A PARADOX meets us at the threshold of the inquiry. The Revolution was designed to abolish the remains of the institutions of the Middle Ages: yet it did not break out in countries where those institutions were in full vitality and practically oppressive, but, on the contrary, in a country where they were hardly felt at all; whence it would follow that their yoke was the most intolerable where it was in fact lightest.

At the close of the eighteenth century there was hardly any part of Germany in which serfdom was completely abolished. Generally speaking, peasants still formed part of the stock on lands, as they had done during the Middle Ages. Nearly all the soldiers in the armies of Maria Theresa and Frederick were absolute serfs.

In 1788, the general rule with regard to German peasants was that they should not leave the seigniory, and if they did that they should be brought back by force. They were subject to dominical courts, and by them punished for intemperance and idleness. They could not rise in their calling, or change it, or marry without leave from their master. A great proportion of their time was given up to his service. Seigniorial corvées were rigorously exacted, and absorbed, in some places, three days of the week. The peasant rebuilt and kept in repair his seignior’s house, took his produce to market, served him as coachman and messenger. Many years of his youth were spent in domestic service on the manor. A serf might obtain a farm, but his rights of property always remained inchoate. He was bound to farm his land under his seignior’s eye, according to his seignior’s directions; he could neither alienate nor mortgage it without leave. He was sometimes bound to sell the produce of his farm, sometimes forbidden to sell; he was always bound to keep his land under cultivation. His estate did not wholly pass to his children; a portion went to the seignior.

I have not groped through antiquated laws to find these rules; they are to be found in the code drawn up by Frederick the Great, and promulgated by his successor just before the French Revolution broke out.

Nothing of the kind had existed for many, many years in France. Peasants came and went, bought and sold, wrought and contracted without let or hindrance. In one or two eastern provinces, acquired by conquest, some stray relics of serfdom survived; but it had disappeared everywhere else; and that so long ago, that even the period of its disappearance had been forgotten. Elaborate researches of recent date establish that it had ceased to exist in Normandy as early as the thirteenth century.

But of all the changes that had taken place in the condition of the French peasantry, the most important was that which had enabled them to become freeholders. As this fact is not universally understood, though it is so important, I shall dwell upon it briefly.

It has been commonly believed that the subdivision of farms began with and was caused by the Revolution. All kinds of evidence establish the very reverse.

Twenty years before the outbreak, agricultural societies deplored the subdivision of farm lands. About the same period Turgot declared that “the division of estates was so general that a property barely sufficient to maintain a family was often parcelled out among five or six children, who were consequently unable to support themselves by agriculture alone.” A few years later, Necker observed that the number of small rural estates had become immense.

A few years before the Revolution a steward of a seigniory informed his employer, in a secret report, that “estates are being subdivided so equally that the fact is growing alarming: every body wants to have a piece of this and a
I have myself taken infinite pains to reconstruct the cadastres, so to speak, of the old regime, and I have occasionally succeeded. The law of 1790, imposing a land tax; devolved upon each parish the duty of preparing a schedule of the estates within its limits. Most of these schedules have disappeared. I have, however, discovered them in some villages, and I find, on comparing them with our modern rolls, that the number of landed proprietors was formerly one half and sometimes two thirds of what it is now; a surprising fact, as the total population of France has, since that time, increased more than twenty-five per cent.

Then, as now, a sort of mania for the acquisition of land pervaded the rural population. A judicious contemporary observer notes that “land is selling above its value, owing to the rage of the peasantry to become landowners. All the savings of the lower classes, which in other countries are lodged in private hands or invested in public securities, are used for the purchase of land in France.”

None of the novelties which astonished Arthur Young on his first visit to France appeared to him so striking as the infinite subdivision of land among the peasantry, who, he estimated, held among them one half the landed property in the kingdom. “I had no idea of such a state of things,” he writes more than once; nor, indeed, could he have, for no such phenomenon existed beyond the frontiers of France or their immediate neighborhood.

There had been peasant proprietors in England, but they were, even then, growing rare. In Germany, too, there had been, from time to time, in every section of the country, free farmers owning portions of the soil. The oldest German customs recognized a freehold peasantry, and embraced curious regulations regarding land held by them; but the number of such landholders was always small, and their case an exceptional one.

The only portions of Germany where, at the close of the eighteenth century, the peasantry were landholders, and comparatively free, were those which bordered on the Rhine; and it was in the Rhenish provinces that the French revolutionary fever developed itself first and raged most fiercely. Those portions of Germany which resisted the Revolution the longest were those where neither freeholds nor rural liberty had made their appearance; a significant fact.

It is, then, a vulgar error to suppose that the subdivision of property in France dates from the Revolution. It began much farther back. It is true that the Revolution was the means of bringing into market the Church property and many of the estates of the nobility; but it will be found, on examination of the sales (a task which I have occasionally had patience to perform), that the bulk of these lands passed into the hands of persons who held land already, so that no great increase in the number of landowners can have taken place. They were already, to use the ambitious but accurate expression of M. Necker, immensely numerous.

The Revolution did not divide, it freed land. All these small landowners were bound to render various feudal services, of which they could not get rid, and, which gravely impeded a proper development of their property.

That these services were onerous can not be questioned. Still, the very circumstance which it would seem ought to have lightened their burden rendered it intolerable. A revolution scarcely less radical than that which had enabled them to become freeholders had released the peasantry of France, alone out of all Europe, from the government of their rural lords.

Brief as is the interval which divides us from the old regime, and often as we see persons who were born under it, it seems already lost in the night of time. So radical was the revolution which has intervened, that it appears to have perished ages ago, and to be now buried in obscurity. Hence there are but few persons who can give a correct answer to the simple question—How were the rural districts governed before 1789? Nor, indeed, can any precise and comprehensive answer be found in books, or elsewhere than in the official records of the time.

I have often heard it remarked that, long after the nobility had ceased to participate in the government of the kingdom, the rural administration remained in their hands, and the seigniors still governed the peasantry. This too looks like a misconception.

