

# Carlsbad 1819

## Like another Chouannerie

## Sir Robert Filmer refuted

October 9, 2017 by Nulle Terre Sans Seigneur

[In which Nigel Carlsbad dons the robes of a Jesuit schoolman. All casuistry, no Aristotelianism. Also doubles as an anti-absolutist tract. I was going to devote a different essay to that, but this one might suffice.]

King Clothar had ordered all the churches of his kingdom to pay into his treasury a third of their revenues. But when all the other bishops, though grudgingly, had agreed to this and signed their names, the blessed Injuriosus [Bishop of Tours] scorned the command and manfully refused to sign, saying, "If you attempt to take the things of God, the Lord will take away your kingdom speedily because it is wrong for your storehouses to be filled with the contributions of the poor whom you yourself ought to feed." He was irritated with the king and left his presence without saying farewell. Then the king was alarmed and being afraid of the power of the blessed Martin he sent after him with the gifts, praying for pardon and admitting the wrongfulness of what he had done, and asking also that the bishop avert from him by prayer the power of the blessed Martin.

— Gregory of Tours, *History of the Franks*, Book IV, Ch 2, illustrating the influence of *sacerdotium* over *imperium*, in contradistinction to absolutist pretensions

Some would rather be Klansmen, in robes of snowy white, and not Roman Catholics, in robes as dark as night. For a Klansman loves his people and his nation, but a Catholic is no more than a fifth column, ever prepared to commit treachery at the command of his master, the Dago Pope of Rome, his supreme overlord who lives *ultra montes*.

"Anarchists! Liberals! Monarchomaques!," so runs the accusation against all who reject Jean Bodin and his *politique* solution to the problem of religious strife, by electing one man supreme, above all law, with both sceptre and sword in his hands. His follower Sir Robert Filmer, too.

Although English jealousy of papal jurisdiction would be enshrined under Richard II ([https://en.wikipedia.org/wiki/Statute\\_of\\_Praemunire](https://en.wikipedia.org/wiki/Statute_of_Praemunire)), it would take the English Reformation for claims of temporal supremacy to really take precedence.

With the Submission of the Clergy Act 1533, clergy were forbidden to "enact, promulge, or execute any such canons, constitutions, or ordinances provincial, by whatsoever name or names they may be called" without royal assent. Additionally, the Court of Chancery began handling cases formerly pertaining to

the archbishop.

With the Act of Supremacy 1534, it was declared such that the king “shall have full power and authority from time to time to visit, repress, redress, record, order, correct, restrain, and amend all such errors, heresies, abuses, offenses, contempts and enormities, whatsoever they be, which by any manner of spiritual authority or jurisdiction ought or may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ’s religion, and for the conservation of the peace, unity, and tranquility of this realm; any usage, foreign land, foreign authority, prescription, or any other thing or things to the contrary hereof notwithstanding.”

(This provision was briefly repealed under Mary’s reign before being restored in 1559 by Elizabeth in her religious settlement. In both acts, an Oath of Supremacy was included that required all taking public or clerical offices to acknowledge the monarch as the supreme governor in all spiritual or ecclesiastical things or causes.)

The Act of Uniformity 1559 set the Book of Common Prayer as the official liturgy of the Church of England, to the dismay of dissenters across the country.

Stephen Gardiner tried to defend Anglican royal supremacy using a nominalist claim, later reused by Thomas Hobbes, that the Church of England consists of the same sort of people that comprise the realm of which the king is head, and that therefore if he is head of the men in the realm of England, he considers it an absurdity that the same men united as the Church of England are to be exempt.

Nevertheless, royal supremacists tried to routinely emphasize that the king was not consecrated with ministerial power to administer sacraments. After all, among other things, if the Sovereign is a Queen, this would entail ordaining a woman as priest.

Hobbes takes this one step beyond, though. In *Leviathan* he states, that the authority of the Church makes a book canonical. But in *De cive*, the Church is defined as “the commonwealth whose will is contained in his [sovereign] will.” The sovereign thus bears the person of state in politics, and the person of the Church in ecclesiastical affairs. “Without the Head the Church is mute.”

This was not a new line of argument. It was seen as early as 1100 with the publication of the Norman Anonymous (authorship unknown), as an English entry into the investiture controversies of the time — and one of the most radical political texts to come out then and for a long time after.

The Norman Anonymous argued that (<https://conclarendon.blogspot.com/2013/10/the-norman-anonymous-tract-on-christian.html>) the anointing of a monarch imputed him with the divine nature of Christ, whereas the consecration of a priest only imputed Christ’s human nature. The NA thus made out the monarch to be some Judaic-esque priest-king. The king therefore seems to acquire the role of a priest in the order of Melchizedek (king of the righteous), putting him on par with the very incarnation of the Divine Word. A very moderate viewpoint, indeed.

Filmer was in agreement with Hobbes on almost everything the latter taught regarding sovereignty except its instantiation through a hypothetical long-distant social contract. A strict Filmerite absolutism thus seems to legitimate priest-kings.

The king acquires the canonical power of dispensation. Accordingly, he can grant toleration and relax uniformity as he wills, as when Charles II tried to extend the Royal Declaration of Indulgence in 1672. Suddenly, all that talk of royal supremacy put the high-church Anglicans in a pickle.

The Anglican episcopacy freaked out and began turning a Whiggish eye with the crown-in-parliament idea. Their priest-king had basically acquired ultramontane powers not unlike an Anglican version of the *Unam Sanctam*. Suddenly, they began imputing the provisions of the (now defunct) canon law into the common law, making Parliament and the Court of Chancery the source of canonical provisions, and not the person of the king himself.

For when you intertwine reasons of faith with reasons of state, you cannot expect heresy to be stamped out. The king as Supreme Governor of the Church is caught in the dilemma where he must undercut the uniform liturgy and practice of the Anglican Communion, one of the bulwarks to his legitimacy, so the more mundane advantages from toleration of Catholics and nonconformists be reaped. Royal supremacy defeats its own purpose.

The classic example of a “realist” solution to religious division in a realm is, of course, the Peace of Augsburg. *Cuius regio, eius religio* — a total hack, but it did the job. However, applying this principle to ecclesiastical territories like prince-bishoprics is a most distressing thing. If the Archbishop of Cologne decides he’s a Calvinist, does this mean the Holy Church loses a diocese, protests of the Bishop of Rome be damned? Clearly not, and so the clause of *reservatum ecclesiasticum* was introduced to deal with this contingency.

If our Anglican sovereign king-bishop reneges on his religious commitments, however, you are done for. Which is why the Anglican sovereign king-bishop had to be turned into a parliamentary puppet, so that this might be prevented. Or, in order to be a better “father to his people,” he would have had to take a stance of religious neutrality for greater inclusiveness, which would have meant leaving his post *sede vacante* in practice. But if Canterbury wants a uniate with Rome? At which point, the king is reduced to being a statue that reads “Not Catholic” — a mere formality that exists as a device to prevent schism.

(Indeed, many of the arguments used against papal primacy can be applied to the theory of Adam’s kingship also.)

Thomas Pierce stated in his *Vindication* (1683) that “all [agreed that] English kings have the power to suspend, or deprive a bishop,” and that moreover, the king is “himself in Person, the Supreme and Sovereign Bishop of every Diocese in England.” This amounted to a civil control of religion, and could not stand for those who wanted the episcopal polity to remain secure. Else what could prevent a triumph of presbyterianism, or, God forbid, a restoration of Romanism?

In making their king a pope, the only way the Anglicans could rid themselves of popery was to get rid of their king. This is the substance of 1688 in a nutshell.

