

1974-09-08: [METHODOLOGY] Legal Historians & Client-Mindedness

In early medieval familial communities there is nothing to speak of in regard to succession "sauf en ce qui concerne les menus objets mobiliers dont le défunt avait la disposition libre." (Olivier Martin, II, 394) In later medieval & early modern times, testamentary power, donations, etc., allowed rather free disposal of all *meubles & acquets*, up to the quint. In modern times, all can be disposed of by testament. Juridically speaking, therefore, the individual has been freed from communal & lineage limitations successively. Such is the story told by legal historians—if not so simply, then in much greater force by their command of detail.

In relating this story, however, legal historians have concentrated almost exclusively upon the rights of the individual. There is an inbred tendency for legal historians to see the history of law as the story of the rights of their clients. Since their evidence is the law which designates those rights, the decisions of courts which enforced & interpreted those law in individual cases, and the writings of commentators who were themselves lawyers and counseling their guild on how to handle cases that came to them. There is no reason to wonder that legal historians have written from the point of view of their clients. What we should do, however, is label all these legal histories as "The law of X or Y as it affected individual rights throughout the ages of French history." What they do not tell us is what the social implications of those laws were, over time—i.e., they do not tell the historian what he would like to know.

Almost all the legal historians have a progressivist philosophy which the social historian today would be ashamed to be accused of—i.e., that society has advanced to better & better stages of individual rights, and we are blessed. They are aware that change was affected by economic factors—they all have a rudimentary knowledge of growing complexity of economic life (their own subject shows it, in the law of contract and the like)—but there is no impetus to link the law with economic or any other aspect of society. (I am not sure this applies to philosophers of law.)