In the eighteenth century, all parochial business was transacted by functionaries who were not seigniorial agents, and who, instead of being chosen by the seigniors, were either appointed by the intendant of the province or elected by the peasantry. It devolved upon these officers to distribute the taxes, to repair the churches, to build schools, to convene and preside over parish meetings; to administer and superintend the expenditure of the
funds of the commune; to institute or answer, on behalf of the community, all necessary legal proceedings. The seignior had lost not only the management, but even the supervision of these petty local matters. All parish officers were subject to the government or the central power, as I shall show in the following chapter. Nor did the seignior figure any longer as the king's deputy in the parish. The execution of the laws, the assembling of the militia, the levying of the taxes, the promulgation of the king's commands, the distribution of his alms, were no longer intrusted to the seignior. They devolved upon new functionaries. The seignior was in fact nothing more than a simple individual, isolated from his fellows by the enjoyment of peculiar immunities and privileges; his rank was different—his power no greater than theirs. The intendants were careful to remind their sub-agents that "the seignior is nothing more than the first peasant in the parish."

The cantons exhibit the same spectacle as the parishes. Nowhere do the nobles, either collectively or separately, administer public affairs.

This was peculiar to France. Everywhere else, that striking feature of the old feudal system, the connection between the ownership of land and the government of its inhabitants, had been partially preserved. England was administered as well as governed by its chief land-holders. In parts of Germany, such as Prussia and Austria, the sovereigns had contrived to shake off the control of the nobility in state affairs; but they still abandoned the government of the rural districts to the seigniors, and even where they assumed to control, did not venture to supersede them.

In France, the only public department in which the nobles still had a hand was the administration of justice. Leading noblemen still preserved a right of jurisdiction over certain cases (which were decided by judges in their name), and occasionally issued police regulations for the use of their seigniories; but their jurisdiction had been so curtailed, and limited, and overridden by the royal courts, that the seigniors who still enjoyed it viewed it rather as a source of income than as a source of power.

The other rights of the nobility had shared the same fate. They had lost their political significance, but their pecuniary value had been retained and occasionally augmented.

I am alluding now only to those tangible privileges which were known as feudal rights proper, as they alone affected the people.

It is no easy matter to point out what they actually were in 1789, for their number had been immense, and their diversity prodigious. Many had disappeared altogether. Others had undergone modifications, so that the words used to describe them were not easily understood even by contemporaries; they are necessarily full of obscurities for us. Still, a careful study of the writers on feudal law in the eighteenth century, and a searching inquiry into the various local customs, permits us to range the then existing feudal rights in a few leading classes, all others being mere isolated cases.

Seigniorial corvées were almost wholly disused. Many of the tolls on highways were either substantially reduced or abolished, though they were still met with in a majority of the provinces. The seigniors still levied a toll upon fairs and markets. It is well known that they enjoyed an exclusive privilege of hunting. Generally speaking, none but they could keep pigeons or own dove-cotes. The farmers were every where bound to carry their grain to the seignior's mill, their grapes to his wine-press. Mutation fines—a tax paid to the seignior on every purchase or sale of lands within the seigniory—were universally in force. On all land, moreover, ground-rents (cens et rentes foncières) and returns in money or kind were exacted from the proprietor by the seignior, and were essentially irredeemable. One single feature is common to all these various rules: all bear upon the soil or its produce; all are leveled at the farmer.

Clerical seigniors enjoyed the same advantages as their lay brethren; for, though there was no similitude between the Church and the feudal system in point of origin, destiny, or character, and though they were never actually incorporated into one, they clung together so closely that they seemed incrusted one upon the other.

Bishops, canons, abbés held feuds and seigniories in virtue of their ecclesiastical rank; convents were usually the seigniors of the village in which they stood. They owned serfs at a time when no other seignior in France did. They exacted corvées, levied toll upon fairs and markets, owned the only oven, the only mill, the only wine-press, the only bull in the seigniory. Besides these rights as seigniors, the French clergy, like the clergy elsewhere,
levied tithes.

The main point, however, to which I wish to draw attention just now, is the fact that analogous feudal rights were in force all over Europe at that time, and that in France they were far less burdensome than in other parts of the Continent. As an illustration of the difference I may cite corvées, which in France were rarely claimed and slight, in Germany universally and rigorously exacted.

More than this, the feudal rights which roused most indignation among our ancestors, as being not only unjust, but inimical to civilization—such, for instance, as tithes, inalienable ground-rents (rentes foncières), interminable rent-charges, and mutation fines, which, in the somewhat forcible idiom of the eighteenth century, were said to constitute the “slavery of the land,” were all more or less in force in England. Many of them are still in full vigor, and yet English agriculture is the most perfect and richest in the world. The English people hardly notice their existence.

How did it happen, then, that these usages roused in France a hatred so fierce that it survived its cause, and seems as though it would never be extinguished? The phenomenon is due partly to the fact that the French peasant was a landholder, and partly to his emancipation from the government of his seignior. Other causes cooperated, no doubt; but, I take it, these were the main reasons.

Had the peasantry not been landholders, they would have paid no attention to many of the burdens laid by the feudal system on real estate. Tithes, which are levied on produce, interest no one but farmers. Rent-charges are immaterial to those who do not own land. Legal hindrances to the development of property are no serious inconvenience to those who are hired to develop it for others. And, on the other hand, if the French peasantry had still been governed by their seigniors, they would have borne with the feudal rights more patiently, for they would have viewed them in the light of a natural consequence of the constitution of the country.

Aristocracies, which possess not merely privileges, but actual power, which govern and administer public affairs, may exercise private rights of great magnitude without attracting much attention. In the old feudal times people looked upon the nobility as they now look on government: they bore its impositions for the sake of the protection it afforded. If the nobility possessed inconvenient privileges and exacted onerous duties, it secured public order, administered justice, executed the laws, succored the weak, managed public affairs. It was when it ceased to do these things that the burden of its privileges began to be felt, and its very existence became inexplicable.

Picture to yourself, I beg, the French peasant of the eighteenth century, or, rather, the peasant you see today, for he is still the same; his condition has changed, but not his character. Picture him, as the documents of the time depict him, so eager for land that he saves all his money to buy, and buys at any price. In order to purchase, he is bound, in the first place, to pay a tax, not to the government, but to some neighbors of his, who have no more authority, and no more to do with public business than he. Still he buys, and puts his heart into his land with his seed. The idea that this little corner of the vast universe belongs to him alone fills him with pride and independence. But the same neighbors pass along and compel him to work on their land without wages. If he tries to protect his harvest from the game, they prevent him. He can not cross the river without paying them toll. He can not take his produce to market and sell it till he has bought leave to do so from them; and when, on his return home, he wants to consume in his family the surplus of his produce—sown by his hands and grown under his eyes—he finds he must first send his grain to their mill to be ground, and to their oven to be cooked. The largest part of the income of his little estate goes to the same parties in the shape of rents, which can not be redeemed or got rid of in any way.