The traits of a wicked prince have long been known. As early as Sedulius Scottus’ *De Rectoribus Christianis* in 850, they are: royal licence, abundance of material goods, wicked friends and detestable courtiers. A king who carries both the sword temporal and spiritual simultaneously has plenty of opportunity for licence.

Abbot Suger, in his Deeds of Louis VI the Fat written in the 12th century, links his performance of kingship with his piety, as in the coronation ritual (Chapter XIV): “On the feast of the invention of the holy protomartyr Stephen, the archbishop anointed Louis with the most holy oil of unction. After a mass of thanksgiving, the archbishop took off his sword of secular chivalry and replaced it with the church’s sword for the punishment of evil-doers, crowned him most willingly with the royal diadem, and with great devotion bestowed on him the sceptre and rod as a sign that he must defend the church and the poor, and various other royal insignia, to the delight of the clergy and people.” The implication is that

his will cannot reign unbounded. Moreover, when describing the rebellious baron Thomas of Marle, Suger reiterates that when the king takes the royal power, he vows to put down “insolent tyrants whensoever he sees them vex the state with endless wars, rejoice in rapine, oppress the poor, destroy the churches.”

The *Konungs skuggsjá* [King’s Mirror], published c.1250, a century after the establishment of the Archdiocese of Nidaros in Norway, and written for the education of Magnus VI of Norway, talks about the authority of kings and bishops in the last chapter. The work is structured as a dialogue between father and son. The father states that (<http://www.mediumaevum.com/75years/mirror/sec3.html#LXX>), the king must not pluck anything away from the house which the bishop has in his keeping, for neither should rob the other. Moreover, the “rod of punishment” has been given to both king *and* bishop. Now, the mirror is rather roundabout in trying to subordinate the bishop’s rod to the king and to deny him a deposing power, but it reiterates that both wield it nonetheless – the bishop’s to use it with words, and the king’s to use it with hands. It is added that when the bishop’s rod strikes rightfully, it wounds more deeply than the king’s. The bishop is supposed to be king’s teacher, counselor, and guide. What we see then is the author having no choice but to accept the Gelasian diarchy of the two swords as clearly right, yet trying also in a somewhat forced manner to secure the royal prerogative.

King Saint Stephen of Hungary admonished his son Emeric: “My dearest son, if you desire to honor the royal crown, I advise, I counsel, I urge you above all things to maintain the Catholic and apostolic faith with such diligence and care that you may be an example for all those placed under you by God and that all the clergy may rightly call you a man of true Christian profession.”

Francisco Suarez, one of Filmer’s punching bags, makes a distinction (<https://www3.nd.edu/~afreddos/courses/301/suarezdelegii6.htm>) in *De legibus* concerning natural law. He says that one must differentiate between natural law being from God as a first efficient cause, and for it to be from God as a lawgiver. As such, natural law indicates what is good and bad in itself.

As Suarez says, even if one is an atheist, this does not exempt you from the law of nature. Filmer does not deny this.

But what this means is that a higher law above the sovereign *does* exist. The king can will all he wants, but permitting sodomites to marry, infringing on the rights of fathers to discipline their children, permitting no-fault divorce, etc. etc. are always intrinsically disordering acts that will cause his realm to plummet into suicide. Since under this model the realm is the extension of the sovereign’s body, it thus follows that the sovereign disobeying natural law constitutes the murder of his own body, which is a mortal sin. And yet we are told that the clergy cannot impose any discipline on this sinner, as if their ordained powers are a dead letter. The king is thus advised to be, let’s call it, a “higher law fictionalist”: he must act under the assumption there is such a thing if he is to be a sane man, even if he wills otherwise.

Filmer says that any system which subordinates a monarch to law makes the law the *primum mobile*, turning the monarch into a servant of the law rather than vice versa. In this model, all law is positivist and a Weberian monopoly on force is taken for granted as an axiom.

Giles of Rome, archbishop of Bourges, was one of those rare medieval schoolmen who defended imperial and papal claims with near equal vigor. In *De regimine principum*, his primary work on statecraft written c.1277-1280, written for Philip III “the Bold” of France. In Book III, Chapter 29, Giles investigates the question (<https://www.cambridge.org/core/books/the-cambridge-translations-of-medieval->

[philosophical-texts/giles-of-rome-on-the-rule-of-princes-](#)

[selections/8BCC9EB76B8D648B85D33FE8115D1B1C](#)). of whether it is better to be ruled by the best law or the best king.

He comes to the conclusion that a king must govern as an intermediary of natural and positive law. If a king ought to follow right reason in ruling others, he ought to follow natural law as a consequence. Now, of course, he is the author of positive law by his own authority and so cannot be above it. Positive law is above the ruler only to the extent that it contains the natural law. The king, however, comes into play when it comes to dealing with *particulars*, the positive law being the qualifications of the universal pronouncements of the natural law, and in this context he can choose not to observe laws when it is right. The king thus has a great deal of prerogative and leeway, but it is not supreme.

The premier French absolutist jurist Jean Domat did not deny (<https://sourcebooks.fordham.edu/Halsall/mod/1687domat.asp>) the natural equality of man, he in fact derived absolute monarchy from natural equality as a starting point: "Because all men are equal by nature, that is to say, by their basic humanity, nature does not make anyone subject to others... But within this natural equality, people are differentiated by factors that make their status unequal, and forge between them relationships and dependencies that determine the various duties of each toward the others, and make government necessary."

It is clear why, for absolutism entails liberating one from any intermediary bonds below the king (and often a few superior bonds above him also, namely divine law), elevating the person to the immediacy of being a royal subject, which in former times was regarded as a great liberty, since one was exempted from the jurisdiction of barons. Now it is all too normal.

Is it possible for an absolute monarch to acknowledge someone on parity with him, and establish a diarchy? This is how Andorra was created and is still on paper supposed to be run, for instance. The absolute monarch is not obligated to respect any laws or oaths of his predecessors, nor is he subject to anyone but his own will and the expediency of nature. Therefore, he ought to be capable of enacting constitutional changes that can subvert him.

For instance, let me quote from the Chronicle of James I of Aragon ("the Conqueror"), a rare example of a royal autobiography and military chronicle, dictated in the mid-13th century, earliest extant manuscript published c. 1313. From Ch. 400, in the context of a noble revolt:

While the letters patent summoning my vassals were on their way, I being then at Barbastro, the Aragonese knights sent to say that if I gave them a safe-conduct, they would come to me. I gave it them, and there came Fernan Sanchez de Castro, Don Berenguer Garcia de Entenza, and Don Ferris de Lizana, who among others had bound themselves by oath to make a league. We met in the great church of Saint Mary of Barbastro; Fernan Sanchez spoke for them, and said that the oath they had sworn was not against me individually, but because I, as King, had infringed their "Fueros," and had asked of them things contrary to custom. In Exea, for instance, I had, he said, caused divisions among them, when Don Exemen de Urrea, Don Artal de Alagó, and the other barons and knights held with me, against Fernan Sanchez, Don Berenguer Garcia, and Don Ferris. I replied to those three that I had done them no injury, broken no "Fuero," taken nothing from them; on the contrary, I had given them hereditaments; Don Ferris was the holder of a good honour when he went into this business, and I had endowed the father of Don Berenguer Garcia with all he had in the world; wherefore I marvelled much they did so harsh a thing against me. And that I may make it short to you [reader] they could not come to terms with me, and I told them, since it was thus, I would have to defend myself against them.

