

1974-03-09: [OFFICES] Misconceptions about "Venality of Office".

The term "venality of offices", from the 16th century to the 20th, has been the subject of the stupidest kind of misconceptions.

- the simplest would be the idea that the judge himself is being bought as in cases of bribery
- more complex, but more ludicrous is the idea that the office itself is being bribed--a hypostatizational error of a grave kind that thinkers who deal in abstractions are as prone to indulge in as are duller minds that reify by instinct.
- an error easily made is that the office itself became proprietary after purchase, whereas it was only ever a proprietary right to exercise the charges of the office. In the case of the office *secrétaire du roi*, which had no duties, and the reason to acquire it was to get the emoluments which went with the office, noble states above all, it is easy to forget that all other offices required service, and that the emoluments that went with it, such as noble status, were acquired once and for all and became truly personally proprietary and transmissible whether the office was kept or not, while the duties of service went on, year after year, perpetually. The king could repurchase the office at any time he chose, and indeed all offices were repurchased by the government during the first three years of the revolution.
- This repurchase by the revolutionary government is the most easily forgotten part of the history of venal offices. No one needed to have his office expropriated, if he availed himself of the right to redeem it for *assignats*. Most did, naturally, and many then redeemed the *assignats* by purchasing the church lands which were expropriated by the state; this redeeming of office, purchase of church lands was encouraged by the government. And in so far as the same families today own former church lands that their ancestors acquired by "re-selling" their offices to the state, then the system of venal office holding was transmuted into an utterly private proprietary right to public lands (i.e., these lands were public during the brief period between confiscation and re-sale by the Revolutionary government.)
- The source of most error is to confuse the acquisition of office, which was venal, from the exercise of it which was subject to examination and certification, recall foar improper performance, and royal repurchase. The distinction made by political theorists from Bartolus onwards, in respect to definition of tyranny, between the way of acquiring the office and the way one exercised it once acquired, is most useful here. Venal office holding describes a way of getting office, and in no way should imply that the exercise of the office was venal. If, as I've said, the exercise of the office became proprietary within the family of the holder, as opposed to the proprietary right to the thing itself which remained the king's, we should perhaps qualify this even more to say that the right to enter into the exercise of the office--i.e., a right of accession--became proprietary and saleable, but that the exercise itself was always contingent and controlled. To carry out the analogy with tyrannical rule, succession to office was no different from legitimate succession to rulership whenever the office stayed in the same family. So, dynastic officialdom is very similar to dynastic monarchy in scores of cases. If the office passed father to son, there is nothing venal to be seen; it is simply hereditary succession. Venality only enters when the office is sold outside the family.
- In regard to the repurchase of office by the state, and purchase by these compensated of

expropriated church lands, we have a nice irony: if there is little doubt that the system of venal office holding in national states began as a copying of sale of benefices in chnnc government in the later middle ages it is appropriate that the system should end by compensating the deprived officeholders with church lands.

--In respect to some venal offices, the purchase should not even be looked at as money given for an office, but as a bond for the honest exercise of that office. This was exactly the view held of the value of office of the *fermiers generaux, receveurs, et payeurs*--i.e., the whole corps of accountants who collected and disbursed the public funds on contract from the government. The value of their office, if it was a venal one, was declared to be the bond against their absconding with funds; officers who had no venal hold on their positions were required to put up cash bonds. It is, therefore, almost ridiculous in functional terms to apply to the venal financial offices the same criteria in public law and political theory that one applies to the judicial offices.

--Another error is to assume that the offices--let us speak now only of judicial offices--were a great source of income for the holders. This is almost never the case, if one takes the entire fortune of the officeholder and sees what percentage of his wealth was invested in office, and what percentag return he got on that investment as compared to other investments (land, rentes, etc.) It turns out, in fact, that offices were low-yielding, constituted usually only 20 percent of the personal fortune, but took a greater part of the life effort of the holder, in terms of his professional function, than anything else. If we assume that office was held for private family gain only, then we are wrong in financial terms because the money could have been invested much more profitably elsewhere and if it was held for the emoluments of noble status that it would bring, sooner or later, it would not be held for any longer than the acquisition of those emoluments. For those emoluments, once given, belonged forever personally to the individual and all his direct descendants, even if he sold the office the next day.