Let him do what he like, he can not but meet at every step of his life these same neighbors, who interfere with his enjoyments, impede his work, consume his produce; and when he has done with these, others, dressed in black, make their appearance, and sweep off the clearest part of his harvest. Picture, if you can, the condition, the wants, the character, the passions of such a man, and estimate the store of hatred and envy he is laying up in his heart!

The feudal system, though stripped of its political attributes, was still the greatest of our civil institutions; but its very curtailment was the source of its unpopularity. It may be said, with perfect truth, that the destruction of a part of that system rendered the remainder a hundred-fold more odious than the whole had ever appeared.
CHAPTER II.

THAT WE OWE “ADMINISTRATIVE CENTRALIZATION,” NOT TO THE REVOLUTION OR THE EMPIRE, AS SOME SAY, BUT TO THE OLD REGIME

I ONCE heard an orator, in the days when we had political assemblies, call administrative centralization “that noble conquest of the Revolution which Europe envies us.” I am willing to admit that centralization was a noble conquest, and that Europe envies us its possession; but I deny that it was a conquest of the Revolution. It was, on the contrary, a feature of the old regime, and, I may add, the only one which outlived the Revolution, because it was the only one that was suited to the new condition of society created by the Revolution. A careful perusal of this chapter will perhaps convince the reader that I have more than proved this.

I must, at the outset, beg to be permitted to set aside those provinces known as pays d’états, which did actually, or, at least, had the appearance of partially controlling the administration of their own government.

The pays d’états, situated at the extremities of the kingdom, contained barely one fourth of the total population of France; and, with one or two exceptions, their provincial liberties were in a dying condition. I shall have occasion hereafter to return to them, and to show how far the central power had rendered them subject to the ordinary rules.*

I purpose to devote attention at present chiefly to those provinces which were styled, in administrative parlance, pays d’élection, though there were fewer elections there than any where else. They surrounded Paris on all sides, bordering each on the other, and constituting the fairest portion of France.

A first glance at the old government of the kingdom leaves an impression of a host of diversified rules, and authorities, and concurrent powers. France seems to be covered with administrative bodies and independent functionaries, who, having purchased their offices, can not be displaced. Their functions are often so intertwined and similar that it seems they must clash and interfere with each other.

The courts are invested with some legislative authority. They establish rules, which are binding within the limits of their jurisdiction. They occasionally join issue with the government, blame its measures loudly, and decry its agents. Single judges make the police regulations in the cities and boroughs where they live.

City charters differ widely. Their magistrates bear different titles, or derive their authority from different sources. In one place we find a mayor, in another consuls, in a third syndics. Some of these are chosen by the king; others are appointed by the old seignior, or by the prince in whose domain the city lies; others are elected by the people for a year; others, again, have purchased their office, and hold it for life.

These are all old ruined authorities. Among them, however, is found an institution either new or lately transformed, which remains to be described. In the heart of the kingdom, and close to the monarch, an administrative body of singular power has lately grown up and absorbed all minor powers. That is the Royal Council.

Though its origin is ancient, most of its functions are modern. It is every thing at once: supreme court of justice, for it can reverse the decision of all ordinary tribunals and highest administrative authority, from which all subordinate authorities derive their power. As adviser of the king, it possesses, under him, legislative powers, discusses all and proposes most of the laws, levies and distributes the taxes. It makes rules for the direction of all government agents. It decides all important affairs in person, and superintends the working of all subordinate departments. All business originates with it, or reaches it at last; yet it has no fixed, well-defined jurisdiction. Its decisions are the king’s, though they seem to be the Council’s. Even while it is administering justice, it is nothing more than an assembly of “givers of advice,” as the Parliament said in one of its remonstrances.

This Council is not composed of nobles, but of persons of ordinary or low extraction, who have filled various offices and acquired an extensive knowledge of business. They all hold office during good behavior.

It works noiselessly, discreetly, far less pretentious than powerful. It has no brilliancy of its own. Its proximity to the king makes it a partner in every important measure, but his greater effulgence eclipses it.

As the national administration was in the hands of a single body, nearly the whole executive direction of home
affairs was in like manner intrusted to a single agent, the comptroller-general.

Old almanacs furnish lists of special ministers for each province, but an examination of the business records shows that these ministers had very little important business to transact. That fell to the lot of the comptroller-general, who gradually monopolized the management of all money affairs—in other words, the whole public administration. He was alternately minister of finance, of the interior, of public works, of commerce.

On the same principle, one agent in each province sufficed. As late as the eighteenth century, some great seigniors were entitled provincial governors. They were the representatives, often by hereditary descent, of feudal royalty. They enjoyed honors still, but they were unaccompanied by power. The substantial government was in the hands of the intendant.

That functionary was not of noble extraction. He was invariably a stranger to the province, a young man with his fortune to make. He obtained his office neither by purchase, election, nor inheritance; he was selected by the government from among the inferior members of the Council of State, and held his office during good behavior.

While in his province, he represented that body, and was hence styled in office dialect the absent commissioner (commissaire départ). His powers were scarcely less than those of the council itself, though his decisions were subject to appeal. Like the Council, he held administrative and judicial authority: he corresponded with ministers; he was, in his province, the sole instrument of the will of government.

Under him he appointed for each canton an officer called a sub-delegate (subdélégué), who also held office during good behavior. The intendant was usually the first noble of his family; the sub-delegate was always a commoner, yet the latter was the sole representative of the government in his little sphere, as the intendant was in his province. He was subject to the intendant, himself subject to the minister.

The Marquis d'Argenson tells us in his Memoirs that one day Law said to him, “I never could have believed beforehand what I saw when I was comptroller of finances. Let me tell you that this kingdom of France is governed by thirty intendants. You have neither Parliament, nor estates, nor governors; nothing but thirty masters of requests, on whom, so far as the provinces are concerned, welfare or misery, plenty or want, entirely depend.”