There is a very clear contractual element here, but not with *the people* so-called, but rather with the king's liegemen. The respect of fueros (customary rights) and the maintenance of liegemen with benefices are the two conditions here.

Much earlier in the Chronicle, in Ch. 20, James I as a young man aged 14 describes one of his royal favorites, Don Nuño Sanchez, getting in trouble with a baron and his retinue. James says that he considered "an affront done to him equal to an affront to my own person."

Filmer, in Ch XIII of *Patriarcha*, actually acknowledges that "It is true that by politic human constitutions, it is oft ordained that the voices of the most shall overrule the rest. And such ordinances bind, because, where men are assembled by a human power, that power that doth assemble them can also limit and direct the manner of the execution of that power. And by such derivative power, made known by law or custom, either the greater part, or two thirds parts, or three parts of five or the like, have power to oversway the liberty of their opposites."

As to the human power which convenes such an assembly, it could be a bishop, prelate, military commander, or simply a Big Man of some sort. Under pure absolutist assumptions, whoever could convene and direct this assembly must be the king. So be it. We can thus have a multiplicity of petty kingdoms through this process.

Alright, let us say then that the granting of military benefices with heritable jurisdiction, under the pure Filmerite absolutist schema, constitutes an act of the king deposing himself. He is surely capable of doing that. What we would then conclude is that absolute monarchy is an ideal type, and that all actually existing monarchies are, in fact, vacant thrones owing to some sort of delegation of power on part of the king that constitutes an abrogation of the pure monarchical type itself. "But this would no longer be a monarchy, then." Okay, fine. I'm not that anal about definitions. Now, the second more powerful claim is that *all* government must be monarchical. As Filmer himself says, if people don't know who Adam's rightful heir happens to be at the moment, that's their problem. He is always there. A more modern way of making this argument is that all governmental decision-making must logically end with one person having the final veto, who then is the de facto king. We may not know who he is, but he has to logically exist. However, I do not see why this has to be the case. It seems much more likely that due to the differentiated functions of the state, that in an oligarchy (and all government is oligarchy at the end of the day) there is not merely one person who acts as a court of appeal, but several, depending on what is being appealed, if for no other reason that there is always a specialization of tasks in every complex society. Moreover, there is no contradiction in saying that each oligarch can individually exercise the legislative-judicial-executive triad, since it all depends on his organizational acumen and influence. Thus, an oligarchy or aristocracy (which to an absolutist is by definition a disordered state little better than, if not identical to anarchy) is a *series of simultaneous rotating monarchs*, or a conciliar government.

In a world where every nation is a Filmerite absolutist monarchy, if one takes the international system as a whole, it must resemble this conciliar structure. As such, "divided" or "insecure" power so-called is a transaction where a territory occupied by one absolutist is partitioned into several absolutist states. Is this good or bad? We cannot say *a priori*. Anarchy and polyarchy are not the same, and to say that all polyarchy is intrinsically demotic, is baseless. A polyarchy could viciously guard its prerogatives (as they often tended to do), whereas a monarchy can debase itself into a democracy by pitting factions against each other (again, as they often tended to do).

Filmer's model is so static that it's an open question of how things like ethnogenesis, unification and secession even work, except solely through Providence. And Filmer's lack of any standards for royal succession (there's always a successor out there, end of story) actually makes it difficult to know when we're dealing with legitimate Providence or with illegitimate usurpation.

Because of this, Filmerism was easily appropriated by defenders of 1688, such as Zachary Taylor, like so:

We have the same Constitution, the same Laws, the same Liberties, or Greater than we had before; and therefore if in want of all these we ought to yield (as the [Convocation Book by Bishop Overall] asserts) Obedience; in the Enjoyment of them, we ought to add unto it, Thankfulness.

[...]

Thus since GOD hath been pleased to Devest the Late King James of that Authority which he had once Committed to him, and Transferred it into another's Hands; both Clergy and Laity according to the Doctrine of the Church of England, ought to Reverence, Obey, and be Subject to it, not only for Wrath, but also for Conscience' sake.

's/James/William' is the path to divine-right Whiggery, evidently.

Forget about "consent" or "contract." Filmer makes many good points against their influence in the origins of constitutions, but in his fixed schema there is no way of knowing how a monarchy can autochthonously emerge. Adam is the Father, but this at best only tells us that each unit needs to be monarchical. It does not tell us about their dynamic creation and destruction. If there are many fathers who do not have deeds or charters from a superior lord, but are each capable of exercising a monopoly on force on their clans and property, are they usurpers or are they monarchical states in their own right? Filmer begs the question by assuming all political constitutions are already in equilibrium, and that thus any action not originating directly from the sovereign will is a disequilibrating usurpation.

(In Chapter XXVI of *Patriarcha* we read that "Neither doth the diversity of laws, nor contrary customs, whereby each kingdom differs from another, make the forms of commonweal different, unless the power of making laws be in several subjects." — which seems to suggest a partitioning of states.)

All kings have their legitimating rituals that they engage with the great men and magnates of the realm. It is not merely a "contract," but nor is it merely an extension of his will alone. It is a sign of devotion and martial piety to his great men, which when properly exercised demonstrate the king to be a man above his inferiors not simply within the positive law but as his own person to be revered. And it is above all the feeling of reverence toward a superior that makes the whole absolutist solution to the problem of anarchic pluralism work. Whether you reject the technical existence of such a thing as "tyranny" as Filmer does, virtuous behavior serves to reassure his men of his fidelity as a ruler.

Hence, the Duchy of Brabant had its ceremonial royal entry, the *Joyeuse Entrée*, which involved the confirmation of an eponymous charter, the Joyous Entry of 1356 ([https://en.wikipedia.org/wiki/Joyous\\_Entry\\_of\\_1356](https://en.wikipedia.org/wiki/Joyous_Entry_of_1356)), reserving rights to the Estates. Joseph II in 1787 decided to follow his guru Voltaire instead of the corporate order that made his possessions in the Austrian Netherlands work as a governable organic whole. Revolt ensued.

Sovereignty is not overlordship. The absolute and indivisible archon of the Bodinian imagination is an invention, picked up by Hobbes in his *Leviathan*, which attempts to create a fixed point for order and stability in a realm plagued by religious dissent. It posits a de facto demigod of a man who can scarcely exist as is conceived.

Lastly, but by no means most trivially, I would like to address the question of absolutism and property. Since Locke was Filmer's most famous opponent, it has been extrapolated by many that the type of patriarchal absolutism Filmer advocated was opposed to liberal property relations.

My contention is that this is backwards. It was absolutism that created liberal property relations to begin with,

The starting point for liberal property relations was that the various types of feudal tenure and the incidents attached to them, along with the heritable jurisdictions of baronies and manors, were reduced by absolutism such that every subject was elevated to the status of tenant-in-chief of the king, holding in fee simple, or if not in fee simple then all remaining feudal dues were converted to a cash rent in free and common socage, all other dues and taxes going to the royal exchequer, and all vacant estates without a heir escheating to the king automatically in the absence of any lords to exercise a right of preemption on their vassals. Ultimately, everyone but the monarch was removed from enjoying *dominium directe*.

The Tenures Abolition Act was passed in 1660, under the reign of Charles II (shortly after the Restoration), reading in part:

And that all tenures hereafter to be created by the Kings Majestie his Heires or Successors upon any gifts or grants of any Mannours Lands Tenements or Hereditaments of any Estate of Inheritance at the common Law shall be in free and common Socage, and shall be adjudged to be in free and common Socage onely, and not by Knight service or in Capite, and shall be discharged of all Wardship value and forfeiture of Marriage Livery Primer-Seizin Ouster le main Aide pur faier fitz Chivalier & pur file marrier, Any Law Statute or reservation to the contrary thereof any wise notwithstanding.

