

Carlsbad 1819

Like another Chouannerie

On royal prerogative

September 12, 2017 by Nulle Terre Sans Seigneur

How do the stewards of the federal government in America plan their budget? It's not a trivial question to answer.

The President submits a budget proposal for the upcoming fiscal year. Congress, both House and Senate concurrently via the House and Senate Committees on Appropriations (in turn divided into 12 subcommittees), then proceed to draft a budget resolution. It is not considered a bill, so it is not presented for a presidential signature, nor can it be vetoed. It passes on a majority vote. There's about 19 different budget functions, i.e. spending categories. Approx. 63% of the federal budget is dedicated to mandatory spending, including most entitlement programs, which aren't even subject to appropriations — it's just a public obligation.

Various hearings are scheduled, taking comments from experts, officials and perhaps laymen, too. Adopting the resolution then sets in motion various mechanisms for enforcement — discretionary spending caps, the statutory cap (a requirement that if an appropriations bill exceeds statutory limits, a sequester order must be issued by the President cutting all discretionary spending by a uniform percentage — we're talking values like 0.0013% here; there's no starving *this* beast!), and so forth.

None of this really matters. If appropriations bills can't be passed, a continuing resolution is signed to resume funding at the previous year's rates.

Most damaging of all, the entire complex process of appropriations committees is in practice short-circuited by the process of reconciliation, as sanctioned in the Congressional Budget Act of 1974. The budget resolution gets a reconciliation provision added to it, specifying what revenue changes are to be made and by which committees. One notable exception: you're not allowed to touch Social Security (that's part of the Byrd rule). The Senate cannot filibuster, and debate time is limited to 20 hours. The result is that a dozen appropriation bills (one per subcommittee) end up being consolidated into one omnibus spending bill, which can be thousands of pages long. Most of it is never read or debated. They have names like "Consolidated Appropriations Act" and "Omnibus Budget Reconciliation Act." It's easy to slip in substantial policy changes by tweaking the fiscal knobs, effectively "veto-proofing" the bill by sheer inundation, and the threat of government shutdown.

All this machinery, all these checks and balances subverted quite easily. You don't like the divine right of kings? Have yourself the divine right of parliaments! The Anglo-Saxon *witenagemot*, that great guardian of English liberties (so called), has immanentized itself into the European world as an ubiquitous essence, haunting all those it is elected to represent.

Perhaps then, the question of *royal prerogative* ought to be revisited, and the implications of spending by the lord of the realm as opposed to spending by the popular representatives.

Sir John Fortescue, one of the great English jurists, and a champion of the Lancastrian cause (R.I.P. 1267-1471), wrote a mirror for princes circa 1471, the same year as the Yorkist triumph, published posthumously under one of two titles (*The Difference between an Absolute and Limited Monarchy* and *The Governance of England*), where he has a good deal to say about keeping the budget in balance, so to speak. There were no appropriations committees back then. Owing to the succession conflicts of the time, the work has a proto-absolutist flavor at places, but is overall quite sound.

In Chapter V, he warns that "First, if a king is poor, he shall by necessity make his expenses, and buy all that is necessary to his estate, by credit and borrowing," evidently preferring the king live off his fruits. "For his subjects would rather go with a lorde that is rich, and may pay their wages and expenses, then with a king that hath nought in his purse, but they must serve him, if they will do so at their own dispenses."

He divides royal expenditures into two classes: ordinary charges and extraordinary charges. Ordinary charges include (<https://archive.org/stream/governanceofengl00fort#page/122/mode/2up>) his household, wardrobe, wages and fees of his officers, courts and counsel, payments to the marcher lords, etc. Extraordinary charges include sending legates and ambassadors to the pope and foreign princes, rewards (preferably in money and not land, so as to keep an "unblemished estate") and so on.

It is declared in Chapter VIII that "For though [the king's] estate be the highest estate temporal in the earth, yet it as an office, in which he ministers to his realm defence and justice." We thus have a view of kingship synthesizing private lord and public servant. "Therefore he may say off himself and off his realm, as the pope saith of himself and of the church." But the office is hence to be jealously guarded from incurring liabilities to other parties. The king sustains himself to the best of his abilities so as to aid his subjects, rather than it being presupposed that the subjects owe all their income in a realm as a collective fund to be disbursed and redistributed at will, as in democratic parliamentarism.

This is explicitly reiterated in Chapter X: "Wherefore I think, that if the king might have his livelihood for the sustenance of his estate in great lordships, manors, fee-farms and other such domains, his people not charged, he should exceed in lordships all the lords of his realm, and there should none off him grow to be like unto him, which thing is most to be feared of all the world." Stressing material primacy, he beforehand mentions the tale of King Solomon and his son Rehoboam, who refused to ease the dues imposed by his father. ("Thy father made our yoke grievous: now therefore make thou the grievous service of thy father, and his heavy yoke which he put upon us, lighter, and we will serve thee." [1 Kings 12:4])

(Also, very interestingly, Fortescue openly makes (<https://archive.org/stream/governanceofengl00fort#page/138/mode/2up>) a high-and-low-against-middle argument that the commons should not be impoverished so that they may be used as troops to suppress noble rebellions: "Wherefore the making poor of the commons, which is the making poor of our archers,

shall be the destruction of the greatest might of our realm. If poor men may not lightly rise, as is the opinion of these men, which for that cause would have the commons poor; how than, if a mighty man made a rising should he be repressed, when all the commons been so poor...")