These powerful officials were, however, outwardly eclipsed by the remains of the old feudal aristocracy, thrown into the shade by its lingering splendor; hence it was that even in their day one saw so little of them, though their hand was every where felt. In society, the nobility took precedence of them in virtue of their rank, their wealth, and the respect always paid to what is ancient. In the government, the nobility surrounded the king and constituted the court; noblemen led the armies and commanded the fleet; they performed those duties, in a word, which are most noticed by contemporaries, and too often best remembered by posterity. A seignior of high rank would have felt himself insulted by the offer of a place of intendant; the poorest gentleman of his house would have disdained to accept it. In their eyes the intendants were the types of usurped authority, new men, employed to look after burghers and peasants; at best, very poor company. For all this, these men governed France, as Law said, and as we shall soon discover.

Let us begin with the right of levying taxes, which may be said to involve all other rights.

It is well known that a portion of the taxes were farmed out to financial companies, which levied them under the directions of the Royal Council. All other taxes, such as the taille, capitation–tax, and twentieths, were established and levied directly by the agents of the central administration, or under their all–powerful control.

Every year the Council fixed and distributed among the provinces the amount of the taille and its numerous accessories. The session and decision of the Council were secret; the taille increased year after year, and no one was aware of it.

The taille was a very old tax; in former times it had been apportioned and levied by local agents, who were independent of government, and held office in virtue of their birth, or by election, or by purchase. Such were the “seignior,” the “parochial collector,” the “treasurers of France,” the “select–men” (élus). These titles were still in existence in the eighteenth century; but some of the persons who bore them had ceased wholly to have to do with the taille, while others were only concerned with it in a subordinate and secondary capacity. The whole real authority on the subject was in the hands of the intendant and his agents; it was he who apportioned
the taille among the parishes, directed and overlooked the collectors, granted delays or remissions.

More modern imposts, such as the capitation-tax, were regulated by government without interference from the surviving officers of the old system. The comptroller-general, the intendant, and the Council fixed the amount of each impost, and levied it without the intervention of the taxables.

Let us pass from money to men.

Surprise has been expressed at the docility with which the French bore the burden of the conscription during and after the Revolution; but it must be borne in mind that they had long been used to it. The militia system which had preceded it was more onerous, though the contingents raised were smaller. From time to time, in the country parts, young men were drawn by lot to serve in militia regiments for a term of six years.

As the militia was a comparatively modern institution, none of the feudal authorities interfered with it; it was wholly under the control of the central government. The entire contingent, and the proportion to be borne by each province, were regulated by the Council. The intendant fixed the number of men to be furnished by each parish. His sub-delegate presided over the lottery, awarded exemptions, decided who were to remain at home and who were to march. It was his duty to hand over the latter to the military authorities. There was no appeal from him but to the intendant and the Council.

It may be added here that, except in the pays d'états, all public works, including those which were exclusively local, were decided upon and undertaken by the agents of the central power.

Other authorities, such as the seignior, the department of finance, the road trustees (grands voyers), were nominally entitled to co-operate in the direction of these works. But practically these old authorities did little or nothing, as the most cursory glance at the records shows. All highways and roads from city to city were built and kept in repair out of the general public fund. They were planned and the contracts given out by the Council. The intendant superintended the engineering work, the sub-delegate mustered the men who were bound to labor. To the old authorities was left the task of seeing to parish roads, which accordingly became impassable.

The chief agent of the central government for public works was the Department of Bridges and Roads (ponts et chaussées). Here a striking resemblance to our modern system becomes manifest. The establishment of Bridges and Roads had a council and a school; inspectors, who traveled each year throughout France; engineers residing on the spot, and intrusted, under the orders of the intendant, with the direction of the works. Most of the old institutions which have been adopted in modern times—and they are more numerous than is generally supposed—have lost their names while retaining their substance. This one has preserved both—a very rare instance.

Upon the central government alone devolved the duty of preserving the peace in the provinces. Mounted police (maréchaussée) were scattered over the kingdom in small detachments, ready to act under the orders of the intendants. It was with these troops, and, in case of need, with the aid of the regular army, that the intendant met all sudden outbreaks, arrested vagabonds, repressed mendicity, crushed the riots which the price of food constantly excited. It never happened that the government was driven to call upon its subjects for assistance, as had been common enough at one time, except in cities, where there was usually a civic guard, composed of men selected and officers appointed by the intendant.

The courts had preserved and frequently exercised the right of making police regulations; but they were only applicable to the territory within the court’s jurisdiction, and not unfrequently to a single place. They were liable to rejection by the Council, and were often so rejected, especially regulations made by inferior courts. On the other hand, the Council constantly made regulations that were applicable to the whole kingdom, as well on matters beyond the authority of the courts as on those which were within the scope of that authority. These regulations, or, as they were then called, Orders in Council (arrêt du conseil), were immensely numerous, especially toward the period of the Revolution. It is hardly possible to mention a branch of social economy or political organization which was not remodeled by Orders in Council during the last forty years of the old regime.

In the old feudal society, the seignior’s extensive rights were counterpoised by extensive obligations. He was bound to succor the indigent on his domain. A trace of this principle is to be found in the Prussian code of 1795, where it is said, “The seignior must see to it that poor peasants receive education. He should, as far as he can,
procure means of subsistence for those of his vassals who own no land. If any of them fall into poverty, he is bound to aid them."

No such law had existed in France for many years. When the seignior’s rights were taken from him, he shook off his obligations. No local authority, or council, or provincial, or parochial association had taken his place. The law obliged no man to take care of the poor in the rural districts; the central government boldly assumed charge of them.

Out of the proceeds of the taxes a sum was annually set apart by the Council to be distributed by the intendant in parochial charities. The needy were instructed to apply to him. In times of distress, it was he who distributed corn or rice. Annual Orders in Council directed that benevolent work-houses should be opened at places which the Orders took care to indicate; at these, indigent peasants could always obtain work at moderate wages. It need hardly be observed that charity dispensed from such a distance must often have been blind and capricious, and always inadequate.

Not content with aiding the peasantry in times of distress, the central government undertook to teach them the art of growing rich, by giving them good advice, and occasionally by resorting to compulsory methods. With this view it distributed from time to time, by the hands of its intendants and sub-delegates, short pamphlets on agriculture, founded agricultural societies, promised prizes, kept up at great expense nurseries for the distribution of seeds and plants. Some reduction of the burdens which weighed on agriculture would probably have proved more efficacious; but this was never contemplated for a moment.

