

Carlsbad 1819

Like another Chouannerie

#INeedFeudalismBecause

February 5, 2018 by Nulle Terre Sans Seigneur

Every once in a while, you stumble upon an obscure jurist barely anyone has heard of with visibly dated (?) ultra-royalist leanings, who turns out to be a true gem. Is there a value to pursuing this? The value, I think, lies in helping you tell the difference between a monarch and a Bonapartist. It is understandable that the left often can't tell it, but increasingly large numbers of the people on the right are also finding themselves incapable.

Next up will be my response to Fritz Pendleton's latest. Until then, a word from Jean-Baptiste-Victor Coquille (<http://www.medias19.org/index.php?id=16401>) (1820-1891), a lawyer who hated lawyers, in *Les légistes: leur influence politique et religieuse* (1863), p.375-9:

The doctrine which gives the right of property to the State is not so foreign to our legislation as one would be tempted to believe at first sight; admirers of our Codes can easily be convinced. Roman law, especially with regard to property, is alive again in our civil law. The gradual abolition of customs, undertaken under the combined influence of jurists and royalty, was to lead to the triumph of absolutism and the denial of the right of property. In Rome, the State alone is invested with the right of property; the Roman citizen is only a member of the political congregation. It alone has the right of ownership. This primitive communism has left many traces in the archaism of the law. Outside the sovereign city, there were only inferior and subordinate rights. Thus the provinces did not enjoy the right of property; the Roman people attributed to themselves the eminent domain, the legal property of all the conquered countries. They abandoned the property to the inhabitants only precariously. The inhabitants were only mere possessors. That is the right of which the Roman jurists have deduced the consequences with precision. Caesar, the legal representative of the Roman people, was thus invested with the total property of the submissive world. This universal confiscation was intended to weaken the subjugated nations, extinguishing in them all sentiment of personality. This system succeeds wonderfully; and when Rome, after centuries of fierce struggle, sank under the weight of the Barbarians, the provinces remained powerless and unable to govern themselves. A brilliant civilization, a perfected administration, did not save them. These advantages, indeed, do not replace, at the time of the great struggles, the energetic instincts of an independent nationality. Gaul got up with the Franks, who placed at their service a valiant and devoted sword, and soon became with the Gauls a single people. From this melee of Gallo-Romans and Franks was born, under the action of the Catholic Church, feudal France. **Feudalism is the glorification of the right of property; it causes all political rights to flow from property.** The hierarchy of lands corresponded to the hierarchy of functions; the land paid for the function. **Royalty was the greatest of the fiefs, but it was of the same nature as the other fiefs,** and was transmitted like them, from male to male and by order of primogeniture. **The ancient possessions were also transformed into incommutable and perpetual fiefs. As a result of this change in the organization of the right of property, justice no longer had the autocratic character it derived from Roman law.** The Roman emperors were the supreme legislators of the world; their will had the force of law, which was principally established, *legis habet vigorem*. To this justice emanated from the imperial arbitrariness succeeded **a territorial justice based on custom.** The peoples freed themselves from the Roman law, and only raised themselves, their manners, and their traditions. Caesar lost his powers as legislator and judge. This was the moderate character of feudal royalty. From the principle that the law was territorial, the consequence was that the men of every custom, of every locality, were the only interpreters of the law. This state of affairs has been undermined by two claims successfully supported by the lawyers. The first is that the fiefs were a usurpation on the royal estate; the second is that "all justice emanates from the King." The French monarchy, by a fatal ambition, became drunk with these fatal doctrines, and demolished with its own hands the edifice of which it was the coronation. Once the foundation of the company was shaken, the ridge was soon overturned. In hatred of the Church and feudalism, the lawyers brought us back under Roman servitude. Roman law, in its application to the provinces, was a code of servitude; it choked under its cold logic all the spontaneous germs of development among the conquered nations. The jurists at an early age began to invoke royal power against customs; in the long run they relocated France under orders and good pleasure. Their triumph has made France the privileged land of bickering and procedure. But their action was above all mortal to public liberties; they have entirely sacrificed the right of property to their pagan prejudices. Almost all French soil was constituted into fiefs; if the fiefs went back to the royal authority, it followed that the right of property was a concession of royalty. Louis XIV professed this theory as clearly as the most advanced socialists of our day. "All the goods of our subjects are ours," he wrote in his instructions to his grandson. The remains of feudalism disappear in 1789.