(It did exempt frankalmoin, but new grants of it by anyone other than the king were abolished in 1290.)

Henry VIII had set up a Court of Ward and Liveries in 1540 to aggressively collect revenues in estates held in knight-service from wardship of heirs below the age of majority. Additionally, the monarch had a right to propose an arranged marriage. The gentry hated it, naturally.

By that point, most obstacles on the free alienation of land had been overcome. Subinfeudation had been abolished in 1290, such that every form of alienation became a substitution (owing dues to chief lords and not mesne lords), with the Crown eventually the sole lord.

Let us look at one of the classic works of French customary law, the *Etablissements de Saint Louis* (1273) — containing coutumes of Tours, Orleans and Paris.

The *Etablissements* open up with a prologue appealing to their legitimacy on basis of respect for tradition, that “these laws were made after great consultation of wise men and good clerks, through the concordance of laws and canons and decretals, to confirm the good practices and ancient customs, which are adhered to in the kingdom of France, in all disputes and all cases that have arisen there, and that still arise every day.”

There is a clear separation between the royal demesne, administered by provosts; and baronial jurisdictions, administered by the retinue of the baron in question.

(Legal status and tenant status are distinct. The *Coutumes de Beauvaisis*, another great work of jurisprudence [the most famous of its particular genre, perhaps], state that: *Freedom of the holder does not free the villeinage*. Contra liberalism, property does not make you free. Your freedom is the product of

your personal relation to your superiors, and property is always an obligation of some form — from lands held in quitrent, to copyhold lands demanding labor services, to fiefs that demand certain improvements on behalf of one's lord.)

Jurisdiction is a piece of real property in of itself.

Judicial battles are forbidden in royal lands run by provosts ("We forbid judicial battles in our whole domain in all suits"), but not in baronial ones.

The concept of levels of justice (high, middle, low) is illustrated in the case of Jews, who at the time had all their personal property held as a ward by their superiors. If a man who lives in a castellany presided by a baron owes money to one of the king's Jews and asks that the case be sent down to the baronial court, he will be denied. Similarly, Jews whose personal belongings are owned by a baron who ask that their case be sent down to a lower liegeman, will be denied.

The ecclesiastical jurisdiction was the most striking, by far. The ultramontane interpretation under the Roman canons essentially had the force of law, which is not surprising for a king as pious as Saint Louis:

If the king or the count, or a baron or some vassal who has the administration of justice in his lands arrests a clerk, or a crusader, or some man in religion, even though he were a layman, he should be handed over to the Holy Church, whatever crime he had committed. And if a clerk commits an offense for which he should be hanged or killed, and he does not have a tonsure, the secular authority should deal with him. And if he has a tonsure and a clerk's habit and can read, no admission and no answer he makes can be to his detriment; for [the secular judge] is not the judge having jurisdiction over him [ordinaire]; and an admission before a judge who is not his proper judge is invalid, according to written law in the Decretals.

From each according to his status, to each according to his law.

When we deal with aggregates like "the people," we resort to extremes. When we divide the people into functionally differentiated groups pursuing their own ends and governed by uniquely applicable laws, the pieces fall into place.

There are few greater evils than to be equal under the law, and this is where absolutism, Filmerite or any other, must lead.

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

## 37 thoughts on "Sir Robert Filmer refuted"

1. Pingback: [Sir Robert Filmer refuted | Reaction Times](#)

2. Vladimir says:

[October 10, 2017 at 12:48 am](#)

Still, all these references to the medieval feudal law are in a sense a copout from the really difficult question: what is a sane, coherent, and workable political formula for an age of absolute state?

Medieval institutions were adapted to a time when the technology — both social and technical — for building and running a powerful centralized state was nonexistent. And whatever rudiments of such technology existed were mostly monopolized by the Church.

However, as increasingly more powerful and centralized states became feasible in the late Middle Ages and the early modern era, the really hard question had to be faced, namely who would wield this previously nonexistent central power.

(Of course, in principle the elites of a country could also cooperate to uphold the old decentralized institutions, as indeed happened in Poland. In most places, however, some ruler would eventually figure out a way to centralize power, and in any case, decentralized countries eventually turned out to be unable to resist the superior military force that could be summoned by the more powerful neighboring states.)

The question, needless to say, hasn't been answered clearly to the present day. Modern political theory that claims to shed some light on the question is for the most part hopelessly ignorant and ideologically blinded.

Now, your point is of course quite correct: liberalism, even of the classical variety beloved by modern libertarians, has always been the most consistent and extreme ideology of absolute state. In this sense, its similarities with the divine right absolutism of Filmer and the like are in many ways deeper and more fundamental than their differences. The idea of an absolute state that completely obliterates every other source of authority in human society is an idea so radical and remarkable that it really seems like a question of secondary importance in what way this absolute state will be ruled. And unlike absolutism, liberalism can't even provide a coherent and workable answer to the latter question.

However, once the conditions are there to build an absolute state, chances are that it will be built; nature abhors a vacuum. How to devise a sane ideology and political formula in these conditions is a question that unfortunately can't be answered by harking back to the laws and ideas from a time before such a thing could even be imagined.

#### Reply.

- Nulle Terre Sans Seigneur says:

October 10, 2017 at 6:14 am

Actually, even with the technological limitations of their time, centralization was not that insurmountable of a task. Henry II of England crushed castles built under King Stephen's "anarchy," instituted common law and tightened the clergy's grip effectively with the Constitutions of Clarendon, all from 1154 onward — the High Middle Ages. It was also something of the norm outside Europe.

This is of course the major question, and I will address it in later installments. I will say however that such a regime needs a greater clerical and ecclesiocratic influence in the upper echelons of its elites than usual, as such a group has one of the best incentives to maintain feudal corporatism precisely due to such privileges as exemption from secular courts.

#### Reply.

- Vladimir says:

October 12, 2017 at 2:22 am

“Actually, even with the technological limitations of their time, centralization was not that insurmountable of a task.”

Note I mentioned social technology in addition to advances in science and engineering. Clearly the Roman Empire at its height was highly centralized despite lack of modern technology. (From Pliny’s letters to Trajan, it appears that a provincial governor wouldn’t dare to approve fixing a public toilet before first asking for permission from Rome.)

Modern technology of transport and communication isn’t a necessary condition of political centralization, but it does seem to be a sufficient one. The only major historical exception has been England (along with its overseas colonies), which in the early modern period somehow lucked out and ended up with a system of very strong centralized power that was nevertheless run under a gentlemen’s agreement of multitudinous free and distributed interests. (And which worked so well that the country could punch several times above its weight in diplomacy and war and nevertheless avoid any sort of bureaucratic centralism that would be stifling, tyrannical, and apt to be hijacked by incompetents and crazies leading to a bloody disaster.)

Reply.

- o Rafael says:

October 12, 2017 at 10:13 pm

Aren’t you conflating absolutism with totalitarianism?

After all, even Bossuet is careful to warn the Dauphin that they are not the same — and the theorists quoted in the OP in connection with the natural law seem to make the same point.

Reply.

3. Michael Rothblatt says:

October 10, 2017 at 8:18 am

>My contention is that this is backwards. It was absolutism that created liberal property relations to begin with

Exactly! Filmerism and Lockeanism are two sides of the same protestant-individualist coin. Filmerites would protest (pun intended) but it’s true. Absolutism is based on protestant view of freedom as irresponsibility, and of property as domain of said irresponsibility. You are right, of course, historically it did happen like that, but I feel that you putting the decline of Feudalism in the spotlight, makes it easy to miss this crucial difference. Under medieval-Catholic view a freeholder republic could still exist, but it would be different than modernist-Protestant freeholder republic. For one, there can be no private consciences under traditional Natural Law. The etymology of the word conscience shows that it cannot be something private.