At times the Council endeavored to force prosperity on the people, whether they would or no. Innumerable Orders compelled mechanics to make use of certain specified machinery, and to manufacture certain specified articles; and as the intendants were not always able to see that their regulations were enforced, inspectors—general of industry were appointed to travel through the provinces and relieve them of the duty.

Orders were passed prohibiting the cultivation of this or that agricultural product in lands which the Council considered unsuited to it. Others required that vines planted in what the Council regarded as bad soil should be uprooted. To such an extent had the government exchanged the duties of sovereign for those of guardian.

CHAPTER III.

THAT WHAT IS NOW CALLED “THE GUARDIANSHIP OF THE STATE” (TUTELLE ADMINISTRATIVE) WAS AN INSTITUTION OF THE OLD REGIME.

MUNICIPAL liberty outlived the feudal system in France. Long after the seigniors had ceased to administer the government of the rural districts, the cities retained the right of self-government. As late as the close of the seventeenth century, several towns continued to figure as little democratic republics, with magistrates freely elected by the people. Municipal life was here still active and public; the citizens were proud of their rights and jealous of their independence.

Elections were not generally abolished till 1692; after that date municipal business was transferred to offices (mis en offices), that is to say, the king sold to certain citizens of each town the right of governing the others forever.

This was destroying, not the freedom of the cities alone, but their prosperity also; for, though the sale of offices has often been followed by happy results in the case of judges, whose independence is the first condition of their usefulness, it has never failed to be most disastrous in every administrative branch of government, because there responsibility, subordination, and zeal are the conditions of efficiency. The government of the old monarchy made no mistake in the matter; it took good care to steer clear of the system it imposed on the towns—it never sold posts of intendant or sub-delegate.

History may well note with scorn that this great revolution was accomplished without the least political design. Louis XI. had curtailed municipal franchises because their democratic tendency frightened him; Louis XIV. abolished, though he did not fear them, for he sold them back again to all the towns which could afford to purchase. His object, indeed, was less to destroy their liberties than to traffic in them. When he did abolish them, it was, so to speak, a mere financial experiment, and, singular to relate, the game was kept up for eighty years.
Seven times during that period did the towns purchase the right of electing their magistrates, and seven times was it taken away as soon as they had learned to appreciate its value. The motive of the measure was never varied or concealed. In the preamble to the edict of 1722, the king avowed that “the necessities of our finances compel us to resort to the most effective remedy.” The remedy was effective enough, but it was ruinous to those upon whom this new impost was laid. “I am struck,” says an intendant to the comptroller-general in 1764, “with the enormous aggregate of the sums that have been paid from time to time for the redemption of municipal offices. Had these sums been laid out in works of utility in each city, the citizens would have been great gainers; as it is, the offices have only been a burden.” I am at a loss to find another feature as shameful as this in the whole range of the old regime.

It seems difficult to tell precisely how towns were governed in the eighteenth century; for not only did the source of municipal power change continually, in the manner just described, but each city had preserved some shreds of its old constitution and its peculiar local customs. No two cities in France were, perhaps, alike in every respect, though the contrasts between them are deceptive, and conceal a general similarity.

In 1764, the Council undertook to make a general law for the government of cities. It obtained from its intendants reports on the municipal organization of each town within their province. I have discovered a portion of these reports, and a perusal has completely satisfied me that municipal matters were managed very similarly in all. There are superficial and apparent diversities; substantially the plan was the same everywhere.

In most cases, cities were governed by two assemblies. This is true of all the large cities, and of most of the small ones.

The first assembly was composed of municipal officers, whose number varied in different localities. This was the executive of the commune, the city corporation (corps de ville), as it used to be called. When the city had obtained or purchased from the king its municipal franchise, members of this assembly were elected for a fixed term. When the king succeeded in selling the municipal offices (which did not always happen, for this kind of merchandise was cheapened by each submission of the municipal to the central authority), they had a life-interest in the posts they bought. In neither case did the municipal officers receive a salary: in both they enjoyed privileges and exemptions from taxes. All were equal in rank; they discharged their functions collectively. No magistrate was charged with any particular supervision, authority, or responsibility. The mayor presided over the corporation, but did not administer the government of the city.

The second assembly, known as the “general assembly,” elected the corporation (wherever elections were still held), and participated in the chief affairs of the city.

In the fifteenth century, the general assembly consisted of the whole population. One of the reports mentioned above observed that this usage was “in accordance with the popular sympathies of our forefathers.” Municipal officers were chosen by the whole people. The people were consulted from time to time, and to them account was rendered by outgoing officials. This custom is still occasionally met with at the close of the seventeenth century.

In the eighteenth century the people no longer constituted the general assembly. That body was almost invariably representative. But it must be carefully borne in mind that it was, in no single city, elected by the people generally, or imbued with a popular spirit. It was invariably composed of notables, some of whom were entitled to seats in virtue of their individual station, while others were delegates from guilds and companies, and were instructed as to their course by their constituents.

With the advance of the century, the number of notables ex officio increases in these assemblies, while the deputies from industrial associations fall off, or disappear entirely. But deputies from guilds are still present; that is to say, mechanics are excluded to make room for burghers. But the people are not so easily duped by sham liberties as many imagine; they cease to take an interest in public affairs, and live at home as unconcernedly as if they were foreigners. In vain do the magistrates endeavor to revive that patriotism which did such wonders in the Middle Age; no one listens to them. No one takes the least thought for the most momentous interests of the city. The polls—deceitful relic of departed liberty—are there still, and the magistrates would be glad if people would vote; but they resolutely abstain. History teems with similar sights. Very few monarchs, from Augustus to our day, have failed to keep up the outward forms of freedom while they destroyed its substance, in the hope that
they might combine the moral power of public approval with the peculiar conveniences of despotism. But the experiment has usually failed, and it has soon been found impossible to maintain a deceitful semblance of that which really has no existence.

In the eighteenth century, then, municipal government in cities had universally degenerated into oligarchy. A few families controlled the public affairs in favor of private interests, without the knowledge of or any responsibility to the public. The disease pervaded every municipal organization in France. It is perceived by all the intendants, but the only remedy they can suggest is the still farther subordination of local authorities to the central government.

