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Bavarian state law and the traditional Germanic monarchy (Karl Ernst von Moy de Sons)

May 25, 2019 by Nulle Terre Sans Seigneur

Kraft Karl Ernst von Moy de Sons (1799-1867) was a Bavarian Catholic jurist, and a follower in the restorationist tradition of v. Haller, Maurenbrecher and Vollgraff. He was also part of the founding circle of *Historisch-politische Blätter für das katholische Deutschland* (https://de.wikipedia.org/wiki/Historisch-politische_Bl%C3%A4tter_f%C3%BCr_das_katholische_Deutschland) alongside other counterrevolutionary stalwarts as Carl Ernst Jarcke, Georg Phillips and Guido Görres. In the 1840s, he embarked on a codification of Bavarian state law entitled *Lehrbuch des bayerischen Staatsrechts*, a volume of which I'll sample in brief (<https://books.google.com/books?id=3-5CAAAAcAAJ>), here. His work aimed to incorporate both the post-1805 constitutionalist amendments while reconciling them with the traditional *landesherrschaft* (territorial-lordship) and *landständisch* (estates of the realm) notions of a monarchy. As such, sovereignty here is considered as an overlordship (a *landeshoheit*) conferring rights and duties like any other physical or moral person, and indeed von Moy de Sons defines the state as nothing more than the legal sphere of such an independent physical or moral person. Some interesting discussions follow that are unfamiliar to Roman law, liberal Rechtsstaat and absolutist principles alike. Excuse the rough and patchy translations.

Of the rights and duties of the king in regard to legislation:

1) The king has the right to issue new laws, i.e. to prescribe universally binding norms for the subjects and to interpret, modify or reverse the previous laws in an authentic way.

2) However, he can only do so in relation to objects that are subject to his determination or disposition in their nature. Laws concerning, in particular, the freedom of persons or the property of subjects (that is, liberty and property, including provisions) can not be enacted, altered, authentically interpreted or annulled without the advice and consent of the estates of the kingdom.

a. Some objects in relation to the royal power are, according to their nature, unattainable, i.e. religion, morality, science, honor. Others are of the kind that the king must not attack, in order not to undermine the common ground upon which he himself at the same time rests; For example, the rights of possession and marital status. Finally, other cases are, by positive laws or contracts, extrinsic to the influence of the king and all or part of his legislation, for example, the objects of ecclesiastical jurisdiction, the whole ecclesiastical organism in general, the liberation of individual inhabitants from state burdens, the conditions governed by the laws of the Confederation. The King's legislative power includes in particular: a) the right to grant privileges, namely to recognize illegitimate children, to grant the rights of majority to minors, to grant exclusive industrial privileges, titles, dignities and higher professional rights to recognize corporations and to give force and validity to their statutes, b) the right to use authorities and institutions of all kinds and to occupy them with public authority, therefore also to determine the way in which to exercise this power and authority. These rights are exercised by the King alone without the participation of the Estates, but only within the limits designated by the recognized general principles of law and the Constitution.

("Privileged rights" shall be understood to mean those legally enforceable claims on persons or property which are based on a legitimate private title, or are for the free or exclusive enjoyment or use of any person, without regard to any public function or obligation of public law.)

(pp.131-5)

What is the financial power of the king:

The term "financial power" [Finanzgewalt] denotes the epitome of the powers by which the king is in possession of the necessary means for the satisfaction of his needs and of the entire expenditure of government. These funds are partly money, partly natural, which includes services. The proper sources from which they flow are, in part, goods which the king possesses and uses in the same way as property, like every other (domains, forests, mines, etc.), and partly they are revenues and uses regardless of their nature and constitution, they are reserved for the king, or occasionally arise in the exercise of his sovereignty rights (regalia), and partly they are contributions which the subjects, for particular government purposes, make to the payment of government expenses, their income and property, directly, or on the occasion of its use for its various purposes and needs, as a recognition of the protection and advantages which they receive from the royal government...

The king's claim to these funds is founded not only in the very nature of the cause, but also in historical acquisitions, which belong in part to private rights, partly to international law, and partly to constitutional rights.

