

Le paysan n'avait pas seulement cessé d'être serf; il était devenu propriétaire foncier

As Tocqueville points out, the commonly held idea of his time was that a society where land-holding reached down to the lowest levels was a product of the Revolution. Yet he challenged this to say that the peasants shared as much interest in the lands as their social superiors. The traditional feudal dues exacted by a lord in previous times, he says, weighed down heavier on peasants in the 18th century than they had previously, since it was the peasants' own produce which suffered as a result. As he says, *qu'important les gênes de l'exploitation à celui qui exploite pour une autre?* Certainly the various dues imposed by lords, rent, tolls on trade, charges for the lord's mill or winepress etc. would not have applied to the produce of a lord's own land, albeit under tillage by his serfs. If they now conspired to reduce the prosperity of a man working for his own subsistence, clearly it would cause resentment.

The other side of the argument is that even this was acceptable if part of a contract whereby a lord would protect the peasants under his charge. As Tocqueville shows, this no longer applied. With the erosion of noble power in the localities by the encroaching of central government that he outlines elsewhere, *le seigneur n'est plus en réalité qu'un habitant que des immunités et des privilèges séparent et isolent de tous les autres.*

Before we can judge whether these really were the reasons why the feudal system appeared so loathsome to Frenchmen, we should first see whether the assumptions Tocqueville made were true. Was it true that peasants had ceased to be serfs? Although it is true that the formal subjection of peasants to a local lord had ceased to exist, it was still the general rule that peasants remained on the lands that their parents had farmed for their lord. Lands were rented from lords, and peasants although free stayed subservient to their lord/landlord. Again, use of the lord's mill remained a necessity, not through formal compulsion, but rather the fact that it was a noble monopoly. Add this to *péages* and *corvées* and we see a picture of a peasantry every bit as secured to a lord as had been the case in feudal times. What had changed was that the lord no longer had his feudal obligations to support them

Is it also true that the peasants really held land of right? Looking at the peasantry, we find them almost equally divided into *propriétaires*, *tenanciers*, *métayers* and *journaliers*. Of these, only the first ever had rights to the land they were tending, and only the first any right to divide it between their children. Thus it can only be around 8 million out of a peasant population of about 20 million who fit Tocqueville's quotes from Turgot. And even out of these 8 million, the numbers who were rich enough to be able to purchase extra lands must have been much smaller: when Tocqueville quotes an anonymous contemporary saying that *les terres se vendent toujours au-delà de leur valeur* he can only be referring to a very small minority. Indeed even he admits that the time when it was possible to see *l'amour extrême du paysan pour la propriété foncière* is after the Revolution has already caused church and noble land to be sold.

Il n'y avait pas de pays en Europe où les tribunaux ordinaires dépendissent moins du gouvernement qu'en France; mais il n'y en avait guère non plus où les tribunaux exceptionnelles fussent plus en usage

What Tocqueville intends by drawing this contrast is the fact that saying that the law courts in France were independent is to understate their independence. The king could not sack judges in the *parlements* or impose anything on them by either force or preferment; and so in order to avoid his own power being tampered with, it was necessary to divert cases he had an interest in to special tribunals. Tocqueville stresses that these were *mesures illégales et arbitraires*, especially mentioning the setting up of special councils to try royal officials who would otherwise be brought in front of the *parlements*.

Tocqueville's view of this process is coloured by the fact that he considered that the *parlements* were fundamentally the only bulwarks protecting society at large from untrammelled despotism on the part of the king. Therefore it is unsurprising that we should see condemnations of this aspect of royal policy as *mesures illégales et arbitraires*, while he says beforehand that royal interference in the workings of justice *déprave les hommes et tend à les rendre à la fois révolutionnaires et serviles*. But it is a judgement which also makes several assumptions about the quality of justice provided by the *parlements* in the first place

The *parlements* in France formed an opposition to royal power that was unmatched by any other continental institution, and in respect of their composition they did indeed depend less on the monarchy than did those of other countries. This does not mean to say that they did not concentrate a great deal of their efforts on the government. In fact, since they were the only real form of opposition to the king, the *parlements* took it on themselves to break almost every new policy that the king's ministers chose to create. By concentrating so fixedly on the government, it is difficult to say that the *parlements* genuinely did not depend on it. Even institutionally, the *parlements* were dependent on the king's government. As their abolition in 1771 had shown, they could be dismissed altogether and replaced by a new judicial system which would not interfere in political matters in the way that especially the *Parlement de Paris* tended to do.