Strictly speaking, under pure feudal monarchy, there is no royal prerogative as such. The king's guaranteed fiscal power over his realm is limited to the incidents and rents owed to him by his tenants, and by his status as lord paramount, which means fiefs without heirs and not otherwise conveyed, all escheat back to him. He is usually also the recognized head of the fisc, which in Anglo-Saxon times meant all unowned lands that could be converted to grants in some form. His tenants-in-chief (those who hold immediately from him) have a special status, but this is not so much the result of an extraneous prerogative as it is a logical outcome of a general hierarchy. Moreover, shrinking the fisc by creating new benefices is obviously politically costly.

However, his primacy in the hierarchy means that he is often the only one to legally hold allodial property, i.e. not owing any dues and with no restraints on alienation, disposal and conveyance. Thus, a straightforward way to put his subjects under stricter control is to annex their fiefs and benefices to his demesne. All the marriages, purchases and conquests required for this can take quite a while though, upwards of centuries.

Until then, he must live off and be self-sufficient from his household income. And once, it used to be a literal household (or multiple rural villas) encircled within a wider crown land area. For instance, the Carolingian era *Capitulare de villis* (<https://www.le.ac.uk/hi/polypytyques/capitulare/trans.html>) records instructions for royal stewards:

That each steward shall make an annual statement of all our income, from the oxen which our ploughmen keep, from the holdings which owe ploughing services, from the pigs, from rents, judgement-fees and fines, from the fines for taking game in our forests without our permission and from the various other payments; from the mills, forests, fields, bridges and ships; from the free men and the hundreds which are attached to our fisc; from the markets; from the vineyards, and those who pay their dues in wine; from hay, firewood and torches, from planks and other timber; from waste land; from vegetables, millet and panic; from wool, linen and hemp; from the fruits of trees; from larger and smaller nuts; from the graftings of various trees; from gardens, turnips, fishponds; from hides, skins and horns; from honey and wax; from oil, tallow and soap; from mulberry wine, boiled wine, mead and vinegar; from beer and from new and old wine; from new and old grain; from chickens and eggs and geese; from the fishermen, smiths, shield-makers and cobblers; from kneading troughs, bins or boxes; from the turners and saddlers; from forges and from mines, that is, from iron- or lead-workings and from workings of any other kind; from people paying tribute; and from colts and fillies. All these things they shall set out in order under separate headings, and shall send the information to us at Christmas time, so that we may know the character and amount of our income from the various sources.

But goddammit, you ain't got the time. What you need, son, are *regalian rights*.

The *iura regalia*, the ancestor of royal prerogative, is an interesting constitutional device. Neither a private right to a claim in an estate, nor exactly a public right vested in the sovereign. It blurs both, instead creating a general territorial claim to the fruits of any economic resource deemed necessary for the sovereign's administration. In a more modern context, the regalia were defined as "profitable rights which by force of a rule of public law inhere exclusively in the State, whereas their content is regarded, 'in se', as a privilege of private law." (per Rudolf Huebner's treatise on Germanic private law)

The definitive statement of the doctrine occurred during Frederick Barbarossa (Holy Roman Emperor)'s second and perhaps most famous expedition to Italy, accompanied by Henry the Lion, in 1158. Having subdued Milan, Frederick convened the Diet of Roncaglia to establish his prerogatives over the free towns of the Lombard League. After much brawling, he would have to give up a fair deal of his regalia in the Peace of Constance in 1183, itself a confirmation of the earlier 1177 Treaty of Venice, following the now famous military defeat at Legnano.

But, in the interim, the regalia enumerated were such:

Royal statutes are: the arimanni [Lombard freeman soldiers], the public roads, the navigable rivers and their streams, the harbor fees, the docks on the banks, the dues commonly called duties, the coins, the proceeds from penances and penalties, abandoned estates and those unworthy if they are not given to certain persons, and the property of those who enter into an incestuous marriage, the condemned and the outlaw, according to what is provided for in new regulations; and the extraordinary contributions to the happiest military voyage of royal sovereignty, the power to employ civil servants in the exercise of jurisdiction, the bureaux de change, [...] the profits of the fisheries, and salt mines, and the goods of the defenders of majesty, and half of a treasure found on imperial or ecclesiastical grounds; if on purpose, it belongs to him altogether. All power of judicature and all authority is with the Emperor, and all judges must receive their office from the emperor, and oath which is prescribed by the law.

Though this ballsy juristic proclamation was a step in the direction of absolutism, it was not quite absolutist for two reasons: firstly, the regalia would go on to become alienable franchises, seized and recognized as the rights held by territorial lords (Landesherr) rather than the Emperor himself. This permitted a partial but significant refeudalization that began to decisively emerge after the fall of the Hohenstaufens, most notably with the Golden Bull of 1356 by Charles IV, Holy Roman Emperor. Secondly, on net they reinforced seignorialism more than they impeded it.