Consistent application of Lockeanism actually leads to a world of absolute monarchies — Rothbard’s “landlord” is nothing but a Filmer’s monarch. It’s all too easy for Hobbes to come along and say “Well, in distant past these landlords transferred their ownership to the king, and if you don’t obey the king you are an outlaw.” Once you have concept of absolute property, you can get any arrangements you wish merely by shifting the distribution around.

Reply.

- o Nulle Terre Sans Seigneur says:

October 10, 2017 at 9:45 am

> Under medieval-Catholic view a freeholder republic could still exist, but it would be different than modernist-Protestant freeholder republic.

You're correct. Ptolemy of Lucca (who wrote a continuation of Aquinas' *De regno*, and thus often was confused with him) was one such medieval scholastic republican. I am personally rather ambivalent about it, but it's beyond doubt that such a system has little to do with anything we call "republican" today.

Reply.

- o quaslacrimas says:

October 11, 2017 at 6:18 am

>The etymology of the word conscience shows that it cannot be something private.

Lol, I've got bad news for you about etymology and scholastic jargon...

>Under medieval-Catholic view a freeholder republic could still exist, but it would be different than modernist-Protestant freeholder republic.

You should read the first page of Patriarcha, I think you'd be amused 😊

> Absolutism is based on protestant view of freedom as irresponsibility, and of property as domain of said irresponsibility.

There was a bull in 1279 which went so far as to define the four principal property-relations (proprietas, possessio, usufructus, and ius utendi) precisely in terms of the right of the owner to dispose of them ad libitum. If you look at the account of dominium in St. Thomas, you're going to find that the majority is word-for-word identical to anything the Reformers have to say about freedom and property.

Reply.

- o Michael Rothblatt says:

October 11, 2017 at 1:20 pm

So? *Rerum novarum* declared private property "sacred and inviolable" yet I don't think that pope thought that if someone was making blasphemous materials that those materials shouldn't be seized and destroyed because they are someone's property. You may own your house, be able to sell it at your pleasure, but should you be able to burn it down just for fun?

"My body, my choice." is not a Catholic statement. On the other hand it distinctly echoes "Here I stand; I can do no other." Catholic though supposes a need to justify yourself to others via argumentative process. In principle, every act may be publicly questioned as to its justifiability. Protestant though supposes a need to justify yourself only to yourself (officially to God, but once you ditch the Church and the Tradition, that doesn't amount to anything). In political sphere this means the sovereign is absolute and is not responsible to anybody. In social sphere this leads to stuff like "My body, my choice."

Reply.

- o quaslacrimas says:

October 11, 2017 at 1:40 pm

> yet I don't think that pope thought that if someone was making blasphemous materials that those materials shouldn't be seized and destroyed because they are someone's property

You're making a claim about a difference between a medieval view and a new view that emerged in the early modern period – "protestant", "liberal", whatever. You're going to have trouble finding anyone, papist or prot, who denied the right of the magistrate to burn blasphemous books... and equally, you're going to have trouble finding anyone who didn't define property in terms of, as you put it, a freedom of irresponsibility: arbitrary control "ad libitum" within the limits imposed by law. (The limits imposed by law are very important and, n.b., remain even in Locke.)

>"My body, my choice." is not a Catholic statement. On the other hand it distinctly echoes "Here I stand; I can do no other."

As depraved as Rome is, I don't think even the Roman Church has descended to the level of framing opposition to baby-murder in terms of communism in the means of reproduction. Have they?

>Catholic though[t] supposes a need to justify yourself to others via argumentative process.

Do you really believe that? That's not how the Reformation-era disputes about obedience, authority, and scriptural truth panned out.

#### Reply.

- o Michael Rothblatt says:

October 11, 2017 at 2:34 pm

>you're going to have trouble finding anyone who didn't define property in terms of a freedom of irresponsibility: arbitrary control "ad libitum" within the limits imposed by law

Even when the property in question is sovereign property? Hm...

>As depraved as Rome is, I don't think even the Roman Church has descended to the level of framing opposition to baby-murder in terms of communism in the means of reproduction. Have they?

What about self-castration? Piercing? Tattoos?

>Do you really believe that? That's not how the Reformation-era disputes about obedience, authority, and scriptural truth panned out.

Of course I do, entire Medieval system of disputations evolved out of that supposition. Counter-Reformation engendered a shift in church policy and attitude both. It witnessed the church forging an alliance with the state and becoming much more authoritarian in attitude. It witnessed the creation of the Index, Tridentine reforms, etc. There were always people who would call out clerical abuses (like Peter Damian did in his Book of Gomorrah, for example). What Luther did was completely different, but he would not have succeeded if not for the greedy princes who wished to loot the churches, and were only waiting for an excuse. As an added bonus Luther taught the theory of passive obedience (in contrast to the scholastic resistance theory). In order to counter this, clearly Rome had to change, to placate the states, so that the rest of them do not go the way of Reformation (and thus the road was paved for Catholic grumbling acceptance of absolutism).

Reply.

- quaslacrimas says:

October 11, 2017 at 7:06 pm

I fear that we are going in the wrong direction – ultimately you want to make a \_philosophical point\_ about liberty and conscience and whatever else, and this thesis is warped when you enframe it in a very queer history of political thought where your understanding of the relationship between medieval and post-medieval concepts are very, very inaccurate. To have hazy ideas of the history of philosophy is no sin, but if you attempt to articulate your own thoughts in terms of non-concepts that only make sense in the context of non-history means that you will ultimately have a misleading picture both of the world and of the great doctrines of the past. Better to articulate your thoughts, e.g., about “property as irresponsibility” without reference to any historical anchors, to establish that you have a thought that will stand on its own, whether or not Locke’s approach to dominium was differs from what was taught at the University of Paris in 1290.

>Counter-Reformation engendered a shift in church policy and attitude both.

Okay, if what you mean is “there were dialectical and papist strains in medieval Christianity, and part of the process of the Reformation was the papist strain separating itself from the others in to a pure, Counter-Reformation Papacy,” then that’s fine. But it doesn’t support your argument.

>As an added bonus Luther taught the theory of passive obedience (in contrast to the scholastic resistance theory).

PAUL taught the passive obedience theory! May Jesus Christ have mercy on us if we confuse apostles with monks. You may well prefer the politics of Cicero to the politics of St. Paul – the Renaissance papacy certainly did – but this is really not something you can blame on Luther.

Reply.

- Michael Rothblatt says:

October 12, 2017 at 7:46 am

There was nothing “un-Pauline” in their understanding of politics. The fact that authorities are from God, and placed specifically to do good, means that if a perceived authority does evil it is no authority at all, but usurpation. Someone having power over you does not automatically make him an authority. Bandit can hold a sword at your throat, and thereby have power over you, but it does not make him an authority (submit though you may to him in order to preserve your life and limb).

Reply.

- quaslacrimas says:

October 12, 2017 at 9:25 pm

The doctrine that citizens should pass judgment on their rulers — and, if they disapprove of them, resist, depose, or assassinate them — is an authentic classical doctrine. It is, however, VERY un-Pauline.