--The question then comes up, concerning judicial offices which required great service for relatively small financial return and which had long since won for the family that owned it the emoluments of noble status, why did they continue to exercise these offices? There is a natural tendency to assume that over the generations the officeholders would be less conscientious in their exericise of the office; and it is not hard to find anecdotal proof of the laxness of judicial officials--especially the younger ones--at the end of the *ancien régime*. But this view generally just does not wash; it is the absence of any great outcry about lax or indifferent exercise of justice that strikes the seasoned historical investigator. The system did work. The officers did function, despite the allurements of high return (not true) or great emoluments (already gotten) were not there. [At this point go into sociological argument about preparing for life work by family upbringing, plus the ancien regime noble's sense of lineage, etc.] The same set of anecdotes are passed around by all the historians who are sure that the venal office holding system has to have been corrupt. The most we may concern is that it was class-preferential, but what judicial system isn't that?

--Another very grave misunderstanding about the function of venal office<sup>2</sup> holding arises from the historians' tendency to assume that private right and private gain automatically invalidates any public interest; or, another way to say it, that an individual serving his family's interest cannot be serving the public interest at the same time. It is, methodologically, the fallacy of single cause, or single motive. It leads easily to the caricature of the avaricious individual taking all he can from his fellow man and from society at large. Yet I see no incompatibility between just such a money-grubbing type and perfectly good service to the public if part of

his investment is in public office. It is, indeed, rather remarkable that the whole class of financial officers who made fortunes by having at their disposal large amounts of public money which they processed between tax collecting and payment of state expenses--and especially because of their control of this money having great credit in the public eye and therefore have easy means to borrow if they needs money, or be the depository of funds of others who trusted them--that this whole class is seldom found to have cheated the government in their accounts. True, their financial manipulations on the private level, based upon the use of public money temporarily in their hands, might be disastrous and lead to bankruptcy; but they had not actually cheated the government in this process, nor the people in so far as honest collection and dispersal of tax money is concerned. The government recovered its money first (it had the price of the venal office forfeited to it automatically, for one thing) and so the public interest was seldom cheated. Who lost were the private individuals who had put trust in these officers. There was nothing illegal whatever in the private *caisses* of the financial offices being the depository of the public money they collected and dispersed on contract; and it was the crown's fault exclusively if they chose to use the financial officers as their main short-term loan source; after all, the money advanced by the officers was against their future collection of taxes, so that the monarchy was indeed borrowing against its own future tax base.

--When we look at the system of venal office-holding in the large, therefore, we cannot say that it didn't work. Starting from its origin in the later 16th century, we can argue that it was a marvelous solution to the problem of establishing a professional administrative class, a class made responsible over time by rooting their privilege and status in their family patrimony. Because the ranks of this class were always open to the bourgeoisie, if they acquired sufficient wealth and prepared themselves for professional service, it was a system that allowed social mobility at least to the powerful element in society. I am of the opinion that it never failed, as such. It was perfectly viable until the end, as honest as one could expect, and even more professional than would have been the case if administrative offices had been perpetually open for appointment and therefore constantly subject to patronage. Between patronage and hereditary office-holding, the more efficient I daresay is the latter.

--The demise of the system in the Revolution is not because of its intrinsic corruption, but rather from extrinsic changes in the basis of state administration which rendered it superannuated. To be superannuated does not mean to be decadent per se, however, but only to be ready to yield to the demands of a new paradigm of governance where the old device lacks the proper symbiotic relationship with the moral, economic and philosophical tenets of the new system.