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- The Spirit of Law - Tools -

Date de mise en ligne : mercredi 15 avril 2020

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Glossary

abbé (â€) "a clerical title requiring tonsure but not necessarily vows, and designating no specific function within the Church.

advantage (*avantage*) (â€) "Especially in the context of marriages and testaments, this word can have a fairly technical sense denoting particular kinds of legal details : "In terms of jurisprudence, what one gives to someone over and above another as a share, succession, or otherwise. This father gave much advantage to his younger children at the expense of the eldest. Great indirect advantages that married couples give each other are forbidden." (Furetière.)

ædile (*édile*) (â€) "Roman officer whose function corresponded more or less to that of our mayors and *échevins* [q.v.]" (*Trévoux*).

agency (*régie*) (â€) "Direct taxation by government, as opposed to tax farming (*ferme*), where private contractors do the collecting.

allod (*aleu*) (â€) "A freehold, i.e., a fully owned estate, one on which no seigniorial duties are paid.

amortization (*amortissement*) (â€) "A pardon or concession which the king makes by letters patent to a perpetual community [gens de mainmorte], such as churches and communities, to keep fiefs and legacies in perpetuity, without any obligation to put them out of their hands, in exchange for a sum which is paid him as compensation for profits and confiscations which would devolve to him in the changes that would be made if they remained in ordinary commerce." (*Trévoux*.) See also *mortmain* below.

antrustion (*antrustion*) (â€) "Similar to *leude* (q.v.) : a high-ranking vassal of the king. "I have spoken of those volunteers who, among the Germans, followed the princes in their enterprises. The same practice continued after the conquest. Tacitus designates them by the name of companions, the Salic law by the name of men who owe fealty to the king, the formularies of Marculfus the name of antrustions of the king, our first historians by the name of leudes and fideles, and those following by the name of vassals and lords." (*Spirit of Law*, XXX, 116.)

assize (*assises*) (â€) "More or less the equivalent of appellate court. "The distinction used to be made between two sorts of assemblies of justice : ordinary ones, which were called plaid, and extraordinary ones, which were called assizes. The latter used to judge in last recourse [...]" (Ferrière, I, 178.)

advantage (*avantage*) (â€) "In terms of jurisprudence, advantage is the name given to what is given to one person over and above another as a division or succession. [...] Indirect advantages of spouses to each other are forbidden." (*Trévoux*.)

barbarian (*barbare*) (â€) "A term which for the Greeks and Romans generally meant foreigners, later applied to several northern nations. "The Burgundians and the Franks who settled in the Gauls were called barbarians. The Goths of Italy were also called barbarians. [...] Our Gauls who were subjects of the Romans called barbarians the Germanic nations that lived beyond the Rhine. [...] Finally, the enemies of the state and those who were not Catholics were called barbarians. Those who were called barbarians in the Gauls under the Roman emperors were not the native Gauls but peoples from Germania whom the emperors had brought in to till the land." (*Trévoux*.) Note that the term also is used with the connotations of savagery and opposition to civilization.

Glossary

benefice (*bénéfice*) "A certain portion of the properties of the Church assigned to an ecclesiastical person to enjoy during his lifetime, as retribution for the service he renders or must render to the Church" (Trévoux).

capitulary (*capitulaire*) "The Capitularies of Charlemagne, of Louis the Pious, and of Charles the Bald were names given to various articles of laws, both ecclesiastical and civil, made by those emperors. They were made in Estates General or in councils, by the authority of the princes and the consent of the peoples. Some distinguish them from laws, saying that they were only their supplements. They received this name because they were set out by sections or by chapters." (Furetière.)

cens "In both Latin and French, this word has had various meanings : quota, capitation, poll tax, rent, census or civic registry. Therefore, given the many possible ambiguities, it (as well as *census*) have been kept in italics throughout.

census "An annual duty paid to one's lord. See also *cens*."

censor (*censeur*) "Used to be one of the premier magistrates of Rome, who oversaw the public interest and the correction of morals" (Furetière).

centenarius (*centenier*) "A Roman chief who commanded one hundred men" (Trévoux).