The thesis that Christians do not owe obedience to an unjust or unchristian sovereign, promoted by some medieval bishops and especially the Bishop of Rome, is un-Pauline. It directly contradicts Romans. Likewise the thesis that the Bishop of Rome (or his agents) can absolve subjects from allegiance or obedience to laws, is un-Pauline. The doctrine that a Christian sovereign must defer to the Bishop of Rome on all questions touching on religious doctrine and canon law is not *\*in itself\** un-Pauline, but the views that it entails about what ensues if the ruler does *\*not\** defer are most certainly un-Pauline.

>1Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. 2Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. 3For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: 4For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. 5Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. 6For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. 7Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.

Note that St. Paul does not say "there is no *\*just\** power but of God" or "there is no *\*benevolent\** power but of God". The sword which is a terror to evil-doers, the revenger instituted by God, does not need to be a sword wielded with virtue, or in the name of the res publica, to receive our obedience. In fact, we are not called upon to judge the virtue or patriotism of the powers ordained by God *\_at all\_*. God ordains the rulers, to punish the evil of mankind; Christians pay the taxes the powerful levy, honor the ranks and offices they establish, and fear the punishments they impose.

> Bandit can hold a sword at your throat, and thereby have power over you, but it does not make him an authority (submit though you may to him in order to preserve your life and limb).

This question touches on the essence of sovereignty. What makes a bandit a bandit isn't that I dislike his demands and threats, but that he violates the law. If there is no one to suppress banditry, then there is no sovereign and no law. If a "king" isn't strong enough to hang an "outlaw", then the one isn't a king and the others aren't outlaws; that is a state of anarchy, or civil war.

#### Reply.

- Michael Rothblatt says:

*October 13, 2017 at 7:44 am*

"For he is the minister of God to thee **for good.**"

In Protestant interpretation Communist dictators would have been instituted by God. God put governments in power that would suppress and eradicate Christianity?!

There is always law. The natural law. Any positive law not in harmony with it is not a law at all, but a perversion of the law. Thus, for example, even though same-sex “marriage” is now a positive law, someone who resists it would not be breaking, but would actually be upholding the law.

### Reply.

o quaslacrimas says:

October 14, 2017 at 4:15 am

>God put governments in power that would suppress and eradicate Christianity?!

You understand Paul was talking about the Roman Emperors, right?

>There is always law. The natural law. Any positive law not in harmony with it is not a law at all, but a perversion of the law.

And (granting your premise for the sake of argument) who gets to decide which laws are perversions – you? Pope Francis, maybe?

>Thus, for example, even though same-sex “marriage” is now a positive law, someone who resists it would not be breaking, but would actually be upholding the law.

If you considered the American state to be a “power” in the Pauline sense (I’m not defending that thesis, mind you, but it seems to be required for your line of thought) then you would have an obligation to obey American law while sojourning in America, no matter how shitty you judge the law in question to be. You don’t have to accept the concept of fag marriage and there may be a colorable argument that you should allow yourself to be thrown to the lions before you \*perform\* a gay marriage (as a perversion of a sacrament), but if Emperor Nero tells you that your employee has married his horse, and orders you to pay out spousal health insurance benefits to cover the veterinary bills, you pay the veterinary bills. That’s pretty clear-cut.

The actually complicated cases, fwiw, are where the content of the norm is set by social standards. I.e., if the emperor allows equine marriage, you will still abstain from marrying your horse. And conversely if the emperor allows (or fails to adequately punish and deter) theft and murder, his claim to imperium breaks down and you reclaim personal exercise of judgment about the extent of your property and the requirements of self-defense. But there may be crimes like unchastity or extravagance where, in a healthy society, the limits of chaste courtship or the standards of decency in clothing and shelter are determined by custom and law. There you have an uglier problem... this topic is genuinely hard. There are three basic strategies

to try — but in the end I think you'll find that none of them are congruent with your position that natural law gets to veto law-law, because any interpretation of "natural law" that makes the problem go away will amount to positivism under a robust, exacting government.

- o Michael Rothblatt says:

October 14, 2017 at 7:48 am

>You understand Paul was talking about the Roman Emperors, right?

Of course, and he had a good reason to want to make upstanding citizens out of Christians so as to give no cause for suppression of Christianity. That particular command to particular people cannot be generalized and transferred vanilla to other peoples and circumstances. The Church decides what is appropriate.

>And (granting your premise for the sake of argument) who gets to decide which laws are perversions – you? Pope Francis, maybe?

The Church.

>but if Emperor Nero tells you that your employee has married his horse, and orders you to pay out spousal health insurance benefits to cover the veterinary bills, you pay the veterinary bills. That's pretty clear-cut.

And if Emperor Nero orders me to throw some incense into the burning flames in a basin before his statue?

4. fjwawak says:

October 10, 2017 at 8:27 pm

So the kingship is somewhere between the two extremes: the priest-king of Norman Anonymous on one side and the swineherd of Menegold of Lautenbach on the other?

Reply.

- o fjwawak says:

October 12, 2017 at 8:14 pm

While I agree with many things you said above this sounds more like Wycliff or Hus. A man is not deprived of his authority (as, for example, father over his son) just because he did something evil. Of course, the son is not bound to obey father's evil decisions but he is not removed from his authority. Sedevacantists espouse this idea and they are wrong, I believe.

Reply.

- o fjwawak says:

October 12, 2017 at 8:16 pm

This is meant to be a reply to Michael Rothblatt above (October 12, 2017 at 7:46 am)

Reply.

- o Michael Rothblatt says:

October 13, 2017 at 7:48 am

>A man is not deprived of his authority (as, for example, father over his son) just because he did something evil. Of course, the son is not bound to obey father's evil decisions but he is not removed from his authority.

Depends on what evil thing the father did. Some evil actions would remove authority, many wouldn't.

>Sedevacantists espouse this idea and they are wrong, I believe.

Sedevacantists are not wrong in theory, they are wrong in practice. If pope publicly started preaching a previously condemned heresy, it would indeed become a duty of every faithful Catholic to publicly resist him, and he would lose all authority, and a new pope would have to be elected. On the other hand if pope had a thousand mistresses, that would certainly be evil, but would not be "authority-removing" evil.

### Reply

o [fjwawak](#) says:

October 14, 2017 at 12:51 pm

Perhaps there are but the point here is the son doesn't have the authority to decide whether his father lost authority over him or not.

Sedevacantists have the same problem. They do not have authority to decide whether the pope is a heretic. Nobody has because there is no higher authority. Your example of teaching a condemned heresy is theoretically possible but highly unlikely. Even then we would probably be bound to obey him in all other things, except the heresy he preaches.

Similarly the just war theory. A just resistance or rebellion against legitimate government is certainly possible but unlikely. Historically, most of such events probably didn't meet the conditions of JWD and, therefore, couldn't be justified.

### Reply

o [marcusmontisursinensis](#) says:

October 15, 2017 at 12:47 pm

Considering popes and heresies, there are historical precedents, but the degrees of spreading heresies (and the verbs associated with it) are of great importance. Those two precedents are Honorius I and John XXII. None of the two has proclaimed heresies in a solemn manner (e.g. in the way the post-Vatican-I pope Pius XII proclaimed the dogma of Assumption in 1950). None of them could be seen as a formal heretic, but only a material one (some would even doubt that).

Honorius I was condemned by the Sixth Ecumenical Council (in 680), several decades after his death (638). His entire pontificate co-occurs with the reign of Heraclius, and saw the end of the Roman-Persian super-war as well the disastrous defeat by the Mohammedans at the Yarmouk River. He was condemned by name, like, for instance, Theodore of Mopsuestia by the Fifth Ecumenical Council, and unlike Erasmus, whose doctrines were condemned by Trent but he was not mentioned by name.

