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Like another Chouannerie

Status, dominion and communal relations: Carl Wilhelm von Lancizolle against Leviathan

October 6, 2019 by Nulle Terre Sans Seigneur

Carl Wilhelm von Lancizolle (https://de.wikipedia.org/wiki/Carl_Wilhelm_von_Lancizolle) (1796-1871) was among the hardest of the Prussian counterrevolutionaries, a historian and archivist who completely and vehemently rejected the vocabulary of modern political philosophy in favor of recounting and defending the legal and constitutional experience of Prussia and the German Reich *wie es eigentlich gewesen*, to the best of his abilities. He merged a patrimonial view of the state building on the Hallerian private law approach combined with a strong Christian integralist piety and a deep historical consciousness.

No surprise that the infamous German-liberal-turned-Machiavellian-realist Heinrich von Treitschke, who eventually became scapegoated as a forerunner of National Socialism, made a special mention for Lancizolle in his *History of Germany in the nineteenth century* like so: "The erudite tomes of the excellent Lancizolle concerning Prussia's monarchy and estates already gave the impression of being a voice from the tomb. This faithful Hallerian, like Schmalz and Marwitz before him, spoke of the different "states" of the royal house, for he regarded the modern state and its legal unity as an empty abstraction."

A voice from the tomb he was, regrettably so. Lancizolle's encyclopedic knowledge of the laws, customs and history of Germany and Prussia in particular made him the most bitter foe of liberalism from one of the most pure and unadulterated feudalistic perspectives there ever was. Every high-level abstraction was methodically dissected by him into the underlying legal realities of the actually-existing Reich, which no doubt often makes his writings a little tedious and increasingly impenetrable as he becomes ever more distant from the present. Seeing what is right under one's nose with the detail that he did simply did not make him endearing or easily simplified into a school or movement. This is the man who in his seminal work *Ueber Königthum und Landstände in Preussen* (<https://books.google.com/books?id=6mcRAAAAYAAJ>) (1846) said that a unified state budget would pose a "danger to the crown, and thus to Prussia's internal and external existence." He doesn't speak of "der Staat" (the state), but of "die Landstandschaft" — the hereditary rights of country estates. The terms "national debt" and "state purposes" were vacuous and imprecise to him, going on to draw meticulous distinctions between sovereign bonds, landlordly incomes and rents, and whether the sovereign's use of his own funds affects the tax burdens of other classes. It made no sense to him to include various personal taxes in a general "state budget": "It would, however, be completely absurd to conceive of the liabilities which inevitably

arise in the course of even the most regular household, but which are always fully covered, under the category of public debts, which require the consent of the estates.” He similarly rejects the distinction between direct and indirect taxation. All taxation is direct and mediated by corporate interests for every addition and deduction (however the aggregate volume itself is not so negotiated, and in the natural state ought to decrease as incomes and expenditures tend toward equalization). Written constitutions are a dead letter from a historicist view: “The establishment of such written norms, supposedly taking up and presenting the innermost core of the whole political system, first and foremost carries with it all the dangers which arise in all the drafting of general law books, in all so-called codification. Such legislative undertakings interrupt the living connection with the whole of primeval times.” He decried seemingly benign administrative simplifications and redistricting as the rise of a “fake or artificial unity of the lands and tribes.” Not only that, but most of what we regard as “property law” like mortgages and trusts was in Lancizolle’s view not anything that even concerned the judicial profession at all, they are something that the knighthood as a corporation ought to manage on its own, which indeed they once did with what were called “Landschaftliche Kreditinstitute” issuing bonds called *Pfandbriefe*. The growth of the political clout held by cities was a grave threat as well: “The rapid growth of the population in some cities, accompanied by no increase in the level of either the material forces accumulating in one place, or the intellectual and, in particular, the moral and political ones, can not, in and of itself, promote any expansion of the Landstandschaft. At any rate, it would be a highly questionable innovation, **a partial devotion to a political system based not on organic conditions, on conditions of status and dominion and communal relations, but on numbers.**”

“Status, dominion and communal relations” — a perfect summary of everything that no longer is, which is why I’m putting it in the title. Lancizolle memorably flips the assumption that liberalism and constitutionalism are evidence of a “mature” state, by saying: “Prussia itself has not yet become “mature” for a “constitution,” for in spite of all the illness of important parts of the body politic, it is not yet dissolved into the atoms of society; it is not so revolutionized that men, like unnamed numbers, or even raw building materials, could be subjected to arbitrary arithmetic or architectonic combinations and manipulations.” (In 1846 maybe it wasn’t, but by 1866 this was no longer true sadly.)