They were already under pretty extensive subjection. Not only did the Council modify city governments generally, from time to time, but not unfrequently the intendants proposed for particular cities special laws, which the Council passed without preliminary inquiry, and often without the knowledge of the people; and these laws went into effect without the formality of registration. “This measure,” said the inhabitants of a city at which such an Order had been leveled, “has astonished all classes; nothing of the kind was expected.”

Cities were prohibited from establishing town-dues, or levying taxes, or hypothecating, selling, leasing, or administering their property, or going to law, or employing their surplus funds without an order in Council first rendered on the report of the intendant. All public works in cities were executed according to plans and specifications approved by an order in Council. Contracts were adjudged by the intendant or his subdelegates; the state engineer usually exercised a general superintendence over all. Those who imagine that all we see in France is new will not read this without surprise.

But the Council had even a larger share of the direction of city affairs than might be inferred from these rules. Its power was, in fact, greater than the law allowed.

I find, in a circular addressed to intendants by the comptroller-general about the middle of last century, the following language: “You will pay particular attention to the proceedings of municipal assemblies. You will require a full report of all their proceedings and debates, and transmit the same to me with your observations thereon.”

The correspondence between the intendants and their sub-delegates shows that the government had a hand in the management of all the cities in the kingdom, great and small. It was consulted on all subjects, and gave decided opinions on all; it even regulated festivals. It was the government which gave orders for public rejoicing, fireworks, and illuminations. I find it mentioned that an intendant once fined some members of the burgher guard twenty livres for absenting themselves from the Te Deum.

Municipal officers were impressed with a suitable consciousness of their nonentity. Some of them wrote their intendant, “We pray you most humbly, monseigneur, to grant us your good will and protection. We shall try to prove ourselves worthy of it by our submission to the orders of your highness.” Others, who style themselves grandly “city peers,” write to say that they “have never resisted your will, monseigneur.”

It was thus that the burghers were being prepared for government, and the people for liberty.

If this close subjection of the cities had but preserved their financial standing! But it did nothing of the kind. It is said that, were it not for centralization, our cities would ruin themselves. How this may be, I know not; but it is quite certain that, in the eighteenth century, centralization did not save cities from ruin. The financial history of the period is full of city troubles.

Let us pass from cities to villages. We shall find new authorities, new forms, but the same dependence.

I have discovered many indications that, in the Middle Ages, the people of villages formed communities apart from the seigniors. The seigniors used them, superintended, and governed them; but they owned property exclusively, elected their rulers, and administered their government on democratic principles.

This old parochial system may be traced through all the nations which were once organized on a feudal basis, even to the dependencies to which they transported their decaying laws. It is easily discernible in England. Sixty years ago it was in full vigor in Prussia, as the code of Frederick the Great is there to prove. Some vestiges of it still lingered in France in the eighteenth century.
I remember that the first time I examined the archives of an intendant’s office, in order to discover what a parish really was under the old regime, I was quite struck with the discovery, in that poor enslaved community, of several features which I had noticed in the rural districts of America, and erroneously considered as peculiarities of New World institutions. Both communities were governed by functionaries acting independently of each other, and under the direction of the community at large; in neither was there a permanent representative body, or municipal assembly proper. In both, from time to time, the people at large met to elect magistrates, and transact important business. They resembled each other, in fact, as closely as a living body resembles a corpse. Nor is this a matter of surprise, for the two systems, different as their destinies were, had the same origin.

When the rural parish of the Middle Ages was removed beyond the reach of the feudal system and left uncontrolled, it became the New England township. When it was cut loose from the seignior, but crushed in the close grasp of the state in France, it became what remains to be described.

In the eighteenth century parochial officers differed in number and title in the several provinces. Old records show that when the parishes were in full vigor, the number of these officers was greater than when the stream of parochial life became sluggish. In the eighteenth century we find but two in most parishes: the collector, and another officer usually known as the syndic. Generally speaking, these officials were elected, really or nominally, but they served far more as instruments of the state than as agents of the community. Collectors levied the taille under the orders of the intendant. Syndics, receiving orders from day to day from the sub-delegates, acted as their deputies in all matters bearing on public order or government; such, for instance, as militia business, state works, and the execution of general laws.

It has already been observed that the seignior had no part in these details of government. He neither superintended nor assisted the officials. His real power gone, he despised contrivances used to keep up its semblance, and his pride alone forbade him to take any share in their establishment. Though he had ceased to govern, his residence in the parish and his privileges precluded the formation of a sound parochial system in the stead of that in which he had figured. Such a personage, so isolated in his independence and his privileges, could not but weaken or militate against the authority of law.

His presence drove to the cities all persons of means and information, as I shall have occasion to show hereafter. Around him lived a herd of rough, ignorant peasants, quite incapable of administering their collective business. It was Turgot who described a parish as “a collection of huts not more passive than their tenants.”

The records of the eighteenth century abound with complaints of the inefficiency, the carelessness, and the ignorance of parochial collectors and syndics. Every body deprecates the fact—ministers, intendants, sub-delegates, even men of rank, but nobody thinks of looking for its true cause.

Until the Revolution the government of rural parishes in France preserved some traces of that democratic aspect which characterized it during the Middle Ages. When municipal officers were to be elected, or public affairs discussed, the village bell summoned the peasantry, poor and rich alike, to the church door. There was no regular debate followed by a vote, but all were free to express their views, and a notary, officiating in the open air, noted, in a formal report, the substance of what was said.

The contrast between these empty semblances of liberty and the real impotence which they concealed furnishes a slight indication of the ease with which the most absolute government may adopt some of the forms of a radical democracy, and aggravate oppression by placing the oppressed under the ridiculous imputation of not being aware of their real state. The democratic parish meeting was free to express its wishes, but it was as powerless to enforce them as the municipal councils of cities; nor could it utter a word till its mouth had been opened by authority. No meeting could be convened until permission had been obtained in express terms from the intendant: this granted, the villagers, who called things by their right names, met “by his good will and pleasure.”

No meeting, however unanimous, could impose a tax, or sell or buy, or lease, or go to law, without permission from the Royal Council. The church which a storm had unroofed, or the presbytery wall which was falling to pieces, could not be repaired without a decree of Council. This rule applied with equal force to all parishes, however distant from the capital. I have seen a petition from a parish to the council praying to be allowed to spend twenty-five livres.