(pp.136-141)

The emergence of royal demesnes from Germanic tribal society:

In order to duly honor the rights of the King in this respect, we must go back to the history of the first foundation of our States, and from there to the present, trace historically the development of the rights in question. In the first reasoning of the States, as far as our historical testimony goes back, we see a double relationship with regard to the occupation and use of the territory. Either the area was regarded as the common property of the whole people, of which the heads instructed each one of his share for temporal enjoyment; or it was immediately made an irrevocable division according to the needs, both of the cooperative life, and of the estate and marital status of the individuals whose individual allowances were transferred into the free, so to speak, unlimited right of disposal of the concerned ones. In the first case, the legitimacy of the individual was governed only by the leaders whom the religious or blood union had placed at the head of the people, and here there was no occasion for a question like that which occupies us here. In the second case, however, which occurred everywhere on our conquered ground in our Germanic states, the necessities of worship and of every single household were first claimed; the rest, however, which was not claimed, remained in the hands of the king or in his peace. Thus, in particular, he received the goods which had previously been withheld from private property, and, in addition, a delivery from the land left to the overcomer. For the king's peace extended over the whole region, as formerly that of the general guarantee over all the common mark, and who had no real property and arms according to popular law, or stood in another's mundium [guardianship] for his person and possession; had to recognize himself as the king's man and serve him as such. Thus came in the king's hands a great mass of possessions and revenues, which he could unlock for his particular purposes, especially for new members to attach themselves to his retinue and also so that the already originally more affluent leaders who equipped his followers could undertake new services. These goods, which are left in the hands of the king or are given by others to fief, are now those which are called *domains* in the true sense, and it is easy to see that the king's law rested on the same reason as everything else remaining property in the realm.

(pp.136-40)

(This is roughly analogous also to the Anglo-Saxon division between royally chartered bocland, and all else being folcland — with a tertiary middle category emerging afterward involving leases.)

Fiscal limitations of the monarchy:

The financial power of the king is limited a) in general by the property right and the personal liberty of the subjects; b) special and positive rights enumerated by the provisions of the constitutional document and the laws of the German Confederation. According to these, "the King may not sell anything except the regalia, domains and public funds, in general all that is part of the royal house, except for 1) to reward exquisite (large and determined) government services with domains or pensions, by means of loan as a man's loan of the crown; 2) for the purpose and welfare of the State, within the limits of the governmental law to which it is entitled, in particular by means of settlement for the termination of a dispute or disputes, by exchange, or, in the case of state goods, to the promotion of the national culture or otherwise for the welfare of the country or for the benefit of the state... A new award of state domains or pensions can only be made with the consent of the agnates and the estates of the Reich. (VU III, 88, 3, pp. III.)

How sovereignty can be lawfully relinquished (there are three primary sources — international law, state law, private law of the royal house):

In order to be able to start governing in Bavaria, the person entitled to the crown must be free at all from such physical or mental infirmities, which render absolutely incompetent for the fulfillment of the regent's duties.

The right of sovereignty ceases by the disappearance of the reasons upon which the possession of it rested. But these are partly international law, partly private law, partly state law.

1) The international law reason lies in the treaties, which secure the possession of the Bavarian regents with regard to the sovereignty and the object of the same. What can lift the effect of these treaties, at first war and the introduction of mutually contradictory treaties, can also bring about the loss of sovereignty over part of the Bavarian territory. The validity of such international treaties depends on the power of disposal of the regent, partly under international law and partly as a result of state and private law.

2) The constitutional reason lies in the conditions of succession to the throne established by the constitutional document. By eliminating these conditions, if at all it could be thought possible in Bavaria, the right to the crown would be lost.

3) The private law reason for possession of the crown lies a) in the house laws of the royal family and in the standards of private licensing law recognized by it and b) in the private freedom of the sovereign who has taken over them. The house-laws defer to the sovereign the government as an exclusive right connected with the enjoyment of the house-idea. (Family Statute of 1819. VVU III 8-1) The private condition of the regent implies that he may arbitrarily dispose of his possessions, and therefore also of the crown, as far as private-law states are concerned – or conflict with international law. State law does not permit the sovereign to leave the crown to anyone else but to the person who, according to him, has the first right to the same from the first acquirer. International law does not permit it to be left to someone who is not a member of the German Confederation.

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2 thoughts on “Bavarian state law and the traditional Germanic monarchy (Karl Ernst von Moy de Sons)”

1. David says:

[July 16, 2019 at 3:11 pm](#)

Something of an aside, but what do you think of Hans Hermann Hoppe?

[Reply](#).

◦ [Nulle Terre Sans Seigneur](#) says:

[July 17, 2019 at 8:05 am](#)

The poor sod has sunk his entire career into Rothbardian libertarianism that he has to jerry-rig the framework to create vaguely neo-Hallerian results, seemingly unable to repudiate the legacy of his idol at this point.

[Reply](#).

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