As for the common occurrence of an *intendant's* court, it did not necessarily mean that a lesser degree of justice was being done. The ordinary courts did not have a monopoly on justice by any means, as Arthur Young noticed, saying: *the conduct of the parliaments was profligate and atrocious. Upon almost every case that came before them, interest was made openly with the judges.*

Qui lit un préfet lit un intendant

One of Tocqueville's central themes was that of a continuity of policy which lasted from the end of the *ancien régime* into the Revolutionary era, and here he is attempting to equate the local agents of the *conseil du roi* with the *préfets* who replaced them after the Revolution. Yet the key thrust of this argument is to suggest that throughout this period, the direct influence of the central government was increasing.

Tocqueville suggests that the correspondence between *intendants* and the ministers in Paris was all-pervasive and this shows the importance Tocqueville places on documentary sources. As he says, *la masse des écritures est déjà énorme*, and it is only after having digested this mass that Tocqueville makes this claim. The items he does quote, though, only relate to projects in which the government was providing money: an *intendant's* duties did extend beyond mere money.

Tocqueville seems to view *intendants* merely as administrative agents in this respect. He sees their role as similar to the job of the *préfets* later on, acting as local representatives of the central administration that was the real decision-maker. This underestimates the powers of initiative that the *intendants* possessed. As Tocqueville himself points out, the *intendants* held their own special courts, in which even capital cases could be tried. They effectively ran their areas of the country especially in the *pays d'élection*, where there was no provincial estates to share power with.

On the other hand, *intendants* in many areas did not enjoy all the power of their *préfet* successors, in that they were forced to share power with governors and other local corporations and organisations. In this respect, it is true that an *intendant* did indeed sound more like his more bureaucratised successor. The point that Tocqueville makes is that they did share the language of a newly emerging administration: more statistically-based and more dependent on the councils in Paris than beforehand. It is this trend which he traces through the years.

As for whether *les fonctionnaires administratives, presque tous bourgeois, forment déjà une classe* with its own particular viewpoint, it is difficult to tell. Firstly, the fact that both *intendants* and *préfets* were bourgeois should be granted: it should not be forgotten that in the Old Regime, as Tocqueville stresses later on, the aim of such men was to stop being bourgeois as quickly as possible. The *noblesse de robe* was already *l'aristocratie de la société nouvelle, qui est déjà formée est vivante*, not the handful of bourgeois *intendants*. If *intendants* and *préfets* shared a common language, then this was result of them performing similar functions, not necessarily because they shared a common view on life.

L'ancien régime est là tout entier: une règle rigide, une pratique molle; tel est son caractère

Tocqueville's claim that in the Old Regime severe rules were waived in practice was shown first in terms of the censorship especially as regards newspapers. The power of newspapers and indeed any printed material had always touched a raw nerve in the government, but Tocqueville notices a marked difference in attitude towards books and newspapers. *Elle est débonnaire pour les livres, mais déjà fort âpre contre les journaux*, as he says, though he notes that censorship had always been a government responsibility. Although he quotes a draconian precedent from 1757, Tocqueville does not ask why this came about: a precedent was needed to reassert the government's power whether or not it would be followed, *in case it was deemed necessary in the future*.

Tocqueville also notes the great volume of new laws produced by the central government, thanks to the constant changes in personnel at the level of the *conseil du roi* and *comptroller-général*. With each of these hoping to make his own mark, it was hardly surprising that over-worked local agents were unable to implement everything that they were given. One officer that Tocqueville quotes mentions that the amount of time needed to study new rules ate heavily into the time needed to implement them

In these circumstances, is it surprising that he also mentions that most *arrêts-de-conseil* invariably recalled previous laws which had not been implemented, *souvent de date très récente* as well as the fact that *le gouvernement permet sans cesse de faire par exception autrement qu'il n'ordonne?* The actual forces available to implement laws were far insufficient to actually carry out all royal wishes, even if the society was not already used to a variety of privileges for individual classes and orders.

It seemed to be a matter of great surprise to Tocqueville that he found such a great diversity in the implementation of the laws that were laid down by the *conseil du roi*. However, the processes of centralisation which he tries to trace had not reached the point where it was possible to govern on a single model: differences in *parlement*, land-holding, trade patterns etc. always made exceptions necessary to the general rule.