27 Sept 75

Assemblée nationale debate on succession, 3/4-6 April 1791.

The debate began on 3 April (?) with a long discourse by the elder Mirabeau (écouté dans un silence réligieux", interrupted sometimes by applause and very generally so at the end, according to the reporter--p.389), in which he inveighed against the right of testament, a practice rooted he said in "nos esprits et nos habitudes, qui sont tachés des principes et des vices de la féodalité" (388). Property right was not a law of nature but is bound "aux lois politiques" (ibid.--later called "les conventions sociales"). The right to dispose belongs only to the living, not the dead; "être mort ou n'avoir jamais vécu, c'est la même chose". Roman laws may have served during barbarian times, "mais dans un siècle de lumières..ils ne servent qu'à embarrasser la vue" (ibid).

In effect, the préciput of feudal law and the testamentary favoring of one heir in Roman law are equated, with the latter the more opprobrious "pensee que le tombeau sera son abri contre le ridicule et les reproches" (ibid)--this and other statements like it receiving special applause, according to the reporter. "Noms et titres" have given way to "la dignité de l'homme et du citoyen" (389); the old noble and the new rich have been equally guilty of vaunting their names in the past.

The traditional evils of favoring one and ignoring others are dragged forth, here stressing the special education preference which are likely to be shown. Equal inheritance will encourage marriages, increase the population and augment the number of landed holdings. Mirabeau does not fear covert inter vivos gifts (he prohibits them, legally), since the censure of society will operate.

He called for the national assembly to adopt two fundamentals: 1) "toute institution de préciput, majorat, fidei-commis, par contrat ou testament, soit prohibée entre toutes personnes; 2) the quotité disponible of the head of the family be limited to 1/10. As a kind of third issue, he specified that the division in the direct line be fixed by law, and that inter vivos gifts,

institutionsx contractuelles, dispositions testamentaires sans charge de rapport, be prohibited.

The next day, the defense of testamentary power began when M. Saint Martin defended it on practical grounds: the acquisitive urge, vital to the growth of the nation, depended on the right to dispose freely, and so he proposed that one son be permitted to receive one-third.

Robespierre led off the debate on the 5th of april, and took an even more radical stance than Mirabeau had. For Robespierre, equal division of inheritances would work to destroy great fortunes: "Vous n'avez donc rien fait pour le bonheur public, si toutes vos lois, si toutes vos institutions ne tendent pas à détruire cette trop grande inégalité des fortunes" (396). Paternal power is not sacrosanct; it is limited by nature to the needs of the one protected, and not the personal utility of the first protector of the infancy: "Je dirai que le legislateur viole la nature lorsqu'il... prolonge inutilement l'enfance de l'homme" (396). So, the law must limit the power to testate to very special cases where equal division is recongized as rightly violable.

Tronchet, giving up his president's chair for the occasion, followed Robespierre and read a prepared paper [cf. 392]. He juxtaposed the French and Roman laws as polar opposities on how society has allowed family succesion, and he avowed that the French was "plus conforme aux vrais principes et à la droite raison." (397). "La convention sociale" is the only title of right that a man enjoys when he transmits property at his death, and so the rights of society must prevail over his personal will. Great fortunes may support a monarch, and "ralentit l'accelération d'une revolution commencée", but once the revolution is consummated, "la puissance purement pécuniaire de quelques individus ne peut pas devenir bien redoutable" (397)--which is queer reasoning if he meant to imply that that could not happen.

The least strong measure Tronchet would accept is a g. d. of 13 1/4.

and his main four principles were as follows (p. 397):

1) Inter vivos gifts up to the limit set for heirs (i.e., 1/4)

2) Same succession laws for all citizens

3) Differential & graduated limites [to testamentary power] "suivant les differens degrés de faveur avec lesquels la volonté de l'homme peur se trouver en opposition"--which I don't understand.

4) If a légitime is allowed in favor of all the heirs in direct lines, ascendent & descendant (which is not to be less than 3/4 of the hereditary share of collateral heirs), there will be a legitime in collateral lines only in favor of brothers, nephews & uncles (to be 1/2 of their hereditary share). This not very clear either.

The assembly decreed the printing of Tronchet's discourse,

Cazalès then took up the cudgels on behalf of a Roman Law application of testamentary power in all of France. He was interrupted regularly by "violens murmures," especially from the left, and at one point "M. Dumetz s'éleve avec violence contre M. Cazalès" (398). Cazalès had not wanted testamentary power to be part of the discussion, but rather only intestate succesion. He had some good sense in arguing against a sudden drastic change of disallowing testaments entirely (although somewhat contradicts himself in principle by recommending uniform testamentary power--altough allowing something where previously disallowed is not as drastic as disallowing something that was traditional), and pointed out that inégalité as prevalent in Normandy as in the south of France so that it could not itself be the issue. He believed that inequality had appeared in French customary law long before the feudal régime, which is dubious, but he was on much stronger ground when he argued that morcellization of heritages would be disastrous in certain areas (pasture & forest lands, z.B.) if not in others. He seems to have had extensive knowledge of the relationship of succession laws and viable landed holdings. He seems thoroughly to have antagonized the crowd, however.

On the 6th, M. Prugnon defended the principle of paterfamilial power against the slurs of evil and tyranny, and reiterated Cazalès' theme of the disorder

which abolishing the testament would cause in the south. He favored at least 1/4-to 1/3 q.t. in the direct lines, 1/3 to 1/2 in collateral, after noting that even the coutumiers had compromised the puissance paternelle and le droit des enfants by adopting the Roman Law notion of the legitime equaling 1/2 of intestate inheritance. (400)

The violence of the confrontation on the issue of testamentary power showed that there was very little chance of compromise, and the Assembly drifted towards adjourning the issue. The short speech of Lanjuinais, favoring the project as a whole and ending by recommending its article-by-article vote, pointed out one serious loophole: no provisions regarding rapport (401). If a limit of 1/10 set on the q.d., as Mirabeau proposed, it would fail if no barrier was put on the many kinds of donations were allowed. Another problem was: "On vous a proposé de mettre une grande difference entre les acquêts et les propres [must find what this proposal was], il faut les volumes in-folio pour le savoir..." Things must be judged in the mass of the inheritance, he implies.

In the series of short speeches which ended the session, Chapelier and Charles Lameth urged adjournment of the whole issue until public sentiment throughout the country could be had. A last effort to separate out the entail issue failed, and the whole problem adjourned; at the same time, the record of all that had been said on this matter was ordered to be published (401).