An interesting detail is that in a booklet of three essays published on May 26, 1847 as “Beiträge zum Verständniss und zur Würdigung der preußischen landständischen Verfassung,” one of them opposes an increase in urban representation with an argument that is interesting for its time. It is frequently assumed that homeownership is a traditional measure of personal independence excepting in modern conditions of financialization and for a lack of a better term “debt slavery,” but according to Lancizolle the German homeowner could not be considered financially independent in a strict sense as early as the 1840s at least: “For urban property, at least for the moment, does not in and of itself afford any elements of political aptitude... Owning a house, especially in a larger city, is not unfairly considered more of a burden than a privilege in our present circumstances, and **like innumerable homeowners, they are only stewards for their mortgage creditors.**” A village school could possess more wisdom in local affairs than a faculty of a law in a university, per Lancizolle. He also doesn’t consider seniority of property ownership to be as important in determining right of representation so much as the tenure and hence class of property that is actually held.

It is far from me to summarize all of “Ueber Königthum und Landstände in Preussen” for it is too vast and dense in historical and legal detail, and I don’t grasp it entirely myself. Nonetheless, a broad outline is in order, for Lancizolle was among the most erudite voices of an old regime eradicated from memory, and an enemy of absolutism from a standpoint thoroughly illiberal and corporatist.

By the Weberian definition of a state as a monopoly on the legitimate exercise of force, Prussia could historically not be lumped into, seeing as “all the states of the king were already endowed with a more or less extensive territorial authority, by purchase, by inheritance, by imperial investiture, also by conquest, in short having been acquired in the most varied ways.” The dignity of the Margrave of Brandenburg was that of a particularly eminent prince, i.e. a personal dignity. The nobility of the Marches had rights to be counseled on taxation, summoning of regional courts, levying of troops, and by the feudal law [Lehnrecht] governed possessions subject to homage as well as reserving certain political appointments. The Hohenzollerns sternly managed the rights that were properly theirs, avoiding large fragmentations of their patrimonies via the Achillean house law (https://en.wikipedia.org/wiki/Dispositio_Achillea) since 1473, setting up indivisibility and primogeniture for the Margraviate of Brandenburg, while also imposing primogeniture on the cadet branches that ruled the Franconian possessions of Ansbach and Kulmbach. This stabilized the Franconian branch holding Brandenburg (and later Brandenburg-Prussia) into a co-regency of no more than three sovereigns.

The first breach comes with the Great Elector (Friedrich Wilhelm), however this could be excused in light of the exigencies of the Thirty Years' War and the need to enforce confessionalization. Even Friedrich II (a.k.a. Frederick the Great) for all of his enlightened absolutist tendencies, indeed being named by the abbe Barruel as one of the co-conspirators in the secret history of Jacobinism alongside Voltaire and Diderot, nevertheless did lay the foundation for the aforementioned Landschaft mortgage banks and kept his rule tempered within the Prussian virtues. Nonetheless, such premature ideas as Friedrich Julius Stahl's “monarchical principle” ran the risk of confusing the king's independent territorial justice with the idea of an unmitigated *imperium* respecting no foreign right. Things however began going adrift when there emerges a “public law” or a “general land law” (in the Prussian case since the 1794 civil code) distinct from the private law that governs right, possession, inheritance, status, etc. The most striking example of absolute monarchy had up to that point been the Danish lex regia of 1665 (https://warwick.ac.uk/fac/arts/history/students/modules/hi203/group12/absolutism_and_the_rule_of_law_in_denmark_1660c_1750_selection.pdf), though even that wasn't entirely absolute in the sense that there was still a house-law and order of succession that the king could not upset. Otherwise, in the Prussian case: “Forming and fortifying warfare and finance (the latter, however, on the most economical footing, and therefore with comparatively modest tax burdens), was the main focus of domestic policy, along with vigorous handling and organization of the judiciary. In the rest, however, the acquired rights of the corporations and of the individuals were not challenged, and no attempts were made to bring about any utopically ideal state of society through revolution-like reforms. Individual transgression of this line, individual arbitrarinesses (especially by financial-police, the free movement of the trade and commerce unduly obstructed, often petty arrangements) should not be denied.” Nor was the separate provincial character of the newly conquered West Prussia and Silesia rejected.

