested.

Commands and units within the Department of the Air Force (both U.S. Air Force and U.S. Space Force) usually rely on TIOH advice in the design of organizational emblems, although the AFHRA retains the final approval authority. The AFHRA's "Guide to Air Force Heraldry" does provide the option for new units to design their own emblems, but in practice this is the exception. Air Force organizations at the group level and above bear coats of arms that are required to follow basic heraldic norms. Those at the squadron and equivalent level have emblems placed on a circular field, usually not in a traditional heraldic style.

The unit emblems of Coast Guard cutters over 154 feet (47 meters) in length are in the form of coats of arms (although officially termed "crests") and are designed by TIOH in consultation with the commanding officer. Smaller vessels may design their own emblems, which generally are not armorial.

6.3. – Legal protection?

In addition to being protected against counterfeiting by the general laws concerning seals, military emblems including departmental seals, command and unit insignia, coats of arms, badges, and the like, are considered to be trademarks or service-marks within the meaning of the Trademark Act (discussed in various parts above). Title 10, U.S. Code, section 2260, provides for the control of these marks by the Secretaries of Defense (for the Army, Navy, Air Force, Marine Corps, and Space Force) and Homeland Security (for the Coast Guard). Their use in commerce without approval by the relevant service's license and trademark offices is a violation of law.

All these provisions, however, are focused on preventing the use of the emblems for fraudulent or misleading purposes and the unauthorized manufacture of physical insignia, badges, and the like. It is not clear that any U.S. laws preclude what heraldists would

¹⁸ 10 USC §4594 (enacted as PL 85-263, 2 September 1957).

¹⁹ Army General Order No. 29, 10 August 1960.

²⁰ The same authorities also provide for TIOH to "advise other departments and agencies of the United States on matters of heraldry."

normally consider armorial usurpation, i. e. the appropriation of arms with the same blazon as those of a military organization for use by someone else.

Part 7. Regional (State) and municipal heraldry

7.1. - Adoption, grant or registration?

State and local emblems in the United States, whether heraldic, quasi-heraldic, or non-heraldic, are adopted unilaterally by the entity concerned, usually by its elected legislative body but sometimes by popular referendum. About fifteen to twenty American counties and municipalities, as well as the Commonwealth (state) of Virginia, have obtained “devisals” from the English College of Arms, but the legal standing of these arms depends on action by the governments concerned to adopt them.

7.2. – Heraldic competence involved?

No specialized heraldic advice is required when states, municipalities, or other communities develop new symbols. Such advice from either American or foreign experts is occasionally sought, however. A particularly notable instance where heraldic expertise was involved is that of Rhode Island, where arms for all the state’s towns were systematically designed in connection with the 1936 tercentenary of colonial settlement. Almost all the designs were approved and adopted by the towns concerned and the vast majority are still in use. Such a systematic approach is, however, quite unusual. A present-day example is Kennett Township, Pennsylvania, which sought advice from members of the American Heraldry Society in the selection of a coat of arms to be used on a new seal.

7.3. – Legal protection?

All the states have laws prohibiting various fraudulent uses of state and local government seals, arms, and other symbols, such as counterfeiting a seal for the purposes of forging a document or displaying state or local insignia to impersonate a police officer or other official. In addition, to the extent that such seals, arms, etc., are registered as service-marks or trademarks they are protected by the relevant federal and state laws and regulations.

Part 8. Ecclesiastical and academic heraldry

8.1. – Adoption, grant or registration?

From a legal point of view, ecclesiastical and academic institutions are free to adopt armorial and related devices—or not—at their discretion. Among ecclesiastical bodies, only the Roman Catholic and Episcopal (Anglican) churches (including recent Anglican splinter groups) have strong heraldic traditions. Academic institutions generally have seals but these need not be of armorial form. The use of arms by universities, colleges, and schools varies based on numerous factors including shifting fashions.

There are no granting or registration authorities, except to the extent that an institution may choose to register or record its arms with one of the private heraldic organizations or to register them as a trade- or service-mark under state or federal law.

8.2. – Heraldic competence involved?