The theory of the State that owns the national soil will emerge from the discussions and events with remarkable speed. By virtue of this principle, the property of the clergy and the nobility are declared State property: the spoliation takes the air of a claim. Let's get to the Civil Code. "Property," says section 544, "is the right to enjoy and dispose of things in the most absolute manner, provided that they are not used in a manner prohibited by law or by regulation." Surely all this is very strange. What is an absolute property subject to the laws and regulations that any legislator will imagine? The drafters of the Code were incapable of raising a clear notion of the principles of the legislation. They recalled the definition of Robespierre, who saw in property only the right, for every citizen, to enjoy the portion of property guaranteed to him by law. Even today collective property needs, in order to be born, a prior authorization; and the legislator would think it right to dissolve it after having authorized it. The State therefore considers the right of ownership to be a delegation, since it gives and withdraws it at will. The law of inheritance and gift gives us a striking example of the influence of this idea, that above the individual property resides the superior right of the State. Substitutions are prohibited by the Civil Code. Why, if I am the absolute master of my thing, can I not dispose of it in an absolute manner, am I a simple usufructuary, have I only a life-giving right limited to my earthly existence? The testament is sacred to all peoples, because, in spite of death, it is the expression of an ever-living will. The last wills suppose the immortality of the soul. By what right to limit the effect of our last will on the things that are ours? England has never known Roman law; it leaves the property right free. It is permissible in England to dispose of his thing in perpetuity, by means of substitutions. This is the right in its complete autonomy. The Civil Code attributes to us only a kind of usufruct. There is no exaggeration of our property tax that does not seem to attest a kind of co-ownership on the part of the State. It is about one-fifth of the income; it is about the tax formerly levied by the Roman fisc in the provinces. What will we say about the property of the communes or public institutions some of whose directors claim that the State has the right to order the sale? Is not this still an appeal to the primordial right of property which belongs to the State? The Code can not be explained dogmatically; but it is impossible not to see in the series of its provisions relating to the right of property an inspiration of Roman law, as opposed to customary law, of which the Revolution has effaced the last vestiges.

It isn't true that "England has never known Roman law," but overall the judgment holds up. Now many people will probably jump that the author is advocating unrestrained alienation, but read more closely the idea is that having *dominium directum* disconnected from territorial rulers claiming regalian rights (<https://carlsbad1819.wordpress.com/2017/09/12/on-royal-prerogative/>), and instead transferred to the Crown, which let us not forget by the time of absolutism became a mere corporate fiction thanks to the doctrine of capacities, and of indivisible sovereignty (which paradoxically held that the sovereign was absolute, but not absolute enough to parcel his demesne lands into fiefs), ultimately led to the institution becoming a meaningless redundancy — with the jurists dealing the final death blow by simply formalizing Crown into the Council that it had been for so long.

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5 thoughts on “#INeedFeudalismBecause”

1. [Imperial Energy](#) says:

[February 5, 2018 at 8:29 pm](#)

“The value, I think, lies in helping you tell the difference between a monarch and a Bonapartist.”

The difference is how X acquired power. The monarch via inheritance or selection according to some legally recognized and or customary process. The second via a coup.

“which paradoxically held that the sovereign was absolute, but not absolute enough to parcel his demesne lands into fiefs...”

This calls for an important distinction. What to name this distinction is not clear at the moment.

At first pass, the distinction between “a priori” absolutism and “a posteriori” absolutism or between an evolved absolutism and a designed one.

French absolutism was “a priori”. It developed piecemeal, over centuries, with many hands involved in its making.

“a posteriori” and “designed” absolutism is rarer. The best example, funnily enough, is probably the for profit corporation, in which all “property” is collectively owned. If Paul Romer’s charter cities ever took off (or something like it), we would see a absolutist regime of this kind. That is, all legal issues relating to property and power, taxing and regulating are fixed in advance. The “company” is powerful, secure and not lacking for want of capital.

Why does the distinction matter?

As a subject/citizen/customer you want clear, consistent and predictable legal outcomes and management behavior.

The trouble with “a priori” absolutism was that it was only a temporary step up the ladder (or down) to totalitarianism.

Hypothetically, “designed” absolutism (assuming it is able to defend itself against all enemies foreign and domestic) will not need to engage in High and Low and against the Middle games, for the High is very secure. Thus, the High can direct their resources (time, energy, money and men) to achieving the formal goals of the organisation: good government.

However, if the High (the French monarchs in this case) are not secure, then they will devote more and more of their resources to maintaining their real goals: power.

Why did the French monarchy make use of lawyers and other “riff-raff”? Why do the Tranzis make use of Muslim/Mexican immigration?

Because of the need to gain and maintain power.

The French kings needed to degrade, defeat and or destroy their Middles (lords, barons etc) or their “Essentials” so that the they had a “free hand” in raising taxes and raising armies and waging war.

The supposition, that if the Ruling Elite are already very powerful and very secure (but not too powerful or too secure alas) then they will do their duty.

Removing Imperium in Imperio is only the “internal” problem, however, for the great and terrible need to wage war is what forces the Elite to amass power. If there are internal obstacles to the need to wage war (defensively or offensively) that cannot be overcome formally or via persuasion, then the Elites will degrade, defeat and destroy those obstacles one step at a time.

The greatest and, perhaps, fatal omission in Moldbug's work is the problem and challenge of great power conflict. Moldbug's Patchwork or his "isolationism" does not come even close to wrestling with the profound problem.

If only someone were in a position of power to say: "we need to compete against China and so we need X amount of money, Y amount of men and Z amount of material; thus, we need you (San Francisco) to give us (Washington) these things or make us a counter proposal – surprise us."

The corollary is that if terms cannot be reached, then Washington either withdraws certain vital and necessary services, or sends armed men at 6:AM into certain domiciles to arrest, try and punish any and all those who refused either legitimate commands or failed to make the necessary and reasonable contributions to the great power struggle with China.

Reply.

2. Oscar C. says:

February 5, 2018 at 11:00 pm

I always enjoy discovering these kind of gems. "A lawyer who hated lawyers". This could be my alter ego.

Reply.

3. Pingback: [#INeedFeudalismBecause | Reaction Times](#)

4. Pingback: [The Prince, The People, and Fritz Pendleton in Between | Carlsbad 1819](#)

5. Pingback: [Boulainvilliers' project for aristocratic rejuvenation | Carlsbad 1819](#)

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