The Prussian land law of 1794, however, with its pretension for supplying an overarching “constitutional law” for all of Prussia, begins to insert enlightened ideas. It uses the term “state” frequently, but never coherently defining it, at least per Lancizolle's report. Wherever a meaning is implied, it appears thoroughly Roman and republican: “Nevertheless, it can be clearly seen that the prevailing concept of the nature of the state in recent times in the literature and in many circles of the so-called educated, is a corporation or community formed by the totality of all men living under one and the same supreme authority under individual sentences of the land law. Thus, an abstraction borrowed from a republic, that is to say, a sovereign, which is the supreme authority over its individual members, as well as through the community or cooperative that lives in the country, is stamped with the concept of “the state” in general, and also placed in the monarchy. Individuals in the state are called citizens.”

In fact, the code purportedly seldom mentions a “king” at all, but rather “head of state,” “sovereign” or “regent”: “An independent person in the legal sense, with his own rights and duties, is not the head of state, but only as a mystical personification of the state itself does it appear as a legal subject. It is written Thl. II. Tit. 13. §. I.: ‘All rights and duties of the state against its citizens and guards are united in the head of the same.’”

Instead of clearly defined *iura regalia*, there are only general and abstract authorizations to preserve “peace,” “security,” “defense of public assets and persons,” etc. The consequence is that the king is no longer a person, but a legal fiction:

It may well be said that the superhuman measure of insight and energy demanded by the head of state in general land law can well behave in the appropriate measure of the power and authority attributed to it. In fact, it leaves no room for the possibility of completing the high profession, even approximately and according to the humblest human condition. There is really no room for instructions of mercy, which could awaken a feeling of gratitude to those to whom they are given. Alms can not be donated by a king, since it is one of his *state* responsibilities to look after the poor and prevent them being free of all nourishment. Any expression of gratitude, and consequently any expression of a petition, of a petition for clemency in the mouth of a citizen against the head of state, would (in most cases at least, if not always) be deprived of actual truth, sink to a meaningless form of unworthy flattery and hypocrisy.

Soldiers and magistrates are “servants of the state,” royal possessions are “domains of the state,” the house-law itself is scarcely mentioned at all, further: “Where otherwise simply the royal will announced itself, it was now pointed to the “welfare of the state,” the “needs of the state.” Where else there was talk of Jews, it was now often spoken of “burghers” of the state, and also of “citizens.” This was a passable first by a lopsided translation of the Latin term, which was made general by the abstract, republican views of the expression “state.” The form “citizen,” as far as I know, first appears in our legislation when, as far as it was considered possible, in 1812 the Jews were accorded equality with the Christian subjects: they became citizens, who had “citizenship” assigned to them.”