There is no requirement for the involvement of heraldic experts in the adoption of ecclesiastical or academic arms, although many such arms have been created with the

participation of respected heraldic experts. In addition, a few such bodies have obtained devisals or grants from foreign armorial authorities.

The General Convention of the Episcopal Church (the principal Anglican body in the United States) appointed a committee on heraldry in 1982, which formulated a set of recommendations for heraldic practice within the church. These guidelines are not mandatory, however, and no provisions for enforcement or oversight were ever established.²¹

8.3. – Legal protection?

Arms of ecclesiastical and academic institutions are legally protected only to the extent that they are registered as trade- or service-marks.

Part 9. Family and personal heraldry

9.1. - Adoption, grant or registration?

Americans who use personal arms acquire them through a variety of methods including inheritance, unilateral assumption, grant (including registration, certification, etc.) by foreign authorities, the use of commercial heraldic design firms, and misappropriation of so-called “arms of the name.”

There are no official bodies to oversee, create, regulate, or document personal coats of arms as such. Many states have laws permitting the registration of the marks of non-profit groups such as charities, fraternal organizations, hereditary societies, and the like separate from trademarks used in actual commerce. A handful of heraldists have taken advantage of these provisions to register coats of arms assumed in the name of a father or grandfather as those of associations of that person’s descendants. The utility of this practice is questionable, however, particularly considering that an annual fee is often required to keep the registration current.

Several private unofficial registries exist that enable persons and corporate bodies to put their arms (of whatever origin) on record. The oldest of these is the Committee on Heraldry of the New England Historic Genealogical Society which has recorded assumed personal and corporate arms since the 1930s.²² The most widely used is probably that maintained by the American College of Heraldry, founded in 1972. The Augustan Society, an organization focused primarily on matters of chivalry and related topics, also maintains a registry of arms. Various similar registries have come and gone over the last 150 years or so. As far as is known, no judicial case has ever been heard as to whether any legal value attaches to such private registrations; it is likely that there is none.

9.2. – Legal protection?

Except for two categories, no statutory provision exists to protect personal coats of arms against infringement. Proposals for legal regulation and protection of private arms have been

²¹ Rev. Canon J. Robert Wright, “Heraldry of the American Episcopal Church” (2005), <<https://silo.tips/download/heraldry-of-the-american-episcopal-church>>

²² The Committee itself dates to 1864. In addition to recording assumed arms, the Committee has, since 1919, maintained a registry of arms of immigrants to the present-day United States that can be shown to have been rightfully borne in the country of origin. This registry, serially published as the Committee’s *Roll of Arms*, is maintained separately from the records of assumed arms.

put forward from time to time (the most notable being those mentioned in section 1.1 of this questionnaire), but they have never gained significant political traction.

The first exception is arms that are registered as trademarks, which enjoy the same protection as any other trademark. In heraldic terms, this is quite limited, as it applies only to use of the design in commerce and, arguably, only to the specific rendering of the symbol registered. Moreover, in American law a trademark is part of the intellectual property of the business it represents; registration of personal arms as a trademark therefore presents a risk that the right to use them will pass to the new owners if the business is sold in the future.

The second exception, discussed in section 3.3, above, is that federal regulations on the marketing of wine forbid any display of armorial bearings, flags, etc., on labels and advertising material that would create a misleading impression of a connection between the producer of the product and the owner of the arms.²³

It is possible that personal arms might be protectable under some circumstances on the theory that armorial usurpation is a form of identity theft. One case is known to exist in which this argument prevailed in a court of law²⁴ but it is an isolated example. It appears unlikely that mere armorial usurpation without proof of financial or other clear, tangible harm to the rightful bearer would be actionable in the United States.

As grants of arms by foreign heraldic authorities have no recognized status in U.S. law, and no American armorial granting authority has ever been established, there is no substantive difference between granted, inherited, and unilaterally adopted coats of arms.