In general, the parishioners were still entitled to elect magistrates by universal suffrage; but the intendant
frequently took pains to recommend a candidate, who never failed to obtain the votes of the small electoral body. Again, he would occasionally declare of his own authority that an election just held was null and void, would appoint a collector and syndic, and temporarily disfranchise the community. Of this course I have noticed a thousand examples.

No more wretched station than that of these parochial functionaries can be conceived. They were subject to the whim of the lowest agent of the central government, the sub-delegate. He would fine or imprison them, and they could lay no claim to the usual guarantees of the subject against arbitrary oppression. An intendant wrote in 1750, "I have imprisoned a few of the principal grumblers, and made the community pay the expense of sending for the police. By these measures I have checkmated them without difficulty." Naturally enough, under these circumstances, parochial office, instead of being an honor, became a burden from which all sought to escape.

Yet still, these last traces of the old parochial system were dear to the peasant’s heart. To this very day that system is the only branch of government which he thoroughly understands and cares for. Men who cheerfully see the whole nation submit to a master, rebel at the bare idea of not being consulted in the government of their village. So pregnant with weight are hollow forms!

The remarks I have made upon cities and villages apply also to almost every corporate body which had a separate existence and corporate property.

Under the old regime, as in our own day, neither city, nor borough, nor village, nor hamlet, however small, nor hospital, nor church, nor convent, nor college, could exercise a free will in its private affairs, or administer its property as it thought best. Then, as now, the administration was the guardian of the whole French people; insolence had not yet invented the name, but the thing was already in existence.

CHAPTER IV.

THAT ADMINISTRATIVE TRIBUNALS (LA JUSTICE ADMINISTRATIVE) AND OFFICIAL IRRESPONSIBILITY (GARANTIS DES FONCTIONNAIRES) WERE INSTITUTIONS OF THE OLD REGIME.

In no country in Europe were the courts more independent of the government than in France; nor was there any in which more abnormal tribunals existed. The one involved a necessity for the other. Judges whose position was beyond the king’s reach, whom he could neither dismiss, nor displace, nor promote, and over whom he had no hold either by ambition or by fear, soon proved inconvenient. That led to the denial of their jurisdiction over cases to which the administration was a party, and to the establishment of another class of courts, less independent, which presented to the subject’s eye a semblance of justice, without involving, for the monarch, any risk of its reality.

In countries like Germany, where the judges were never as independent of the government as they were in France at this time, no such precaution was ever taken, and no administrative tribunals ever established. The monarch held the common courts in such subjection that he did not need extraordinary ones.

Very few of the royal edicts and declarations, or of the Orders in Council, issued during the last century of the old monarchy, were unprovided with a clause stating that all disputes that might arise, and lawsuits that might grow out of them, must be referred to the intendants and to the Council. The ordinary form of words was, "His majesty ordains that all disputes which may arise concerning the execution of the present decree, its accessories and corollaries, shall be tried before the intendant, and decided by him, subject to appeal to the Council. We forbid our courts and tribunals to take cognizance of any such disputes."

In cases arising out of laws or old customs which made no similar provision, the Council constantly intervened by process of evocation, and took the suit out of the hands of the common judges to bring it before itself. The Council registers are full of such decrees of evocation. Frequently they gave to the practice the force of theory. A maxim, not of law, took root in the public mind to the effect that suits, in which state interests were involved, or which turned on the interpretation of a law, were not within the jurisdiction of ordinary courts, and that these latter were restricted to the decision of cases between private individuals. We have embodied this idea in a set
form, but its substance belongs to the old regime.

In those days, the intendant and Council were the only court that could try cases growing out of questions of taxation. They alone were competent to decide suits concerning common carriers and passenger vehicles, public highways, canals, river navigation, and generally all matters in which the public interest was concerned.

Nothing was left undone by the intendants to extend their jurisdiction. Representations to the comptroller-general, and sharp hints to the Council, were incessant. One of the reasons assigned by a magistrate of this rank for issuing a writ of evocation is worth preserving. “Ordinary judges,” says he, “are bound by rule to repress illegal acts; but the Council can always overstep rules for a salutary purpose.”

This principle often led intendants and Council to assume jurisdiction over cases whose connection with the administration was so slight as to be invisible, and even over cases which had obviously no connection with it at all. A gentleman went to law with his neighbor. Dissatisfied with the tone of the court, he begged the Council to evoke the case. The intendant, to whom it was referred, reported that, “though the interests involved were wholly of a private nature, his majesty could always, if he chose, take cognizance of all classes of suits, without rendering account of his motives to any one.”

Individuals arrested for riot were usually tried on evocation before the intendant or the Provost of Police (prévôt de la maréchaussée). In times of scarcity, evocations of this kind were common, and the intendants appointed several “graduates” to assist them in their duties. They formed a sort of prefect’s council, with criminal jurisdiction. I have seen sentences rendered by these bodies condemning culprits to the galleys and to the scaffold. At the close of the seventeenth century, criminal jurisdiction was still frequently exercised by intendants.

Modern legists assure us that we have made great progress in administrative law since the Revolution. They tell us that “before that event the powers of the judiciary and those of the administration were intermingled and confused, but that since then they have been severed, and a line drawn between them.” A right appreciation of the progress here mentioned can only be formed when it is well borne in mind that if the judiciary under the old regime occasionally overstepped its natural sphere, it never filled the whole of that sphere. Both of these facts must be remembered, or a false and incomplete view will be taken of the subject. True, the courts were allowed to travel out of their sphere to make laws on certain subjects for the government of the public; but, on the other hand, they were denied cognizance of legitimate lawsuits, and thus excluded from a part of their proper domain. We have stripped the courts of the right of intruding into the administration of government, which they very improperly possessed under the old regime, but we have continued to suffer the government to intrude into the courts of law; yet it is even more dangerous for the government than for the judiciary to transcend its scope; for the interference of the latter in the administration of government only injures the public business, whereas the interference of government in the administration of justice tends to deprave the public mind, and to render men servile and revolutionary at one and the same time.

