

OUR EUROCLASS CONSTITUTION

Part Deux: Farmers and Ranchers Get Along

Alert readers will recall Alaska is not really a state because it lacks counties. No hate mail from our 'Euroclass Constitution Part One', so I guess we're all in agreement here. These occasional but nasty disappointments – as to how much state dignity you deserve, despite the Equal Footing Doctrine – should not be too surprising. West Virginia is actually *not* a state. 90 Cal. L. Rev. 291 (2002). The learned demonstrate this by poking around state and federal constitutions; and what is this *California* law review anyway? Why is California which was not even contiguous at time of admittance – okay, Louisiana was the first – now handwringing and hairsplitting our constitution just to beat up on poor ol' West Virginia?

And of course there are the eleven “surly sisters” of *that* (what's the time frame between ante bellum and post bellum?) vintage. The winning side insisted that the losing side be readmitted with their constitutions vetted by Congress as though they had never been in the Union before. Even thought the slogan in the war on the winning side was 'you can't leave the union'. Now that does explain West Virginia not being a real state. And what about Maine? I'm suspicious of states named after French provinces. How about you?

This must be why they pay historians the big bucks. Alaska has no counties and so it would not qualify it for “diocesan” status in the Eastern Roman Empire. Sports arenas, sex scandals, monuments everywhere – and Jiminy Willikers things change in a millennium and a smidge; every piece of real estate was assigned to a companion of the Emperor. A *comes* pl. *comites*. Who in essence became the chief functionary or count thereof and was responsible for the welfare of the residents of the county. Sir Walter Scott got himself named Sheriff of Selkirkshire in Scotland; good pick. Bull Connor got elected Sheriff of Jeffersonshire, Alabama. Okay, not so good.

At the constitutional convention of 1954/55 there was a lot of self-congratulations on counties being so, well, Byzantine, and dispensable. And of course recent hoo-ha about our cool conventioners. *Au contraire*. Our state supreme court has said that its writ doesn't run throughout the whole state, and this is not bragging. *John v. Baker*, 982 P. 2d 738, 762 (Alaska

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1999)[barriers of culture, geography, and language create [sic] a court system that remains “foreign and inaccessible”]. One county, one courthouse survived *Baker v. Carr* and *Wesberry v. Col. Sanders* (which isn’t relevant but is fun to cite) so that would have been a viable solution; and the said conventioners could give our counties really cool names, like Russian Pelagia and Alaska Septentrionalis – names that Justinian would think are nifty and don’t forget he has *two* screen credits in the architecture of that big building covered with a lot of marble in Washington.

So Alaska lacks counties and therefore we aren’t a state and somebody at the Cal. Goldenbear Law Review is going to notice this and write us up (or down) and then Congress will take away our bridges and all the money they sent up here to keep us in the union, and then where would we be? Okay, so our county-less constitution’s not so cool, after all. Or there’s a risk of having sand kicked in our state face, at least.

So if you are (nominally) a state and you are ignoring 1500 years of constitutional history and you can’t really be a state over each and every latifundia west of Canadia, then what should you do? I mean we have to have a snappy answer for the professoriat, because they will notice our county-lessness sooner or later.

Now here’s where Ronald Coase comes in. First place, he gets cited more than anyone else so that’s, like, really cool, right there. Second, he loved farmers and ranchers getting along although he may have lifted the idea from Oscar Hammerstein II’s *Oklahoma*. See farmers and ranchers, before Coase, would sue each other or get some regulatory agency to make each get along with the other (known as “the respondent”). This was long before Rodney King. Then Coase said they could do it themselves, actually just like Aunt Eller ‘called it out’ in the aforesaid *Oklahoma*. This solution never occurred to them, and so they tried it, because Coase and all of his citing professors said they *should* try it. It turned out that this – negotiated – solution to latifundary ‘peace in our time’ *was* really nifty especially if you are folks who are a long way from anyplace else, such as your state court system is “foreign and inaccessible”.

Pretty soon every one was quoting Coase, saying Coase would want solutions delivered *this* or *that* way because it’s cheaper and then they would

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go on about the social costs of getting transactions right. So why you don't you just go down to the polluter and promise him a wheelbarrow of money to stop polluting? According to Ronald.

But I think everyone missed the boat here.

What about a whole state that is so Coase-cool that everybody outside of a few boroughs just makes law themselves. Reduced social costs, more Rodney King sightings, lots of subjects for law review articles. Winners all around.

Now take a recent advisory opinion of the Judicial Conduct Commission. You go to court, and then pretty soon it is suggested that you should be out of court, because the cost of being in court is too high. The problem is Coasean and, as I have argued, diocesan, if not Diocletian-dependent at the highest levels of abstraction. First you have counties, and then you have courthouses, and then you have users of court services and then when you get everyone in their seats – peanuts, softdrinks, cruising altitude, and so forth – the pilot says, see the farmers and the ranchers down there, the ones getting along? That's the only way to travel.

So you land, every gets out and goes over – boots needed here – and watches to see how it's done, because Ronald loves rural imagery, as did Oscar's Aunt Eller, and then you have to get people to behave like farmers and ranchers *or* get back in the fun bus if that didn't work out and then take off again.

Okay here's the point. There's a transition in Alaska – as in no other place in this or any other Roman Empire – where you go from county to county-less justice. But there's also a place inside a county where Coase takes us from the justice of the adjudicated and socially costly solution to the do-it-more-yourself and cheaper solution.

It's all in the transitions. But are these transitions constitutionally compelled? Limited? Hurdled? Desirable? Article IV, Section 4 'Republican Form of Government' enough for you? And that's why they call this Part Deux of our Euroclass Constitution.

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Apparatus

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