Since an Ecumenical Council, from the Catholic viewpoint, is valid (i.e. takes the status of a Council) only if a pope signs the decrees, it is noteworthy to mention that pope Leo II signed the proceedings, with a statement that some historians interpret as a milder interpretation of what the council proclaimed. Thus, there is a disagreement of whether he was only condemned for gross-negligence, or something worse, e.g. helping

to spread the heresies. Gallicans or those with less ultramontane leanings (Bossuet, Hefele at the eve of Vatican I) believed that Honorius, in his letters is a formal heretic to some degree. Baronius and Bellarmine held contrary positions, which I would consider too benevolent towards Honorius.

Anyway, who could condemn a pope? Any of his successors. The condemnation would be stronger if proclaimed by an ecumenical council. That is what is probably going to happen to Pope Francis. His condemnation will surely measure the atrocities he committed in a mild and generous manner.

John XXII, a pope in Avignon, preached a heresy (considering the beatific visions of souls before the Last judgment) from the pulpit, which was consistent with a thesis that he published as a theologian before ascending to the papal throne. John was confronted vigorously by the University of Paris (and King Philip VI Valois, who, on some accounts, threatened him with stake). During his papacy he fought heavy battles with Emperor Louis IV (the Bavarian) and his proto-absolutist scribes such as Marsilius of Padua. Facing the strong opposition from Paris (providentially, a Catholic like myself could say), he allowed himself to be reconciled with the orthodox opinion, proclaiming that he expressed opinions as a private theologian, not as a pope. Thus, he is not considered a formal heretic. Yet, to cite Bl. Ildefonso Card. Schuster, "he offered the entire Church, the humiliating spectacle of the princes, clergy and universities steering the Pontiff onto the right path of Catholic theological tradition, and placing him in the very difficult situation of having to contradict himself".

I also have two other brief notes regarding the Council of Constance.

First, Constance was convened by Emperor Sigismund, with support of cardinals from both Rome, Avignon and Pisa. For instance, the future pope Martin V, Oddone Colonna, was created cardinal by Rome, yet went to Pisa where the cardinals produced the third co-occurring pope (anti-pope Alexander V), yet then abandoned his successor (anti-pope John XXIII) and went to Constance. Constance gained a posteriori approval of Gregory XII, the pope of Rome, who, very reluctantly, resigned but still did resign and authorized the Council to elect the successor. By this sign of humility (as reluctant as it was) the legitimacy of the Roman line was actually confirmed. The electors included cardinals created by all sides (including the future Eugene IV, a nephew of Gregory XII) of , plus additional electors of "five nations" (Italy, France, Hispania, England and Germany, the latter including Austria, Netherlands, Livonia and the Kingdoms of Poland and Hungary). Some saints at the time, e.g. St. Vincent Ferrer, were obedient to an antipope, but, in this case Ecclesia supplet.

Second note, Constance had a document later proclaimed as heretical, Haec Sancta, which is explicitly heretical, and against which Eugene IV, spoke, mainly with the help of Cardinal Torquemada (not the Inquisitor). Covering the subject, Torquemada produced his famous opinion that a pope proclaiming a heresy in a solemn way would automatically depose himself. Haec Sancta, meanwhile, does not proclaim anathemas, or uses verbs such as order, define, establish, decree and declare.

### Reply.

- o Michael Rothblatt says:

October 15, 2017 at 6:45 pm

>Covering the subject, Torquemada produced his famous opinion that a pope proclaiming a heresy in a solemn way would automatically depose himself.

This is what I had in mind, and this is what logically follows from dogma of papal infallibility. Pope who ex cathedra proclaims a previously condemned heresy automatically ceases to be a pope (or else the dogma ceases to be). Francis on the other hand, doesn't fulfill this criteria (not to mention the previous not-recognized-by-Sedevacantists-popes), therefore Sedevacantists are wrong from Catholic standpoint. Francis is aware of this, and I am sure will never attempt to do something drastic via means of ex cathedra proclamations. What he can and does do, is appoint leftist cardinals. This can have an interesting effect. Official Catholic teaching on faith and morals will remain the same in the future I think (because previous dogmas cannot be undone, even by popes), but via laxity of leadership it can be made sure that it is safely ignored. This might seem hopeless, but is not as bad as it may seem. Since official stance is safeguarded, the fate of Anglicanism can not befall Catholics no matter how bad the leadership.

Reply

◦ quaslacrimas says:

October 16, 2017 at 4:21 am

The interface seems to be impeding me from replying directly to your last comment, which I will take as a sign we've gone on long enough. But briefly:

>And if Emperor Nero orders me to throw some incense into the burning flames in a basin before his statue?

Congratulations, you're about to receive an eternal crown. 🦁🦁🦁👑

Reply

◦ Michael Rothblatt says:

October 16, 2017 at 9:15 am

>we've gone on long enough

We did, Mon' Ami, we did. Thanks for the discussion.

Reply

◦ quaslacrimas says:

October 16, 2017 at 6:23 pm

Likewise, always a pleasure 😊

Reply

5. quaslacrimas says:

October 11, 2017 at 6:01 am

>It is clear why, for absolutism entails liberating one from any intermediary bonds below the king (and often a few superior bonds above him also, namely divine law), elevating the person to the immediacy of being a royal subject, which in former times was regarded as a great liberty, since one was exempted from the jurisdiction of barons. Now it is all too normal.

This is missing the point. A sovereign can permit the operation of a system of common law which predates his reign (or his dynasty). A sovereign can elevate commoners, attain peers, or permit the perpetuation of the existing constitution of his realm. The question is, who decides the exception?

When case-law conflicts with a statute law (or with itself), who decides? A guild of lawyers? A legate from Rome? A jury? Or the king himself?

When the laws of the realm contradict feudal customs, who decides? A mob of serfs? A clique of barons who have come to consensus among themselves? Or the king?

Absolutism, of course, need not be royal. Aristocratic councils work fine – they didn't call it "serenissima" for nothing, did they? But every a jerry-rigged contraption like "King-in-Parliament" is a dubious proposition, for the simple reason that a king can't both have an unequal share of legislative power and a monopoly on executive power.

>It was absolutism that created liberal property relations to begin with

The "property relations" in question are the rights of the Roman *paterfamilias*. His dominium was later transferred, post-Republic, to the dominium of the emperor. So you have this backwards, which is surprising; this is the sort of thing you normally get right. Even in the context of the recovery of Roman Law in the Renaissance, you are on shaky ground; the *\_politiques\_* were generally happy to have all sorts of coexisting standards – provided the supremacy of the sovereign was recognized – whereas the champions of the feudal regime were the great fans of Roman Law, as a project for imposing transnational, univocal ethico-juridical standards on their rivals. (No different, really, from the EU in 2017.)

### Reply.

- o Nulle Terre Sans Seigneur says:

October 11, 2017 at 8:24 am

So in this case all government is absolutist because someone (or some body of people) need(s) to have the power to do extra-legal (on a statutory basis at least) constitutional amendments. The "state of exception," using Schmitt's phrase. So "divided power" seems to dissolve into many petty absolutisms, as I hinted in this essay. Another subject for future clarification.

As to the question of Roman law, its application in medieval times from glossators, postglossators to humanists is a highly intricate history that didn't belong here. It'll take several essays worth.

For the time being, I will say its practical application often carried revolutionary leveling implications. The two episodes I'll mention are a) the Reichsreform of 1495, b) this prosopography of a 13th-century French jurist and his attempts to bridge the two conflicting traditions.