The purest remnants of the old constitution at the time that Lancizolle was writing was in Lower Lusatia. The two classes in the Landtag (assembly) were the Landschaft and the cities. The Landschaft contains prelates such as the Catholic abbot of Neuzelle, various comital families like Brühl, Lynar, Schoenaich, and the knighthood consisting of 240 manor-owners. The four cities represented are Lübben, Calau, Luckau and Guben. The four regular types of estate assemblies were a) a general (“Gesamtheit,” i.e. in totality) estate assembly; b) ordinary general diets a.k.a. arbitrary diets, held annually twice in Luebben, chaired by the district president; c) special grant assemblies, held before the fiscal period at which taxes were granted. Since 1754 these were merged into the arbitrary diets. There are four boards in the room: one for the prelates and imperial princes (incl. comital families) plus the district officials, one for the Landsyndicus (a chief representative versed in Roman and sometimes canon law), the chief tax collector, and deputies to the Landesältester (country elders — eminent and senior landowners elected by knighthoods); one for the rest of the knighthood and one for the cities. Each class votes by majority which is then amalgamated into a single vote, except for those eminent individuals possessing a Virilstimme who have a singular vote that may be multiplied to equal several collective ones. Objects of Landtag negotiations include tax grants to the sovereign, material provisions for the army, county concerns such as poorhouses, asylums, scholarships, fire insurance, etc.

Following the Prussian War of Liberation, there emerges another strong reformist drive. Of particular note to Lancizolle is a royal decree dated to May 22, 1815 ([here in English](https://books.google.com/books?id=X-UxQAAMAAJ&pg=RA1-PA387&lpg=RA1-PA387) (<https://books.google.com/books?id=X-UxQAAMAAJ&pg=RA1-PA387&lpg=RA1-PA387>)) declaring

that “a Representation of the People shall be formed,” with preparations for a National Assembly out of the provincial diets. Lancizolle tries to sort of fit the meaning to be compatible with older definitions and thus preserve the king’s pure intent:

For centuries, the estates in the sense of positive German state law have often been called representatives of the country or of the people. Not infrequently, this is wrong, related to the recent ideas of popular representation, which is why some have rejected the whole name. But it could also be a completely appropriate to the essence of the thing expression for the state associations regularly included all the authorities in the country under (rather in a sense, for the domains and the local state authority opposite and next to) the sovereign. Each of these authorities was initially the natural representative of their desires. The almost never lacking corporative rights of these estates forming part of the Obrigkeits (<https://de.wikipedia.org/wiki/Obrigkeits>) [state authority], however, also belonged to the contract, that without their consent no taxation of the domains could occur, and that they were also entitled to assert in the interest of the sovereign their own tenant rights, grievances and desires. If so, the estates could be called representatives or representatives of the whole country, even if the relation on which the representation of their own tribes rested was much more different from that of the territorial lord. But if the latter (in the urban and rural communities, which also existed for them) had a direct share in statehood, it would still be possible to attribute state representation or representation to the country estates in a more comprehensive, more uniform manner to let, as if the sum of all the members of the land, the people, a true corporation, a community or a person in the legal sense of the word, and as if each estate is representative of that aggregate and its statehood merely an outlet of its justification, one of its given mandate.

Thus, in the §. 1. of the regulation of 2Z. By May 1815, the term “representation of the people” was by no means incompatible with the intention which in 1823 had been more clearly pronounced (and also more clearly conceived): to allow estates to enter in the spirit of the older German constitution.

A minor victory for the estates emerges later with the brief “Allgemeines Gesetz wegen Anordnung der Provinzialstände” [General law on the order of the provincial estates] promulgated on June 5, 1823. It states that I. Provincial Estates shall take effect in Our Monarchy; II. Landed property [Grundeigentum] is the condition of the state; III. The provincials are the legal organs of the various Estates of our faithful subjects in every province. Further it is promised that the king will comply with this provision in 1) the law drafts, which alone approach the province, come to them for consultation, also to them; 2) as long as there are no general state assemblies, the drafts of such general laws, which have as their subject matter changes in personal and property rights and in taxes, as far as they concern the province, can be submitted for consultation; 3) to accept, test, and humble petitions and complaints, which have the special interest and interest of the whole province or a part of the same relationship, of the provincials; 4) leave the municipal affairs of the province to its decision, subject to our approval and supervision.

