

1974-11-30: [ANCIEN REGIME] Public & Private law.

According to Seneca, "Power over all things belongs to kings, ownership to individuals." This ideal division of the realms of public and private law, upon which Roman law was predicated, was never realized in France before the Revolution. Public law hardly existed in the sphere of jurisprudence. It was not taught in the law schools and was passed off by jurists as being the domain of political thinkers. Public law was political government. "Absolutism" in France, therefore, was the untrammelled power of the royal government in political affairs. But those political concerns must never impinge upon private law rights, upon property and contract: that was the basic rule of "fundamental law" during the *ancien régime*.

I have avoided the questions of whether the cohesion of family was based upon traditional legal division into orders, or corporate ties, or already transformed into a class structure. One must take a pluralist view, I believe, and say that all of those things were operative, but none of them dominant. There is a kind of intellectual juvenility that has underlain the debate over the social structure of the *ancien régime* which we should by now have overcome.