9.3. – *Inheritance*

No legal rules exist on inheritance of arms. In general, American armigers have traditionally followed the predominant European principle that arms descend through all legitimate male lines. Differencing for cadency was widely disregarded as early as the colonial period and is generally in disuse except among heraldic enthusiasts who seek to emulate foreign (mainly British) practices. Attention to such practices is more widespread among those who have obtained modern grants of arms from English, Irish, or (especially) Scottish heraldic authorities.

Given that most heraldic texts in English were written with British practices in mind, British customs on marshalling of marital arms have been the most prevalent in the United States. However, armigers of non-British descent sometimes choose to follow the customs of their ancestral countries if they are aware of those customs.

Developments in the status of women, adoption of children, status of children born out of wedlock, family structures, same-sex marriage, and related trends have led to debate among American heraldists on how these changes should be reflected in armorial practices. Both the American Heraldry Society (in its “Guidelines for Heraldic Practice” adopted in 2007)²⁵ and

²³ 27 CFR §4.39(g)

²⁴ *Orsini v. Eastern Wine Corp.*, 1190 Misc. 235, 73 N.Y.S.2d 426 (1947). The court held that use of the plaintiff’s surname and coat of arms on a wine label falsely implied his involvement in production of the wine and thus was an unlawful misappropriation of his identity for commercial purposes.

²⁵ On the AHS website, <<https://www.americanheraldry.org/education-resources/guidelines-for-heraldic-practice/>>.

the American College of Heraldry (in its recommendations to its registrants)²⁶ take the view that inheritance of arms should be consistent with evolving laws on inheritance of property. Of course, as there is no legal regulation of heraldry in the United States, observance of these or any other recommendations is completely voluntary.

Part 10. General assessment of the status of heraldry in a legal context

(As these questions, with the exception of 10.3, involve normative judgments about issues on which there is no clear consensus among American heraldists, let alone across American society in general, we are offering separate answers by representatives of the three principal heraldic organizations in the United States, attached as appendices. These are the personal views of the writers and not necessarily those of the organizations themselves.)

10.3. – Recent disputes or proposals

There have been no known legal disputes over heraldry in the United States in recent memory. Proposals for heraldic regulation or official registration are regularly floated in heraldic discussion groups but they have never garnered serious support or even attention outside these narrow circles.

Part 11. Bibliography

A. ACTS AND RESOLUTIONS

Continental Congress. Resolution of 14 June 1777. *Journals of the Continental Congress*, 8. Washington: Government Printing Office, 1907.

_____. Resolution of 20 June 1782. *Journals of the Continental Congress*, 22. Washington: Government Printing Office, 1914.

U. S. Congress. An Act to provide for the safe keeping of the acts, records, and seal of the United States. 5 U. S. Code § 301 (1789).

_____. An Act to establish the flag of the United States. 3 Statutes at Large 415 (1818).

_____. Emblems, insignia, and names. 18 U. S. Code §§ 700, 712-713 (1959-1968).

_____. Flag and seal, 4 U. S. Code chs. 1-2 (1947).

_____. Furnishing of heraldic services. 10 U. S. Code § 4294 (1957).

_____. Licensing of intellectual property; retention of fees. 10 U. S. Code § 2260 (2004).

_____. Misuse of [Central Intelligence] Agency name, initials, or seal. 50 U. S. Code § 3513 (1981)

_____. Penalty for unauthorized use of words “Coast Guard.” 14 U. S. Code § 639 (2012).

_____. Prohibitions relating to references to Social Security or Medicare. 42 U. S. Code § 1320b-10 (1988)

_____. Seals of courts; signatures of judges or court officers. 18 U. S. Code § 505 (1948).

_____. Seals of departments or agencies. 18 U. S. Code, § 506 (1948).

²⁶ “Types of Registrations,” American College of Heraldry, <<http://www.americancollegeofheraldry.org/achregister.html>>.

_____. Trademark Act of 1946 as amended. 15 U. S. Code (1946).

_____. Use of likenesses of the great seal of the United States, the seals of the President and Vice President, the seal of the United States Senate, the seal of the United States House of Representatives, and the seal of the United States Congress. 18 U. S. Code § 713.

B. FEDERAL ORDERS AND REGULATIONS

U.S. President. Establishing exact proportions for all flags and union jacks. Executive Order 2390, 29 May 1916.