cession (*cession*) "An act by which a man transfers to another a right which belonged to him. [...] It is said almost exclusively of obligations, annuities, or movable debts, which consist in the transfer of a document. With respect to furnishings, functions, or inheritances and buildings, the transfer made of property is called sale, exchange, or donation. (Trévoux).]"

champion (*champion*) "Brave and generous warrior who upholds a quarrel or a party by paths of honor against his [or her] attackers" (Furetière).

comitia (*comices*) "Assembly of the Roman people in the Field of Mars either to elect magistrates or to deal with the most important matters in the republic" (Trévoux).

composition (*composition*) "A price or forfeit by which two parties agree on cession of a property or settlement of a challenge.

constitution (*constitution*) "A term for the structure of a state, or more particularly (Trévoux) for the laws of the emperors and the empire.

consul (Latin) "Chiefs of the Roman senate who commanded the armies and were the sovereign judges of disputes between Roman citizens. (Dictionnaire de Trévoux)

customs (*coûtumes*) "[T]he individual or municipal law established by practice in certain provinces, which has force of law once it has been set down in writing" (Furetière).

decemvir (Latin) "Roman magistrate created to make the people's laws, and so called because this power was attributed to ten persons together" (Furetière).

Glossary

default of justice (*défaute de droit*) â€” "Delay which the lord or the judge instituted by him brings, after expiration of the legal delays, to dispense justice to the vassal who has appealed to his court. The accused then argues that his claims be rejected and appeals to the court of the dominant suzerain." (La Curie de Sainte-Pelaye.)

domain (*domaine*) â€” Inheritance, land, property, dwelling (*Trévoux*).

dynasty (*race*) â€” The three ancient lineages or "races" of French kings :

First or Merovingian dynasty, 481-752, beginning with Clovis ;

Second or Carolingian dynasty, 751-987, beginning with Pepin the Short ;

Third or Capetian dynasty, 987-1328, beginning with Hugh Capet.

ephor (*éphore*) â€” "A magistrate who was established in Sparta to curb the authority of kings, as the Romans had established tribunes in Rome to curb that of the consuls. The Ephors sometimes drove out kings or had them killed." (Furetière.)

échevin â€” An officer who is elected by the inhabitants of a city to manage their common business, the upkeep and decoration of the city. (*Trévoux*)

fascis (*faisceaux*) â€” "Hatchets bound to some shafts or rods, which were signs of magistracy" (*Trévoux*).

fidele (Latin *fidelis*) â€” See antrustion.

gage (of battle) (*gage de bataille*) â€” "[A] token which the accuser or assailant threw on the ground, and which the other picked up to accept the challenge, such as a glove, or a cap, etc." (*Trévoux*).

indemnify (*indemniser*) â€” "To promise someone to guarantee him against any losses he might suffer by pleasing, or recompense him from those he has indeed experienced" (Furetière).

industry (*industrie*) â€” Skill and hard work, frequently with connotations of ingenuity and cleverness, even deviousness.

jurisconsult (*jurisconsulte*) â€” A legal scholar, knowledgeable in jurisprudence, who is consulted on the interpretation of laws or customs or the difficulties of a trial (*Trévoux*).

law of nations (*droit des gens* ; Latin : *jus gentium*) â€” "Laws and conventions established by general consent for the security of commerce between different nations" (*Trévoux*).

leude â€” A great lord or highly-placed vassal of the king ; see also *antrustion*. (See Book XXX, chapter 16.)