On July 1, 1823 an in-depth code is promulgated on how to conduct the provincial estates in Brandenburg and Lower Lusatia. The estates in question are: I. the first, a) from the cathedral chapter to Brandenburg, b) from the Count of Solms-Baruth, c) from the Herrenstand [high nobility] of Lower Lusatia, d) from the knighthood; II the second, from the cities; III. the third, from the other landowners, hereditary tenants and peasants. There are a total of 68 members of the Landtag from the three estates across three regions of Kurmark and Neumark (in Brandenburg), and in Lower Lusatia. All deputies require some real estate acquired uninterruptedly for at least 10 years, to be at least 30 years of age and to be of good moral character. The right to the first estate for the knighthood to be elected as a deputy, is justified by the possession of a manor in the province, regardless of the noble birth of the owner (which is something of a dilution, but nonetheless). As second estate deputies, only urban landowners can be

elected who are either senior magistrates, or who engage in bourgeois trade. In the third estate, the property of a deputy of the Landtag will require the possession of an independent farm [Landgut] farmed as a principal trade, the size of which will also determine the special ordinance. However, voting in an assembled diet does not take place in a curial fashion by default. Rather, the estates all vote jointly unless two-thirds of the votes of a particular class protests a general majority decision, at which point voting becomes split into three different curia. Resolutions which affect the special rights of the cathedral chapter to Brandenburg, the Counts of Solms-Baruth and the high nobility of Lower Lusatia are reserved for the king to deal with directly without intermediation, which still illustrates that there is a traditional particularism not in line with a unified national representation at this point.

Imperfections aside, Lancizolle lauds this as a positive development at the time. "But with unmistakable clarity and decisiveness the king's majesty, now in reign, has always had this basic idea [of the Landstandschaft] in mind, and since the accession of the throne, on occasions of the highest importance, especially in the whole course of the homage, especially in the personal addresses as well as in the contentious, above-mentioned address to the assembled committees, with great emphasis asserted and put into light."

He then goes on to describe a theory of their origins:

Rather, the estates were, according to their constituent parts, a force in their own right. Clergymen and secular lords (most of them of the equestrian order, more rarely of the gentleman's estate), townships or (most of them right) town councilors, sometimes also rural communities, existed opposite the ruler in a legally inviolable manner, just as by the emperor and the imperial courts as the sovereign's own right protected position, with personal and objective powers, which, like the sovereignty of the country itself, partly rooted in the most primitive nature of German freedom and German property, were in part also (like the first elements of urbanism) based on later developments which, however, even where they had proceeded from privileges and permits granted by the landlords (as in north-eastern Germany), have certainly been recognized as powers which are not to be unilaterally restricted or withdrawn. And it was not just for such privileges, which, according to more recent terminology, had been of a private law nature, to the same extent as those in which there was an analogous authority similar to the law of sovereignty itself.

In consequence of the reciprocal need of help and cooperation, connected with the various conditions of the cooperative and the subordination, especially the feudal and ministerial federation, it was produced by those most powerful and independent masters and congregations, with authority over the majority of the country's subjects between them on one side and the ruler on the other side the manifoldly composed fabric of the state constitution.

Most of all, the ruler's need led them to assist him with advice and deeds, mostly in matters in which the principles which were undoubtedly valid in the Middle Ages would be of no service to them (and their families) without their free consent. In particular, the landlord (apart from his own demesnes and tenants), as little in his territory as the emperor in the Reich, did he accept taxes and services imposed one-sidedly.

It is the development of the constitution of the Estates, as we are able to trace them from the ancient, given foundations, here and there since the thirteenth, or even the twelfth, most of all only since the fourteenth century, sometimes even only from the fifteenth onward, next to the silent and imperceptible course of custom, most certainly effected by the overlord of the territorial lord, and partly (and for the most part) by treaty agreements, the same with the estates (according to their aggregate or even according to their individual constituents, often to individuals, partly by unilateral orders, that is to say essentially awards, pardons, privileges, freedoms — names which in many cases designate the content of contractual stipulations.)

(As early as the 15th century among e.g. the Bavarian and Austrian estates, we see a developed idea of a "gemeine nutzen,"

(<https://www.researchgate.net/publication/306336052> The land as a community of honour public interest and peace A contribution to the discussion about the gemeine nutzen). i.e. a common good.)