_____. Executive Order 9646, 25 October 1945. Coat of arms, seal, and flag of the President of the United States. 10 Federal Register 13391.

_____. Executive Order 10834, 21 August 1959. Proportions and sizes of flags and position of stars. 3 Code of Federal Regulations 1959-1963 Comp. 367.

_____. Executive Order 10860, 5 February 1960. Coat of arms, seal, and flag of the President of the United States. 3 *Code of Federal Regulations* 1959-1963 Comp. 393.

_____. Executive Order 11649, 16 February 1972. Regulations governing the seals of the President and the Vice President of the United States. 3 Code of Federal Regulations 1971-1975 Comp. 675.

_____. Executive Order 11884, 7 October 1975. Prescribing the official coat of arms, seal, and flag of the Vice President of the United States. 3 Code of Federal Regulations 1971-1975 Comp. 1034.

_____. Executive Order 11916, 28 May 1976. Amending Executive Order No. 11649, Regulations governing the seals of the President and the Vice President of the United States. 3 Code of Federal Regulations 1976 Comp. 119.

U. S. Department of Defense. Department of the Air Force. Air Force Instruction 84-105, Organizational Lineage, Honors, and Emblems.

_____. Department of the Army. Army Regulation 672-8, Manufacture, Sale, Wear, and Quality Control of Heraldic Items. April 1996.

_____. _____. Army Regulation 840-10, Flags, Guidons, Streamers, Tabards, and Automobile and Aircraft Plates. 17 July 2020.

_____. Department of the Navy. OPNAV [Office of the Chief of Naval Operations] Instruction 5030.4G, Naval Aviation Squadron Lineage and Naval Aviation Command Insignia. 11 April 2012.

U. S. Department of Commerce. Patent and Trademark Office. Trademark Manual of Examining Procedure. July 2022. Online < <https://tmep.uspto.gov/RDMS/TMEP/current> >.

U. S. Department of Homeland Security. U. S. Coast Guard. Commandant Instruction M5200.14A, U. S. Coast Guard Heraldry. April 2011.

U. S. Department of Justice. Bureau of Alcohol, Tobacco, Firearms, and Explosives. Labeling Requirements for Wine – Prohibited Practices. 27 Code of Federal Regulations §4.39.

C. COURT CASES

U.S. Supreme Court. *United States v. Eichmann*. 496 U.S. 310 (1980).

New York State. Supreme Court, County of New York. *Orsini v. Eastern Wine Corp.* 190 Misc. 235 (1947); 273 App. Div. 996 (1948).

D. OTHER SOURCES

Barton, William. “A Concise Account of the Origin and Use of Coat Armour; with some Observations on the Beneficial Purposes by which Heraldry may Be Applied in the United

States of America” (1788). Ms. George Washington Library, Boston Athenaeum. Ed. John P. DuLong, *The Armiger’s News* 28.2 (2006): 7-11.

Whitmore, William Henry. *Reasons for the Regulation of the Use of Coat-Armor in the United States*. Boston, 1868.

Appendix 1

Joseph McMillan

Corresponding Secretary, Committee on Heraldry
New England Historic Genealogical Society

10.1. – Institutions and knowledge

With the exception of the Institute of Heraldry and the offices in the other military services with which it works (the only governmental institutions that deal with heraldry professionally), knowledge about heraldry among federal, state, and local authorities is spotty at best. The idea that this ignorance is problematic, however, is confined largely to the small community of heraldic and vexillological enthusiasts. As there is no general societal expectation that states, counties, and cities or governmental agencies at any level must have traditional coats of arms, it is not unreasonable that officials would know little about heraldry and pay little or no attention to it.

As previously mentioned, TIOH already has full authority to provide advice and assistance to any component of the federal government that chooses to avail itself of the Institute's services. The only obvious area of improvement that one might suggest in this area would be to broaden access to TIOH's services to state and local government agencies on the same basis.

The only other heraldic institutions in the United States are private organizations such as those mentioned in earlier sections of this questionnaire.