Re: Roman law and feudal law — we have to draw a distinction between the academic law of fiefs in Italy (the *Libri feudorum*) and the various amalgamations of Germanic law, folkways, royal edict and Roman law influence that governed fiefs and feudo-vassalic relations in various coutumes, customals and written texts of such a nature. Procedural law especially tended to be ad hoc. The first reference to a formal law of fiefs was actually the *Constitutio de feudis* decreed by Conrad II, Holy Roman Emperor in 1037, IIRC.

Re: Pretensions for a universal jurisdiction — a common ambition for Emperor and Pope alike up to the Late Middle Ages, reaching its practical apex respectively in (by my rough estimation) Charles V and Innocent III. "Universal history" was a popular genre, too. Even up to later absolutism, Bossuet tried to take a stab at it. Actually, by the end of the High Middle Ages, many of the political debates were of the form "Roman Law v. Aristotelianism."

(This is not to say the Romans themselves couldn't improvise more intricate forms of legal status for their colonies — the status of *peregrinus* in the *ius latinum*, for instance.)

(And further let us not forget that the whole device of the *lex regia* in Roman law of the people transferring their *imperium* and *potestas*, used to justify the constitutional transition from Republic to Empire, was something of a proto-Hobbesian social contract [minus the state of nature, I suppose] — which befuddled medieval students of Roman law for a long time and led to many confused ideas of popular sovereignty. Accursius himself interpreted the *lex regia* as revocable and made up the Emperor to be a popular delegate.

*Chronologically*, you're correct in going back to antiquity. But not quite. The medieval discourse on Roman law, and the process of defeudalization, were two contemporaneous and mutually interacting developments. It was then that Roman law as we know it became significant. What the ancients did in a vacuum regardless of surviving evidence, is irrelevant.)

Reply.

o quaslacrimas says:

October 11, 2017 at 1:24 pm

>So "divided power" seems to dissolve into many petty absolutisms, as I hinted in this essay.

Oh, Nigel. You really need to read Hobbes seriously. Not for "symptomology", but as philosophy. If you could endlessly subdivide the functions of sovereignty and hand them out to each and all like splinters of the True Cross, you would be correct. But the end result of this kind of subdivision is not N officials with absolute control over 1/N of the functions of state, but rather a body of N officials all of whom have an unclear, ambiguous claim over the operations of the entire state.

>something of a proto-Hobbesian social contract [minus the state of nature, I suppose]

Consider the relevant passages in *De oratore*; I would say this is a case of "plus" rather than "minus"

Reply.

6. Imperial Energy says:

October 12, 2017 at 12:02 am

It will be interesting to see how the absolutists respond to this article. Filmer defends the following claims:

- 1) That there is no form of government, but monarchy only.
- 2) That there is no monarchy, but paternal.
- 3) That there is no paternal monarchy, but absolute or arbitrary.
- 4) That there is no such form of government as a Tyranny.
- 5) That the people are not born free by nature.

You have taken a whack at 1, but your argument is not much more than "intuitive".

You write: "It seems much more likely that due to the differentiated functions of the state, that in an oligarchy (and all government is oligarchy at the end of the day)...." While we agree with your claim, this is a point to be proved.

No argument concerning 2?

Set aside (3) for the moment.

Do you really address 4? (It is hard to take Filmer seriously here, as with 1.)

5 is not really addressed, but is irrelevant anyway.

As for 3, this is something that we have not seen a completely satisfactory answer from absolutists (Neo or otherwise).

There is, however, truth on both sides of this issue.

On the side of the absolutists, it is clear that law is not some inert thing but requires interpretation and application by a judge. However, no body of law, no system of rules or doctrine of morals is sufficient to cover all cases or all eventualities – in principle.

In practice, ruling requires judgement and judgement contains an irreducibly qualitative aspect – an art and not a science.

Moreover, at times the sovereign must, how shall we say it, "break the law in order to save the law." This is what absolutists get right – someone must always rule.

Perhaps, a better, non-pejorative term for "absolutism" is Finalism.

The sovereign is he who makes the Final decision – decisions concerning law, liberty, life (and death) itself.

Now, what critics of absolutism get right – intuitively – is the "horror" that this claim evokes.

The horror that is felt is moral horror over a man sitting in a room deciding on who gets to live and who gets to die (perhaps by dealing out "death cards" for CIA drone operators.)

The horror is that a single individual has all the forces of man and materials at his disposable – for whatever purpose.

Naturally, these "constrainers" recoil in horror, disgust and terror (quite rightly).

Thus, the "constrainers" invent and propagate fictions (God's laws or Human Rights) in order to constrain the capacity for death and destruction that man has.

And they are quite right.

However, the mistake they make is that they confuse the purpose of the thing (law and morality) with the thing itself (its "mystical" aura).

The best definition of morality was given by G.E Warnock "the purpose of morality is to prevent bad things from happening" or, as J.L Mackie wrote, "to constrain limited sympathies."

Nevertheless, there are no “moral absolutes”, “absolute laws” or “categorical imperatives” or anything like it; a sovereign must be constrained but never bound, regulated but never overruled.

The sovereign does not just decide the exception but the state of emergency itself. And it is in these states of emergency – or war – where exceptions are to be made.

And that can never be fully enunciated in law or morality but is subject, ultimately, to the particulars of the circumstance in question and the psychological character of the sovereign.

Thus, where law ends, virtue begins. So the question then is: what kind of man ought to be sovereign, and how can such a man be educated or groomed for such a role?

Finally, you write:

“When we deal with aggregates like “the people,” we resort to extremes. When we divide the people into functionally differentiated groups pursuing their own ends and governed by uniquely applicable laws, the pieces fall into place.

There are few greater evils than to be equal under the law, and this is where absolutism, Filmerite or any other, must lead.”

Wise, but not at all inconsistent with absolutism either.

Indeed, what better argument for absolutism could there now be, what with all of God’s squabbling children? A sovereign who exercises final judgment over all of them? A sovereign who regulates each regulator with their own system of regulation?

Supreme over the Jew and Gentile, Sunni and Shia alike.

In other words, the sovereign becomes the supreme defender of Order and Final protector of Property and Persons (for Profit).

Reply

- Michael Rothblatt says:

October 13, 2017 at 1:07 pm

>Supreme over the Jew and Gentile, Sunni and Shia alike.

TBH it sounds like Antichrist.

Reply

- Imperial Energy says:

October 13, 2017 at 4:57 pm

Perhaps, but is that not the implication here? That depending on your caste and religion you will be subject to different laws.

You know, Islam has this very concept?

Reply

- Michael Rothblatt says:

October 13, 2017 at 6:09 pm

I am fine with millet system. What I find ghastly however is world government. I cannot imagine a scenario where world-wide total state would be running a millet system, rather than replacing all religions with state-mandated emperor-worship. It would be the only way for his diverse groups of subjects not to want independence, from him, and each other.

Reply.

- Imperial Energy says:

October 13, 2017 at 6:20 pm

We have a major piece coming up soon Reactionary World Order which you might enjoy.

Reply.

7. Different T says:

October 13, 2017 at 11:41 am

@Rothblatt and quaslacrimas

What is the source of doctrine for this claim:

*The doctrine that citizens should pass judgment on their rulers — and, if they disapprove of them, resist, depose, or assassinate them — is an authentic classical doctrine.*

*and this:*

*In Protestant interpretation Communist dictators would have been instituted by God.*

*and this:*

*If pope publicly started preaching a previously condemned heresy, it would indeed become a duty of every faithful Catholic to publicly resist him, and he would lose all authority, and a new pope would have to be elected.*

Reply.

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