Glossary

machine (*machine*) â€” The human body, as opposed to the soul. To Descartes, whose influence promulgated this concept, animals were pure machines (or automata) ; humans, though also physical machines, were also endowed with a soul.

magistrate (*magistrat*) â€” Generic term for anyone in a position of delegated public authority (principally administrative or judicial) under any types of government.

manufactory (*manufacture*) â€” "A place where numerous workers are gathered to work on a single kind of product" (*Trévoux*).

mayor of the palace (*maire du palais*) â€” "He was at first the master of the king's household, who held command over all the domestic officers" (*Trévoux*).

maxim (*maxime*) â€” "A general proposition which serves as principle, fondation, or rule in some arts or sciences" (*Académie*, 1762). In *The Spirit of Law*, the term is frequently more or less a synonym for "principle".

mortmain (*mainmorte*) â€” Property that does not change hands, particularly property of a perpetual body, such as a religious corporation, which in the eyes of the law never dies, although its members do (though they cannot will their property).

personal law (*loi personnelle*) â€” A law or set of laws belonging or applying only to a limited group of persons. *The Spirit of Law* (XXVIII, 10) refers, for example, to "the personal laws of each nation", as opposed to the Roman or other supranational legal system.

placites â€” "Plaids or assizes" (note of Montesquieu, *Spirit of law*, XXX, 18).

plaids â€” See assises.

prætor (*préteur*) â€” "A famous magistrate in Rome. At first, all magistrates were called prætors. Subsequently they called prætors all the army chiefs, and even emperors. Since then they had prætors to dispense justice to the citizens, and other prætors to dispense it to foreigners." (Furetière.)

precarious (*précaire*) â€” Tentative or provisional : adjective applied to property that is loaned, with perhaps a presumption but no guarantee of eventual ownership.

preception (*préception*) â€” "Orders which the king sent to judges to do or allow certain things that were against the law" (Note of Montesquieu, *Spirit of Law*, XXXI, 2).

prince (*prince*) â€” "When the word prince is used absolutely, it usually means the sovereign who commands in the place under discussion" (*Académie*, 1694).

quæstor (*questeur*) â€” "Officer of ancient Rome who oversaw the public treasury" (*Trévoux*).

redemption, lineage right of (*retrait lignagier*) â€” "[W]hen someone in the lineage redeems from the hands of a third-party buyer [...] a former property of the family sold by a relative of his" (*Trévoux*).

Glossary

rescript (*rescript*) "The Roman emperors, like our princes, manifested their wills through decrees and edicts ; but as our princes do not, they allowed judges or individuals, in their disputes, to question them by letter, and their replies were called rescripts." (*Spirit of Law*, XXIX, 17).

retaliation, law of (*loi du talion*) "Punishment tantamount to equivalent revenge : the principle of "an eye for an eye and a tooth for a tooth", also known by its Latin name of *lex talionis*.

revolution (*révolution*) "Besides its application to the rotation of planets, "Revolution is also said of extraordinary changes that occur in the world : downfalls, misfortunes, declines" (*Trévoux*).

seigniorie (*seigneurie*) "Landed holdings of a lord, including fiefs and other land subject to duties.

senatus consultum (Latin ; pl. : *senatus consulta*) "A decree issued by the Roman senate.

substitution (*substitution*) "Act of a testator by which he substitutes an heir for another who has only the usufruct of the property left to him. The opening of a substitution takes place only after the death of the assigned heir. Substitutions are common in Roman law." (Furetière.)

succeed (*succéder*) "To inherit by law, either a legacy or a title or rank.

System (*Système*) "A term used for a management program for the royal treasury (1715-1720), proposed and ultimately run by John Law (1671-1729), a Scottish economist. Two of its features were the creation of a national bank and the introduction of paper money.

tribune (*tribun*) "A Roman magistrate whose role was to be defender of the people.

tribute (*tribut*) "Duty which one state is obligated to pay to another by virtue of some treaty it has made with it to buy peace. The Romans made all the peoples they subjugated pay tributes. [...] Tribute is also a personal contribution which princes raise on their subjects by capitation to support the expenses of the state. In Latin it is called *tributum* ; and in that it differs from a tax [*impôt*] raised on merchandise, which is called *vectigal*, *eo quod vehebantur*. The *taille* is a tribute which is naturally owed to the king." (Furetière.)

usufruct (*usufruit*) "The enjoyment of a property or revenue which one does not own. One can donate the ownership of one's property while reserving the usufruct to oneself." (Furetière.)

villeinage (*servitude de la glèbe*) "Villeins were technically free men, but survived through sharecropping on terms that were variable but often onerous.