10.2. – Legal uncertainties

Official (federal, state, local) heraldry has adequate protection against the sorts of misuse with which American governments are concerned, primarily the use of official seals and other emblems for misleading or fraudulent purposes. Beyond that, public authorities generally view uncertainties about official heraldry with indifference.

There are several legal uncertainties relating to personal heraldry in the United States, some of which have been touched upon above. Those frequently discussed among heraldists include:

- Would an American court in the 21st century enforce a name-and-arms clause in a will?
- Is there a plausible means of suing for armorial usurpation?
- Can unofficial registrations of assumed arms or other forms of public notice of their adoption serve as proof of first use and thus create an enforceable exclusive right to them?
- Could heraldic "arms-of-the-name" vendors, also known as "bucket shops," be prosecuted under consumer protection laws?

None of these are likely to be resolved. Given the tacit decision at the time the U.S. Constitution was ratified in 1788 for the government not to get directly involved in personal

heraldry,²⁷ it is almost inconceivable that either Congress or any state legislature would enact a statute on such matters. Nor could this be done by presidential or gubernatorial fiat absent statutory authorization; there is no concept equivalent to royal prerogative in American constitutional law.

Clauses in wills requiring a devisee to adopt the testator's surname are very rare, although they do appear from time to time and are usually enforced by the courts. However, it is not clear that any will or other document requiring a change of *arms* has been submitted for probate since the late nineteenth century.²⁸ Even in the cases where such clauses were enforced in the eighteenth and nineteenth centuries, no official attention was given to whether the arms in question were rightfully borne or indeed what they were.²⁹

As for the issue of armorial usurpation, it is worth observing at the outset that the problem itself is largely theoretical. Usurpation of newly created arms, whether granted by a foreign authority or assumed, is quite uncommon, all the more so for arms that have not been widely publicized in easily accessible form (e.g., online). The arms that are usurped are usually historic arms found in heraldic reference books. Even if a court were to accept a claim by someone who could prove legitimate entitlement, the plaintiff would still have to prove that he or she suffered specific material harm as a result of the usurpation.

10.4. – *Strengths and weaknesses*

Assessing the overall status of heraldry in the United States depends on one's assumptions and base of comparison. If one takes for granted that every society ought to have a strong and flourishing system of heraldry at all levels, from sovereign authorities all the way down to private individuals, then clearly American heraldry does not measure up very well. But this is not only an unrealistic but an inappropriate basis of comparison. The place heraldry or any other social custom enjoys in a particular country is a function of its distinctive polity, social structure, and history.

Even during the colonial period, while possessing a coat of arms had a certain cachet, it was not a necessary or even sufficient condition for a person to be accepted among the upper strata of society. It is certainly not the case today that membership in any segment of American society requires the possession of a coat of arms as a prerequisite, nor is one expected to acquire a coat of arms upon attaining a particular level of prominence. Unlike some European countries, it has never been the practice in the present-day United States to create public displays of the arms of all the members of corporate bodies such as city councils, professional

²⁷ Joseph McMillan, "American Independence and the Privatisation of Heraldry, 1775-1800," in Steven Thiry and Luc Duerloo, eds, *Heraldic Hierarchies: Identity, Status and State Intervention in Early Modern Heraldry* (Louvain, 2021), 245-46.

²⁸ An entry in John Matthews, ed., *Matthews American Armoury and Blue Book* (1907; rpt. New York, 1962), p. 221, states that Andrew H. Mickle of Berkeley Springs, West Virginia, had "by judicial decree assumed the name and arms of Saltonstall." This was presumably required by the will of his great-uncle Henry Saltonstall (d. 1880), but the judicial record and indeed the court in which the will was probated have not yet been located. At about the same time, a Virginia chancery court was dealing with a name and arms clause in the will of George Washington Parke Custis, but it ultimately did not have to be enforced as all the other potential heirs renounced their rights in favor of his eldest grandson.

²⁹ Joseph McMillan, "The Maryland Name and Arms Acts: Heraldic Law in the United States," *The Coat of Arms*, 3d ser, 8 (2012) 91-116.

organizations, church vestries, and the like, or of all the successive holders of various public and private offices.