An example of this intermediary state can be observed in some of the statutes passed regarding land revenue of the crown in England. During the reign of Edward II, we are given an example of a regalian right (<https://books.google.com/books?id=aOEDAAAAQAAJ&pg=PA505>) that overlaps with the feudal incident of wardship:

The King shall have the custody of the Lands of natural Fools, taking the Profits of them without Waste or Destruction, and shall find them their Necessaries, of whose Fee soever the Lands be holden. And after the Death of such Ideots he shall render it to the right Heirs, so that such Ideots shall not aliene, nor their Heirs shall be disinherited.

In addition, customary laws were respected. A page later, in a declaration of a royal prerogative to seize the lands of felons and enjoy a year and a day's worth of profits, the normal course afterwards is for the land to revert to the chief lord, but for the counties of Gloucester and Kent it is stipulated that they, respectively, be restored to the heir of the felon (Gloucester) and be divided via partible inheritance (Kent).

Later, during the reign of James I, the opening of a statute describes how a royal prerogative can, in principle, be canceled (<https://books.google.com/books?id=aOEDAAAAQAAJ&pg=PA531>): "The King's most Excellent Majesty, out of his gracious Disposition towards his loving subjects, and at their humble Suit, being willing to remit a Part of his ancient and regal Power, is well pleased that it be enacted, and

be it enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same..." Though based on a parliamentary theory, it still illustrates the private aspect of regalia.

In my estimation, the sheer intuitiveness of a doctrine of extraneous royal prerogative when talking about kingship, makes its rise inevitable. It is most just and effective when coupled with a strict idea that the monarch ought to live off the revenue from his own estates to be self-sufficient, and use regalian taxation sparingly. Highest estate temporal and a public office, per Fortescue.

A reappraisal of the *iura regalia* and perhaps an updated version of the *primus inter pares* kingship of old — the entrepreneur-king, perhaps? — may be necessary if one wants, at the very least, a non-farcical fiscal policy.

This entry was posted in [Feudalism](#), [Monarchy](#). Bookmark the [permalink](#).

6 thoughts on “On royal prerogative”

1. Pingback: [On royal prerogative | Reaction Times](#)

2. Michael Rothblatt says:

[September 13, 2017 at 4:25 pm](#)

Great post, as always.

My favorite hate-fact on the subject are stats for the much-maligned tsardom. Per thousand subjects there was seven times less policemen in Tzarist Russia then in Great Britain, and five times less in Russia then in French Republic. In the year 1912 the index of direct taxes in Russia was 311, in France 1235, and in Great Britain 2675. In the same year index of indirect taxes was 598 in Russia, 1600 in France, and 1386 in Great Britain. Public debt in then's rubles was 58.7 per person in Russia, 288 rubles per person in France, and 169.5 rubles per person in Great Britain. Furthermore, it was tzar Nicholas II who saw where Europe was heading and penned down a Peace Manifesto hoping it would lead to disarmament (of course, it proved barren of result).

It certainly does seem that royals beat parlaments in fiscal responsibility.

> the entrepreneur-king, perhaps?

It's interesting to note that the British Crown is in already in possession of around £12 worth of properties. Unfortunately the Queen gets only 15% of Crown Estate earnings (most of which goes into charity, not investment), which means that Queen is the most taxed person in the UK, paying taxes at a rate of 85% not counting inflation! Some used to have it even worse:

The top rate for British taxpayers in the mid-1960s reached 83 percent. The wealthiest among them paid a 15 percent super-tax on top of that, pushing taxes as high as 98 percent. The pain came out in the Beatles 1966 song “Taxman”. The Rolling Stones had a song called “Exile on Main Street” due to having to leave the UK because of high taxes, although that was in 1972.

So much for English liberties, and the Glories of the Revolution! Ah, but I guess worshipping the NHS and needing a licence to breathe while having to put up with your child getting raped or blown-up is the true meaning of freedom.

Reply.

- o Michael Rothblatt says:
September 13, 2017 at 4:27 pm
 >£12 worth of properties

£12 billion

Reply.

3. Imperial Energy says:
September 16, 2017 at 8:29 am
 Awesome.

This is not a criticism but a request; one that only you with your historical knowledge, facility with language, intimate understanding of historical systems and writing talents could do.

Let's suppose you are the tutor to a young Prince. Your task is to use your learning to help him become a good king. Next, suppose that you are writing "letters" or "thought materials" for this purpose.

What topics are important? What role models should be studied?

In any case, the following seem essential: war; diplomacy; finance; law; judging; personal conduct; advisers etc., etc.,

Set up a problem, then bring your historical knowledge to bare on the issue with reference to similar cases, situations, figures and events from history; set out options, consider consequences etc.,

Suppose the American Empire really does have a true King one day, what can you bring to the table to illuminate the task of ruling?

Yes, the form is maybe humdrum, but the material (because of you) would be novel and fascinating.

Reply.

4. Pingback: #INeedFeudalismBecause | Carlsbad 1819
5. Pingback: The Prince, The People, and Fritz Pendleton in Between | Carlsbad 1819

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