Lancizolle also states that contrary to the common picture of unruly and rebellious estates, they were generally loyal and went above and beyond their duties, including fiscal ones. The well-known scholar of the Holy Roman Empire and its constitutional structures, Benjamin Arnold, has also made a similar case in our day (https://www.reading.ac.uk/web/files/GCMS/RMS-2000-02_B._Arnold_The_End_of_Territorial_Lordship_in_Medieval_Germany.pdf) that the fragmentation of the Reich came as a result not because of weak imperial authority, but because of good concord between imperial and noble authority where the Emperor entrusted many duties to his vassals:

For – to touch on only one main point – so voluntarily in the fullest sense of the word were the tax exemptions and, as the history of all territories teaches, no less in the sense of so-called indirect than so-called direct taxes – so the estates have very rarely pledged individual taxes once and for all, but the grants have always been made in ample measure; indeed, the rulers have the longer, the more not only in cases of special, indebted, or involuntary distress, but can count on a very significant and ever increasing measure of the same for the ordinary times. This has often gone so far, especially in larger territories, that, if originally, according to the most unequivocal legal bases, which are also expressly recognized by the Reichsgesetz, the ruler of the land should understand his entire needs – not only in the narrower sense personal, but also in recent times, so-called state needs – which had to be essentially compensated by the income of lucrative domains and the so-called usable regalia, the sum of the approved (direct or indirect) taxes, not only equaled those of other revenues, but went far beyond them. And part of the earliest constitution of most, not of all territories, and partly of the laws of the sixteenth and seventeenth centuries? The necessary taxes were of minor importance in addition to what the estates have voluntarily granted. But the granting of taxes was only one kind of aid in financial terms; a very frequent and important one was the assumption of debts: sovereign debts, “national debts” in the original sense, have thus arisen, to a lesser extent against one’s own needs and embarrassments of the estates themselves.

Lancizolle also plainly declares that taxation is a voluntary grant, with the traditional aristocratic tax exemptions being not an usurpation or even a revocable privilege but an inherent right as owners of a patrimonial jurisdiction which in a sense is “repaid” by their position in a feudal hierarchy as tenants-in-chief of the Emperor, by the expectation of military service and by their traditional prohibition from engaging in commerce, which was later lifted with detrimental consequences in Lancizolle’s view.

He doesn’t see much value in peasant representation. He sees their interests as being identical to the knighthood. Moreover, it is the knighthood which must act as the steward to secure a vigorous and healthy peasant life. At the time he was writing, the major issues were peasant indebtedness and loss of social security from the abolition of serfdom, the lifting of restraints on alienation and the conversion of leases into freeholds; i.e. all of these were issues of *Polizeiwissenschaft* in the classical sense and not items on an agenda that a Landrat would present for deliberation to an elected assembly. Not only that, but since the acquisition of a manor (*Rittergut*) was now open to non-noble landowners, the result was a debasement in the quality of their administration, particularly as even Jews could now possess them. However, Lancizolle affirms that the alienation and saleability of franchises and jurisdictions is a key aspect of how Prussia’s boundaries were formed: “With regard to the ability to possess. It is an exceedingly great misery and excitement that equestrian goods [*Rittergute/manors*], in the full sense of the word, that is, goods with which official rights, such as jurisdiction, police, patrol, and statehood are granted, can be bought by anyone, or otherwise acquired rightly so. It is not the alienability and thus the saleability of those so-called honorary rights in themselves that is reprehensible. Otherwise, much more would have to be given to sales, and especially to the sale of whole countries and parts of the country, whereupon the stock of our present states (and of the Prussian monarchy) is to a large extent based. The fault lies only in the fact that anyone, including the Jew, is admitted to the acquisition; that thereby many goods have sunk to an object of the lowest speculation, and must have fallen into unworthy hands, temporarily or permanently.”

Lancizolle died 4 months into German unification, at a very bitterly fitting time, since with his passing so did all the values he fight for wither away into an obscurity as if sent to *damnatio memoriae*.

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