Of course, a certain perception of heraldry as inherently snobbish continues to survive, thanks in part to the emphasis placed on arms as the exclusive province of the “gentleman” in traditional English-language heraldry textbooks. The most important factor, however, is that in the United States the bearing of heraldic arms has always been viewed as a personal choice, not a social one. American society as a whole—and therefore the American polity as a whole—has no stake in personal heraldry, good or bad, and therefore no compelling reason to meddle with its use in any way.

In conclusion, what may appear to outsiders as a state of heraldic chaos crying out to be put in order is actually a better reflection of American norms and attitudes—about heraldry as well as many other things—than the sort of tightly regulated regime some heraldists yearn for. Americans have always been responsible for their own individual heraldic choices, and it is a moral certainty that they will remain so.

Appendix 2

David Robert Wooten

Executive Director, American College of Heraldry

Part 10. General assessment of the status of heraldry in a legal context

10.1. – Institutions and knowledge

There is, and always has been, a dearth of heraldic knowledge/expertise within state, regional, or municipal authorities in this country, as plainly evidenced by the egregious violations of simple heraldic “rules” in design, as well as the “overloading” of such examples with “everything but the kitchen sink.” As I’m sure all of us have admonished potential armigers/registrants within our own organizations, one need not tell one’s entire life story within an escutcheon, despite the fact that a great percentage of “neophyte-armiger/heraldists” do precisely this (fortunately, they can be talked out of such extremes with a bit of education on sound heraldic practice). However, it is quite clear, especially throughout at least the first 100 to 150 years of the founding of the United States, designs of all things heraldic were either placed in the hands of a local “historian,” or, worse yet, became design-by-committee projects, with the inevitable result of “too many cooks” inputting their opinions resulting in a hodgepodge of disparate design elements.

The question of “institutions that deal with heraldry professionally” calls for clarification, especially as the majority of our groups are not-for-profit entities without paid staff. Each of our organizations has leadership with self-evident heraldic knowledge upon which to draw, and, in my opinion, we all have reasonably high profiles to those seeking out “proper” heraldic instruction towards registration or at least assumption. I believe the only “institutions” that (falsely) claim professional heraldic dealings—and draw away well-meaning potential armigers with incorrect or outright fraudulent information—are the “bucket shops.”

Finally, there are several organizations that have been established over the last several decades—our own and others—all with similar goals, offerings, etc. Unfortunately, at least to date, there has never been a consensus of common policies and procedures, and thus we each have our own “idiosyncrasies,” none heraldically incorrect, but often in slight conflict with each other. There has been no coordination/cooperation save not disparaging one another in public forums, something which would be of no benefit to any and detriment to most. I believe serious potential armigers do their research on the individual organizations to see what each has to offer, and then proceeds down their chosen path of preference.

10.2. – Legal uncertainties

There are most certainly uncertainties relating to heraldry in the United States, as thoroughly discussed above as well as in my response to 10.4 below. As to lack of legal protection of state symbols, I believe this has been thoroughly covered in responses under Parts 3, 4, 5, and 7. Issues relating to personal heraldry are well-covered throughout Part 9.

10.4. – Strengths and weaknesses

Having come into the heraldic “world” a bit late in the game, historically speaking, we in the United States have done more borrowing for our own models than inventing anything new

that would be adopted by other longstanding national heraldic bodies. As noted in the response to section 9.3, American heraldry organizations have followed—either in part or full—a mostly English model (the aforementioned section referring specifically to inheritance, etc., but this is applicable throughout most “accepted” heraldic practice in this country), with some gleaning of Scottish practices as well.

As to legal framework, there really is none for individual heraldry in this country. The legal regulations for national, state, municipal, civic, and military heraldry have been well detailed in previous sections. For my part, I would vote against involving the U.S. government in any part of individual heraldic practice.