In one of the nine or ten constitutions which have been established in France within the last sixty years, and designed to last forever, an article was inserted declaring that no government official could be prosecuted before the common courts until permission had been obtained from the executive. The idea seemed so happy that, when the constitution was destroyed, the article in question was rescued from destruction, and has ever since been carefully sheltered from revolution. Officials commonly allude to the privilege secured to them by this article as one of the great triumphs of 1789, but here again they are in error. The old monarchy was quite as solicitous as more modern governments to protect its servants from responsibility to the courts, like mere citizens. Between the two eras the only substantial difference is this: before the Revolution government could not come to the rescue of its agents without having recourse to arbitrary and illegal measures; since then it has been legally authorized to let them violate the law.

When, under the old regime, an agent of the central government was prosecuted before any of the ordinary courts, an Order in Council usually forbade the judges to proceed with the case, and referred it to commissioners named in the order. The ground for the proceeding was, according to the opinion of a councilor of that day, because the ordinary judges were sure to be biased against a government official, and thus the king’s government was likely to be brought into contempt. Cases of evocation were not rare occurrences. They took
place daily, and the lowest officials were as often protected by them as the highest. The most slender connection with government secured immunity from all authorities, save the Council only. A farmer liable to corvées prosecuted an overseer of the Bridge and Road department for having maltreated him. The Council evoked the case. The chief engineer reported confidentially to the intendant that “the overseer was no doubt much to blame, but that was no reason why the case should be allowed to take its course. It is of the highest importance to the department of Bridges and Roads that the ordinary courts should not take cognizance of complaints against the overseers made by workmen bound to service, for if they did, the works would soon be brought to a stand by the lawsuits which the public dislike of these officials would excite.”

On another occasion, a state contractor had taken from a neighboring field materials which he required, and used them. The intendant himself wrote to the comptroller-general, “I can not lay sufficient stress on the injury the government would incur if contractors were left at the mercy of the ordinary courts, for their principles are wholly at variance with those by which the administration is guided.”

A century has elapsed since these lines were written, and yet these public officers would pass for contemporaries of our own.

CHAPTER V.

HOW CENTRALIZATION CREPT IN AMONG THE OLD AUTHORITIES, AND SUPPLANTED WITHOUT DESTROYING THEM.

LET us briefly recapitulate the points established in the three preceding chapters.

A single body, placed in the centre of the kingdom, administering government throughout the country; a single minister managing nearly all the business of the interior; a single agent directing the details in each province; no secondary administrative bodies, or authorities competent to act without permission: special tribunals to hear cases in which government is concerned, and shield its agents. What is this but the same centralization? As compared with ours, its forms are less sharply marked, its mode of action less regular, its existence less tranquil; but the system is the same. Nothing has been added, nothing taken away from the old plan; when the surrounding edifices were pulled down, it stood precisely as we see it.

Frequent imitations of the institutions I have just described have since made their appearance in various places, but they were then peculiar to France. We shall see presently how great an influence they exercised over the French Revolution and its sequel.

But how did these modern institutions find place among the ruins of the old feudal society?

By patient, adroit, persevering labor, rather than by violent arbitrary effort. At the outbreak of the Revolution, the old administrative system of France was still standing, but a new system had been built up inside it.

There is no reason for believing that this difficult exploit was the fruit of a deep scheme laid by the old government. On the contrary, it appears to have been accomplished almost unconsciously, instinct teaching the government and its various agents to acquire as much control as possible. The old officials were left in possession of their titles and their honors, but stripped of their power. They were led, not driven out of their domain. The idleness of one, the selfishness of another, the vices of all, were skillfully turned to account. No attempt was made to convert them, but one and all were quietly replaced by the intendant, whose name had never even been heard at the time they were born.

The only obstacle in the way of the change was in the judiciary department; but there, as elsewhere, the government had contrived to seize the substance, leaving its rivals the outward show of power. It did not exclude the Parliaments from administrative business, but it gradually absorbed their duties till there was nothing for them to do. On some few rare occasions, as, for example, in times of scarcity, when popular excitments tempted the ambition of magistrates, it allowed the Parliaments to exercise administrative authority for a brief interval, and let them make a noise which has often found an echo in history; but it soon silently resumed its functions, and discreetly assumed sole control of men and things.
A close study of the struggles of the Parliaments against the power of the king will lead to the discovery that they were invariably on political issues, and never on points of administration. Quarrels usually began on the creation of new taxes—that is to say, the belligerents contended for legislative authority, to which neither had any claim, and not for administrative power.

This becomes more apparent as we approach the revolutionary era. As the people’s feelings become inflamed, the Parliament mixes more in politics; and simultaneously, the central government and its agents, with skill enhanced by experience, usurp more administrative power. The Parliament grows daily less like an administration, and more like a tribune.

Day after day, the central government conquers new fields of action into which these bodies can not follow it. Novelties arise, pregnant with cases for which no precedents can be found in parliamentary routine: society, in a fever of activity, creates new demands, which the government alone can satisfy, and each of which swells its authority; for the sphere of all other administrative bodies is defined and fixed; that of the government alone is movable, and spreads with the extension of civilization.

Impending revolution unsettles the mind of the French, and suggests a host of new ideas which the central government alone can realize: it is developed before it perishes. Like every thing else, it is brought to perfection, as is singularly proved by its archives. There is no resemblance between the comptroller-general and the intendant of 1780 and the like officials in 1740: the system has been transformed. The agents are the same, but their spirit is different. Time, while it extends and exercises the power of the government, imparts to it new skill and regularity. Its latest usurpations are marked by unusual forbearance; it rules more imperatively, but it is far less oppressive.

This great institution of the monarchy was thrown down by the first blow of the Revolution: it was raised anew in 1800. It is not true that the principles of government which were then adopted were those of 1789, as so many persons have asserted; they were those of the old monarchy, which were restored, and have remained in force ever since.

If it be asked how this portion of the old regime could be bodily transplanted into and incorporated with the new social system, I reply that centralization was not abolished by the Revolution, because it was, in fact, its preliminary and precursor; and I may add, that when a nation abolishes aristocracy, centralization follows as a matter of course. It is much harder to prevent its establishment than to hasten it. Every thing tends toward unity of power, and it requires no small contrivance to maintain divisions of authority.

It was natural, then, that the democratic Revolution, while it destroyed so many of the institutions of the old regime, should retain this one. Nor was centralization so out of place in the social order created by the Revolution that it could not easily be mistaken for one of its fruits.