- Were an effort made to establish a government-regulated office of heraldry in the United States, bureaucratic bloat would immediately overtake even the startup process, such that it would take years to arrive at a consensus for practice (imagine our own private organizations’ minor differences amplified geometrically by politically motivated subcommittees).
- Who would be chosen to establish the standards and practices for such an office? One would suppose that they might draw on each of our organizations, though given governmental standard operating procedures, the appointments to such an office would likely be more political than qualified.
- You can then only imagine the restrictions/qualifications put in place by such an entity for individual armorial registration (grant?). Who would qualify? What would qualify? Would it be a simple matter of registering assumed arms, or would genealogy be involved (which would delight professional genealogists no end but would protract the process immeasurably).
- And lastly, imagine the floodgates that would be opened when the US Government announced that U.S. citizens could get legally binding heraldic registrations/grants. The office would be inundated and would have to expand from day 1. Universities would have to begin teaching courses both on heraldic practice (not a bad thing) as well as heraldic art (for the multitude of new artists needed to keep up with emblazonments). And who would teach those classes?

As a final point to this section, imagine if all of the above went off without complication (hard to imagine, I realize). Then the already overwhelmed courts would have to take on the inevitable volume of claims and counterclaims of one individual against another for the right to inherited arms, and the need for reams of international documentation for same. I don’t believe that would leave a good taste in the mouths of our heraldic brethren in Scotland, England, Canada, South Africa, Spain, etc., etc.

Appendix 3

David Boven

President, American Heraldry Society

10.1. – Institutions and knowledge

From my experience, there is very little knowledge of heraldry at any level of government. For the most part, municipal or state authorities who take an interest in heraldry, simply try to design something that they think looks like a coat of arms without doing any serious study of the topic. Of course, there are one-off instances where someone who *does* have knowledge of heraldic design or practices pushes a municipality to adopt a coat of arms, such as the recent case of Kennett Township, Pennsylvania.

As for heraldic institutions, if there were any municipalities or states that used the services of professional heraldic artists or scholarly armorists, it could certainly improve the armorial practice across the country. As it is, I think it's mostly just the mentality that having once read a book about heraldry qualifies someone to design a coat of arms. There are some organizations that ostensibly have guidelines and practices that *should* be followed, but without any compulsion to follow those guidelines and practices, it's difficult to make sure new designs are good. There are, of course, not many people who make a living off of heraldry in the United States, so it's going to be difficult for institutions to find professionals to connect with. The vast majority of heraldic professionals that institutions work with would, I think, be from overseas.

There is very little coordination and cooperation between the various private heraldic institutions but I am not sure how much room there is for cooperation anyway as the organizations operate in different lanes. The American College of Heraldry designs and registers coats of arms, but there's nothing else quite like it in the United States. (The Committee on Heraldry of the New England Historic Genealogical Society records assumed arms but does not provide a design service). There are other organizations that have come and gone (especially in the age of the Internet), but none of them have had the strength to last. It's possible that in spite of the country's size, there is simply not enough heraldic interest to keep more than one organization like the ACH running well.

10.2. – Legal uncertainties

There is very little certainty in American heraldry. When so little is said about heraldry in the laws and regulations, and with fifty states all able to establish their own laws of arms, it's going to be difficult to come to any kind of consensus. Thus even if one or more states should ever take an interest in heraldry, the federal structure of the country would probably mean that such interest would create more rather than less uncertainty.

10.4. – Strengths and weaknesses

As an American, I think the best thing about heraldry in the United States (its biggest strength) is that heraldry is open to all. With most of the English-language texts on the subject coming from British sources, it's sometimes difficult to get Americans to understand how good they have it. Presumably, many of those who develop an interest in heraldry also have an interest in royalty and chivalry and the like. Seeing the models provided in England

and Scotland causes some Americans to second-guess whether their assumed arms are legitimate. It is interesting to recall that one of the things that brought about the founding of the American Heraldry Society twenty years ago was a quest to create an American heraldic authority. Obviously, that's not something that would or should happen at the Federal level and I see little reason at this point to push for something at any state level. The situation is something of a Wild West, but it seems to work well for those who really try to learn and study. So I don't think we have anything that could be exported and used as a model for other countries, but I think we've got a system that works fine for our purposes.